



IT'S A PENALTY

CommonProtect

A review of the legal systems protecting children
from sexual exploitation and abuse across
the Commonwealth

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Foreword

The sexual exploitation and abuse of children is reaching catastrophic levels and devastating numerous lives. It is a threat from which no child, community or country is immune.

Estimates show that one in eight children are sexually exploited or abused before reaching the age of 18.¹

Despite significant work being done by governments and the global child protection community to tackle these issues, millions of children across the Commonwealth remain under significant threat.

Throughout the Covid-19 global pandemic, rates of technology-facilitated exploitation and abuse have accelerated, and economic fallout has driven families into exploitative situations which can endanger children.² Recent climate-related disasters and conflicts have caused millions of children to be displaced, putting them at even higher risk of sexual violence.³ **The time to act is now.**

We hope that this report serves as a springboard for Commonwealth-wide action. Its findings show that there is still a long way to go towards ensuring every child in the Commonwealth is protected from sexual exploitation and abuse, offenders are prosecuted and survivors have access to justice.

It's a Penalty established the CommonProtect programme and produced this report because we believe that children all over the Commonwealth deserve to be protected. CommonProtect's goal is to protect every child from these forms of violence through legal reform, improved implementation and enforcement, comprehensive child protection systems, and increased awareness and education.

We are incredibly grateful to all partners who have made CommonProtect and this research possible. In particular, special thanks are owed to the Thomson Reuters Foundation and its TrustLaw programme, CMS, Clayton Utz, the Commonwealth Lawyers Association, and Sysdoc, as well as all of the contributing lawyers and researchers across the Commonwealth. We have been greatly encouraged by the collaboration and partnership that has been a part of producing this report.

Together, we can build a Commonwealth where all children are protected from sexual exploitation and abuse.

Sarah de Carvalho MBE
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About It's a Penalty

It's a Penalty is a UK-based NGO working globally to end abuse, exploitation and human trafficking.

This report is an output from It's a Penalty's advocacy programme, CommonProtect, which focuses on delivering improved protection for children from sexual exploitation and abuse (CSEA) throughout the Commonwealth of Nations.

Working in collaboration with governments, civil society organisations, child rights champions and Commonwealth institutions, CommonProtect is the Commonwealth-wide movement to end impunity for child sexual exploitation and abuse, improve access to justice for survivors, and ensure better child protection. CommonProtect's ultimate goal is for there to be a comprehensive legal framework in place in each Commonwealth country which criminalises CSEA in every form, no matter where the offender is from or where in the world the offence takes place.

It's a Penalty has a history of working in the Commonwealth, including running awareness-raising campaigns during the Commonwealth Games, and has strong working relationships with many Commonwealth institutions and organisations.

For more information about It's a Penalty, please visit www.itsapenalty.org



Methodology

This report is a result of a two-year-long project in partnership with key contributors. Initial guidelines for the research were developed and a request for assistance issued to lawyers in each focus country who were available and willing to assist. Additional lawyers from certain jurisdictions were connected to the project. In order to guide lawyers in their research and ensure consistency, a research template was produced.

For the majority of Country Reports featured in this report, lawyers conducted research and returned a completed research template to help key contributors prepare a country report, with additional desk-based research conducted where necessary. For the countries of Australia, Barbados, Malaysia, New Zealand and South Africa, the lawyers and researchers wrote the country reports themselves. All country reports were then finalised and edited.

A diverse range of secondary sources were used in the research and analysis of this report, including the UN Committee of the Rights of the Child, U.S. Department of State Trafficking in Persons, and research published by international and local NGOs, government ministries and other intergovernmental organisations.

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Scope of the Report

The scope of this report is limited to 21 Commonwealth Member States from four regions of the Commonwealth (Africa, Asia, the Americas and the Pacific). These 21 focus countries were selected based on several criteria, including but not limited to: ensuring an even regional spread of focus countries; consideration of progress thus far made in child protection; apparent need for improved child protection legislation or systems, and findings from It's a Penalty's 2018 research report on extraterritorial legislation in the Commonwealth; and the ability to connect with lawyers and child protection experts in-country to complete the research.

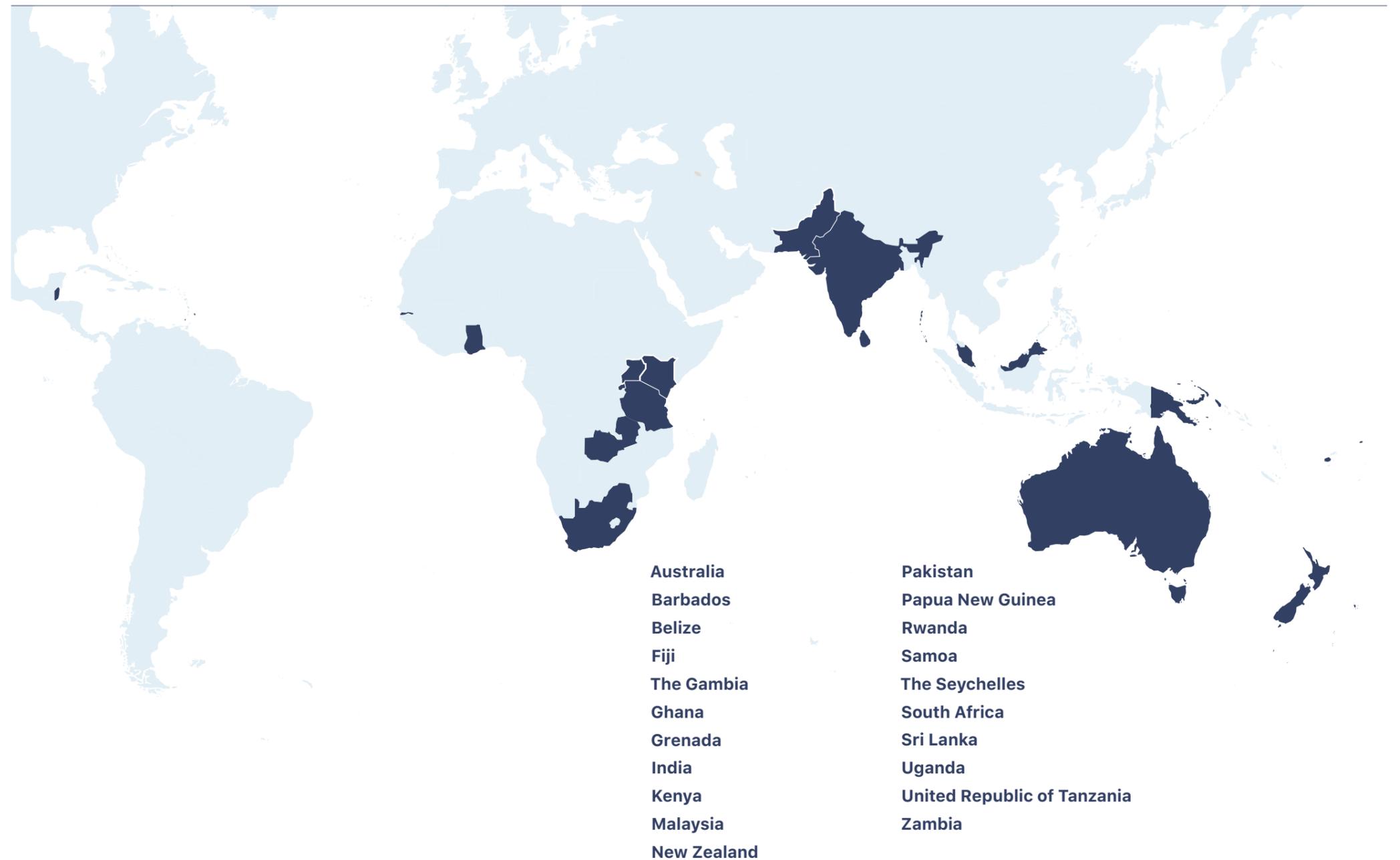
The Commonwealth focus of this report not only recognises the significantly varied nature of the Commonwealth, but also the synergies that exist between its Member States, including the common law tradition and the strong bonds and networks which facilitate a productive sharing of best practice throughout the Commonwealth. It also recognises that child sexual exploitation and abuse (CSEA) is a common and growing issue for many members and one which can benefit from joint political action by leaders. This report provides an in-depth overview of each focus country's legislation and policies against CSEA.

An introductory section outlines the definition and global prevalence of CSEA, survivor and perpetrator profiles, and emerging forms of CSEA, responses and protective measures to protect children from these forms of violence, and the role of the Commonwealth in ending CSEA worldwide.

The report is divided into Commonwealth regions. For each region, summaries of trends, risk factors, key areas of concern and survivor stories precede the Country Reports. Each Country Report examines the prevalence and profile of CSEA, gaps and successes in the legislation/criminalisation, prosecution, protection, and prevention systems. From this analysis, recommendations for the advancement of child protection in each country have been made.

Throughout the report, child protection and Commonwealth organisations have contributed Spotlights exploring key topics and relevant search efforts.

Finally, the report concludes with recommendations for Commonwealth-wide action to improve the protection of children from sexual exploitation and abuse throughout the Commonwealth and beyond.



INTRODUCTION

CSEA: A global and Commonwealth-wide issue

What is child sexual exploitation & abuse (CSEA)?

CSEA is a form of violence against children.

CSEA encompasses all sexual activity involving a child. As defined by the United Nations Convention on the Rights of the Child (**UNCRC**), a child is considered to be any person under the age of 18.⁴ Regarding CSEA, the term 'child sexual abuse' is defined as any activity that involves a child for the sexual gratification of another person, or any sexual activity before a child has reached the age of consent. This includes assault, rape, physical contact, grooming as a precursor to sexual activity, and exposure to sexual language and images.⁵ The term 'child sexual exploitation' is used when a child or someone else receives a benefit (not always monetary) in return for child sexual abuse taking place. This form of violence can often be associated with organised crime, and commonly applies when children are groomed and trafficked for sexual activity; forced into commercial sexual exploitation, formerly known as 'child prostitution'; or involved in the creation and distribution of child sexual abuse material (**CSAM**), formerly known as 'child pornography'.⁶

For every child who experiences sexual exploitation and abuse, the legacy of these forms of violence can be vast. The impact of CSEA can vary regarding the nature, severity and duration of the abuse, the child's coping strategies, their ability to understand the abuse, and how family, friends, the wider community and services respond to the child's disclosure.⁷ Survivors suffer both short- and long-term effects from CSEA.⁸ Many are often afflicted with severe physical, emotional and psychological trauma for the rest of their lives, with relationships with others and themselves irrevocably damaged.⁹ The documented consequences for survivors of CSEA include post-traumatic stress disorder (**PTSD**), substance abuse, poor sexual health in later life, mental health struggles, increased risk of re-victimisation and, in the cases of girls who become pregnant as a result of their abuse, lower rates of education.¹⁰

The global cost of violence against children is estimated to be 7 trillion USD.

CSEA is a public health and human rights issue with devastating consequences not only for individual survivors, but for society as a whole. The economic impact of CSEA is significant due to costs associated with government spending and productivity losses. According to a 2014 report by ODI, the global cost of violence against children is estimated to be 7 trillion USD, or 8% of global economic output.¹¹ More specifically, a 2015 study found that, over the course of survivors' lifetimes, the economic burden of CSEA in the US is approximately 9.3 billion USD.¹² A recent report by the UK Government concluded that the financial cost of children who were sexually abused in England and Wales in 2018/19 will amount to at least 10.1 billion GBP over their lifetimes.¹³

Global prevalence & statistics

CSEA is a global problem that takes place in every country and community around the world. Overall, it is estimated that one in eight children are sexually exploited or abused before they reach the age of 18, amounting to 12.7% of the world's children.¹⁴ This equates to one in five girls and one in thirteen boys.

According to the ILO, at least 1.8 million children worldwide are subjected to commercial sexual exploitation.¹⁵ The interrelatedness of CSEA and human trafficking often means that survivors of sexual exploitation and abuse, both children and adults alike, are first victimised through human trafficking.¹⁶ According to the UNODC, one in three detected human trafficking survivors worldwide are children.¹⁷ The majority of these children are trafficked for sexual exploitation.¹⁸

Recent technological advances and globalisation have led to the emergence of new forms of exploitation and abuse. With growing global accessibility to the internet, it is likely that millions of children throughout the Commonwealth are groomed online and exploited through the production and distribution of child sexual abuse materials (CSAM); a 2019 study found that 81% of reports of child sexual abuse material came from

Asia, Africa and Europe.¹⁹ The issue of online-facilitated CSEA has been further exacerbated by the global pandemic. Throughout 2020–2021, many countries experienced increases in online CSEA content between 40–265%.²⁰ As online forms of communication become more and more part of everyday interactions, the distinctions between 'online' and 'offline' CSEA are increasingly blurred.²¹

Violence against children, particularly sexual violence, is an often hidden issue. Around the world, the vast majority of offences go unreported—estimates show that only 1% of CSEA cases come to the attention of child protection services each year.²² Too often, survivors do not report their abuse because they are afraid. This can be because of societal stigma faced by those who have been subjected to CSEA, the potential for backlash from their family or the perpetrator, who they may be dependent on in some way, distrust in the police or criminal justice system, a lack of awareness about where to go and how to report, or even that they do not realise what happened to them was abuse.²³ Feelings of shame or guilt can also lead children not to disclose their abuse as they mistakenly believe that they are to blame for what happened to them. Furthermore, cultural barriers such as taboos about sexuality, patriarchal attitudes, social tolerance of violence against women and girls, and homophobic attitudes towards male survivors, make it hard for CSEA survivors to come forward.²⁴ Given this widespread under-reporting, even where data does exist, it is likely that the actual global scale and impact of CSEA is far greater than statistical evidence shows.²⁵

Across the world, it is evident that several key structural drivers exist that increase the prevalence of CSEA, including: age and social inequality, discrimination based on race, sexuality and gender identity, stigma and social norms supporting gender-based violence and violence against children, poor capacity and weak legislation, poverty, a lack of protection for children who are migrating or displaced due to crisis or conflict, limited industry (e.g. online service providers, travel and tourism, sports) policies in place to protect children, and the breakdown of stable governance in a country.²⁶



...at least 1.8 million children worldwide are subjected to commercial sexual exploitation.



In the Commonwealth, 43% of women are married before they reach 18 years of age.

Victimisation & vulnerability

Any child could be exploited or abused. However, some are more at risk of being victimised than others, including those from impoverished backgrounds, runaways and missing children, LGBTQIA+ individuals, those with unstable family lives, children of sex workers, those who are homeless, refugee or migrant children, AIDS orphans, children with disabilities, out-of-school children and those from ethnic minorities.²⁷ Additional barriers to reporting and getting help are also faced by these groups, increasing their vulnerability to further harm.

Currently available data indicates that girls are disproportionately affected by CSEA. For example, research shows that 120 million girls worldwide have been subjected to some form of sexual abuse, and that girls are at the greatest risk of being groomed online.²⁸ However, global data on the exploitation and abuse of boys is severely lacking.²⁹ Some experts have argued that the specific stigma faced by boys who report CSEA means that many more boys than girls stay silent following their abuse.³⁰ Therefore, this absence of data should not be taken as definitive proof that boys experience exploitation and abuse at a far less significant rate than girls.³¹ Furthermore, it is evident that boys, as well as children of other genders, are often excluded in policy, research and interventions, which only increases their vulnerability to sexual violence.³²

Children of every age are vulnerable to CSEA. However, the forms and specific risks they may be exposed to frequently vary according to developmental stages.³³ For example, children of a younger age may be more prone to abuse by adults and caregivers at home or in care settings, where they are likely to spend a majority of their time. Younger children may also be more susceptible to manipulation, coercion and grooming by CSEA perpetrators as they are probably unaware of their ulterior motives or the risks posed to them.³⁴ Older children, on the other hand, may be more vulnerable to victimisation outside the home through exposure to strangers and peers.³⁵

Many CSEA survivors do not disclose their abuse until many years later. The UK's Independent Inquiry into Child Sexual Abuse (IICSA) found that over 66% of CSEA survivors did not tell anyone that they were being sexually abused at the time.³⁶ This delayed disclosure can often result in survivors being unable to seek justice for the crimes committed against them as they are subject to statutes of limitation, which many countries still impose for CSEA offences.³⁷

Perpetrators of CSEA

Those who sexually abuse or exploit children can be of any race, gender, sexuality or economic background.³⁸ Studies have demonstrated that the majority of CSEA perpetrators—between 70–90%—are men, but women and people of other genders do also commit these crimes.³⁹ A 2016 research report commissioned by Australia's Royal Commission into Institutional Responses to Child Sexual Abuse found that female CSEA offenders may account for 6–11% of all perpetrators.⁴⁰

In 89% of cases, the perpetrator is known to the child.

Despite the typical characterisation of CSEA perpetrators as paedophiles with a particular sexual preference for children,⁴¹ evidence shows that most known perpetrators can instead be described as situational offenders who exploit or abuse children because they are accessible.⁴²

Not all perpetrators of CSEA are adults. Children make up a significant proportion of those responsible for acts of sexual abuse against other children and adolescents.⁴³ Despite its prevalence, child-to-child, also known as peer-to-peer, sexual abuse remains an under-investigated topic within child protection and intervention policies.⁴⁴



Most often, children are abused in their own home or at the perpetrator's residence.

Research has found that most perpetrators of CSEA are not strangers to the children they abuse. In 89% of CSEA cases, the perpetrator is known to the child.⁴⁵ This could be a family member, a neighbour, a friend or someone who has targeted them, such as a teacher, faith group leader or sports coach. Frequently, perpetrators build a relationship, trust or emotional connection with a child, as well as other adults who are close to them, so that they can manipulate, exploit and abuse them. This process is known as grooming.⁴⁶

As a precursor to abuse, grooming strategies will often involve the perpetrator giving gifts to the child or "testing" their relationship by telling secrets.⁴⁷ As well as in person, perpetrators can use the internet to connect with and groom children. When grooming a child online, perpetrators commonly hide who they are by sending photos or videos of other people, or pretend to be a similar age to the child in order to build rapport.⁴⁸ Often, children do not recognise that they are being groomed and so may not come forward on their own. Overall, this 'preparation' phase of CSEA can take place over a short or long period of time, varying from weeks to years.

Specific forms & manifestations of CSEA

CSEA can occur in all settings in which children spend their time. Most often, children are abused in their own home or at the perpetrator's residence, but other locations where CSEA takes place include school, work, places where children participate in sports, churches or faith centres.⁴⁹ It is common for perpetrators of CSEA to enter into professions where they gain

access to children to groom and abuse.⁵⁰ The abuse of children by authority figures, including in institutions, residential care or education, sport and religious settings, has been well-documented in recent years.⁵¹ Particularly regarding intra-familial CSEA, cases rarely come to the attention of statutory authorities.

Online technologies facilitate direct access to children and young people, and the distribution of abusive imagery.⁵² Online-facilitated CSEA can take many forms and varies in its severity. Offenders engage with children using the dark or deep web, online file sharing and storage, peer-to-peer network, and streaming services through which they can communicate with children anonymously.⁵³ Online communication can also escalate into in-person CSEA if children meet someone they have been communicating with online.⁵⁴

The sexual exploitation of children in travel and tourism (**SECTT**) is a global issue. Children of all ages, genders, and circumstances are sexually exploited by both foreign and domestic offenders who misuse travel

and tourism infrastructure and services all over the world.⁵⁵ In particular, informal travel and 'voluntourism' allows tourists access to vulnerable children with little regulation, oversight, or safeguarding mechanisms in place.⁵⁶ Online access has increased offenders' access to children who they can travel to in order to abuse. A widespread lack of extraterritorial jurisdiction over CSEA laws means that offenders can often escape prosecution for crimes they commit overseas.⁵⁷

Throughout the world, harmful traditional practices exist which exacerbate the risks posed to children of sexual exploitation and abuse. Child marriage, as well as early and forced marriage, is considered a form of, and a pathway to, CSEA.⁵⁸ Every year, 15 million children globally are married before the age of 18; the majority of those affected are girls.⁵⁹ That equates to approximately 41,000 children per day, or one child every two seconds. In the Commonwealth, 43% of women are married before they reach 18 years of age.⁶⁰ Most children who are forced into marriage are at risk of sexual violence, domestic/family violence, early pregnancies and discontinued education.⁶¹ Parents who choose to marry their children off before they reach legal maturity are typically motivated by existing social and sexual norms, the low value attached to daughters, poverty, or humanitarian crises.⁶² A further harmful practice which affects millions of girls throughout the world and Commonwealth is female genital mutilation (**FGM**), also referred to as female genital cutting (**FGC**). When performed on a girl under the age of 18, FGM is considered a form of child abuse which is contrary to the UN Convention on the Rights of the Child.⁶³ Reportedly, at least 200 million girls and women living in 30 countries have undergone FGM.⁶⁴ The regions of the Commonwealth where FGM is most prevalent are Africa and Asia.⁶⁵

CSEA is not a static or fixed phenomenon.⁶⁶ As the world progresses and changes, and global attention and research is increasingly drawn to child protection issues, new manifestations of CSEA are sure to emerge and be reported on.⁶⁷ In light of this, it is imperative that efforts to protect children from sexual exploitation and abuse similarly evolve and adapt.

SPOTLIGHT

The effect of the COVID-19 pandemic on child sexual exploitation

The Special Rapporteur for the Sale and Sexual Exploitation of Children, Mama Fatima Singhateh, issued a report in January 2021 on the “Impact of coronavirus disease on different manifestations of sale and sexual exploitation of children” (the SR Report).¹

The SR Report reveals some shocking truths and devastating conclusions that show how the novel coronavirus (**Covid-19**) pandemic has gone beyond a global health crisis. The knock-on effects of Covid-19 on the lives of children across the world is undeniable and could have a significant, long-term impact on the protection of children from sexual abuse and exploitation.

The evidence is clear and unequivocal: **the Covid-19 pandemic has snowballed into a formidable test for global development and the protection of children.**⁶⁸ A rise in reports of child abuse and sexual exploitation has been reported across the globe, including Europe, Botswana, Kenya, Peru and Uganda.⁶⁹ In Nigeria, financial hardship is leading to an increase in families sending children, predominantly boys, to Almajiri schools which, as research has shown, are institutions rife with physical and sexual abuse as well as child labour.⁷⁰ In migrant camps, the lack of humanitarian aid and travel restrictions have seen an emergence of children being sold and sexual acts being exchanged for food and basic supplies.

UNICEF estimates that an additional 150 million children have been plunged into multidimensional poverty without access to essential services due to the pandemic.⁷¹ This poverty and desperation creates a breeding ground for impunity and the breakdown of law and order, destroying communities.⁷² Furthermore, the Covid-19 pandemic has allowed trafficking and child exploitation to flourish, and it is predicted this will be the case long after the pandemic ends.⁷³ In countries such as India, where poverty was prevalent before the pandemic, children living on the streets,

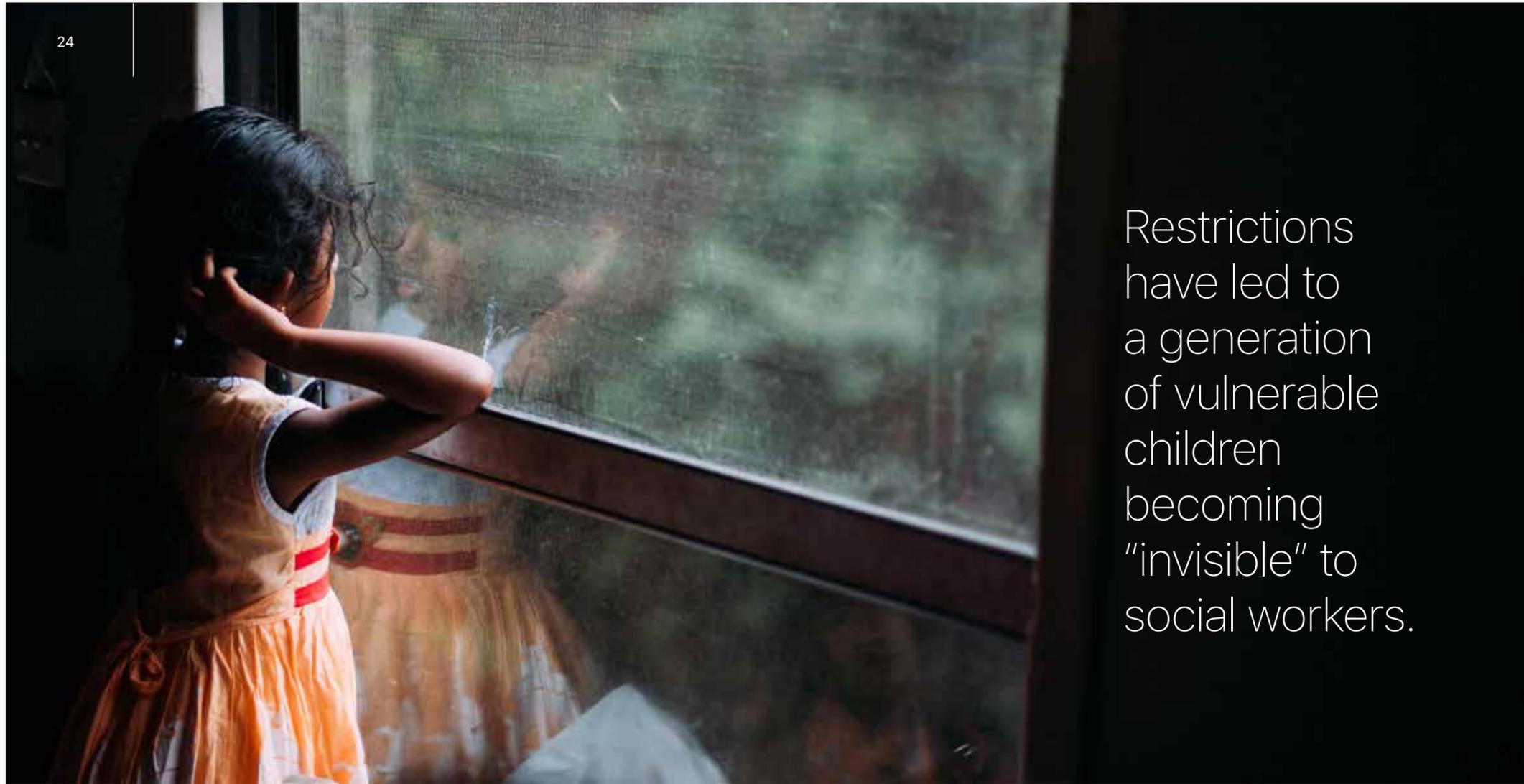
many of whom are undocumented, suffer an increased risk of trafficking and sexual exploitation.⁷⁴ Where people struggle financially, they are more vulnerable to being targeted and befriended by abusers. Further, it is possible that where a family’s income has decreased, they may feel forced to sell their children for sex in order to get money.⁷⁵

Past public health emergencies have had similarly dire consequences for children in terms of exploitation and abuse. The Ebola epidemic of 2014 and 2015, for example, was linked to spikes in sexual abuse and teenage pregnancy in West Africa, with vulnerable girls turning to “transactional sex” to pay for food and other basic needs.⁷⁶

Individuals are not alone in facing financial hardship because of the pandemic. In countries across the world, especially those that rely on income generated through travel and tourism, governments face the harsh reality of limited funds. Recently, this has led to the prioritisation of measures to contain Covid-19 over the delivery of vital support and measures to prevent child abuse and sexual exploitation, with already-limited child protection services being reduced even further. The responses to UNICEF’s socioeconomic impact survey of Covid-19 highlight this, with at least one service being severely affected by the pandemic in around two thirds of those who responded, including South Africa, Nigeria and Pakistan.⁷⁷ As countries adopted prevention and control measures to contain the Coronavirus, vital violence prevention and response services were suspended or interrupted which, as a result, left children at an increased risk of sexual violence, exploitation and abuse.

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Restrictions have led to a generation of vulnerable children becoming “invisible” to social workers.

Restrictions put in place to contain Covid-19, such as closing schools and making children stay at home, has led to heightened levels of abuse against children, especially as they are, in some instances, being confined to close quarters with their abusers, increasing the level and frequency of abuse. In Uganda, once lockdown measures were put in place, the national Child Helpline run by the Ministry of Gender, Labour and Social Development saw a 13-fold increase in daily calls reporting violence against children.⁷⁸ The lack of schools and access to external support systems has taken away a child’s opportunity to escape abuse or reach out for support, and has also contributed to the delayed reporting of abuse.⁷⁹ In the UK, the Children’s Commissioner for England has reported that these restrictions have ‘led to a generation of vulnerable children becoming “invisible” to social workers.’⁸⁰

The three key areas of abuse heightened by the pandemic as set out in the SR Report are:

Child marriage

The UNICEF and UNFPA report, *Child Marriage in Covid-19 Contexts*,⁸¹ estimates that there will be an additional 13 million child marriages globally by 2030 as a result of the pandemic.⁸² The lack of prevention programmes and increased poverty have created the perfect storm for this practice to grow. Historic evidence from the Ebola outbreak in Liberia emulates this upwards trend of child marriages in the wake of a crisis.⁸³

The African Committee of Experts on the Rights and Welfare of the Child concluded that despite Covid-19 measures being temporary, the drop in children returning to schools increases their vulnerability to falling victim to forced marriages, labour, domestic servitude, sexual abuse and sexual exploitation.⁸⁴ It is estimated that school closures increase marriage risk by 25%, and 2% of girls will never return to school.⁸⁵

The education system not only provides immediate protection and escape from exploitation and abuse, but also provides girls with an opportunity to gain an education and stop the cycle of poverty for their future families.

Ensuring access to counselling, education and contact with officials working with families where there is a culture of child marriages is paramount to preventing child exploitation and abuse. Schemes that have been put in place globally, such as the national cash transfer programmes in India (where families receive financial compensation for not marrying off underage daughters), are also in jeopardy due to the Covid-19 pandemic.⁸⁶ Removing these schemes and support services, along with the absence of education, removes the incentive for families not to force their children into marriage for financial reasons.

Child trafficking

Vulnerable children inside refugee camps and those living in severe poverty across the world are at risk

from criminal organisations seeking to ensnare children for labour and sexual exploitation. Children make up a third of victims of trafficking or exploitation according to the latest UNODC report.⁸⁷ The combination of severe economic shocks, food shortages, school closures and deteriorating security situations creates fertile ground for the forced recruitment of children by human traffickers and armed groups.⁸⁸ The lack of free movement both inside and between countries due to the pandemic has changed the way criminals traffic and exploit children. Although the pandemic has isolated victims further, criminal organisations have adapted and the use of online communication and sexual exploitation in homes has increased. The sale and trafficking of children has moved online and the “drive-by” sale of children has been noted. A significant decrease in humanitarian aid in refugee and migrant camps has led to children being sold and forced into sexual activities in exchange for food and basic supplies.⁸⁹

Online child sexual exploitation & abuse

The pandemic has led to a growth in the number of child exploitation images and videos being uploaded or live-streamed to online platforms⁹⁰ European Union member states reported a 25% increase in demand for child pornography during the Covid-19 lockdowns.⁹¹ With children spending more and more time on the internet and feeling isolated, they are at more risk than ever of being befriended and abused online by those with whom they interact. The US-based National Centre for Missing and Exploited Children saw a 97.5% increase in reports of online grooming in 2020 to their CyberTipline, compared to 2019.⁹²

The transnational nature of sexual online abuse requires a holistic approach and commitment from all stakeholders globally. It is recommended that national regulation of private companies operating on the internet be required to limit the available dark-net platforms and to protect children when online.⁹³ However, laws alone are insufficient. Law enforcement agencies require sufficient budgets to enforce the law, and international cooperation between nations, law enforcement agencies and private stakeholders is key.

Conclusion

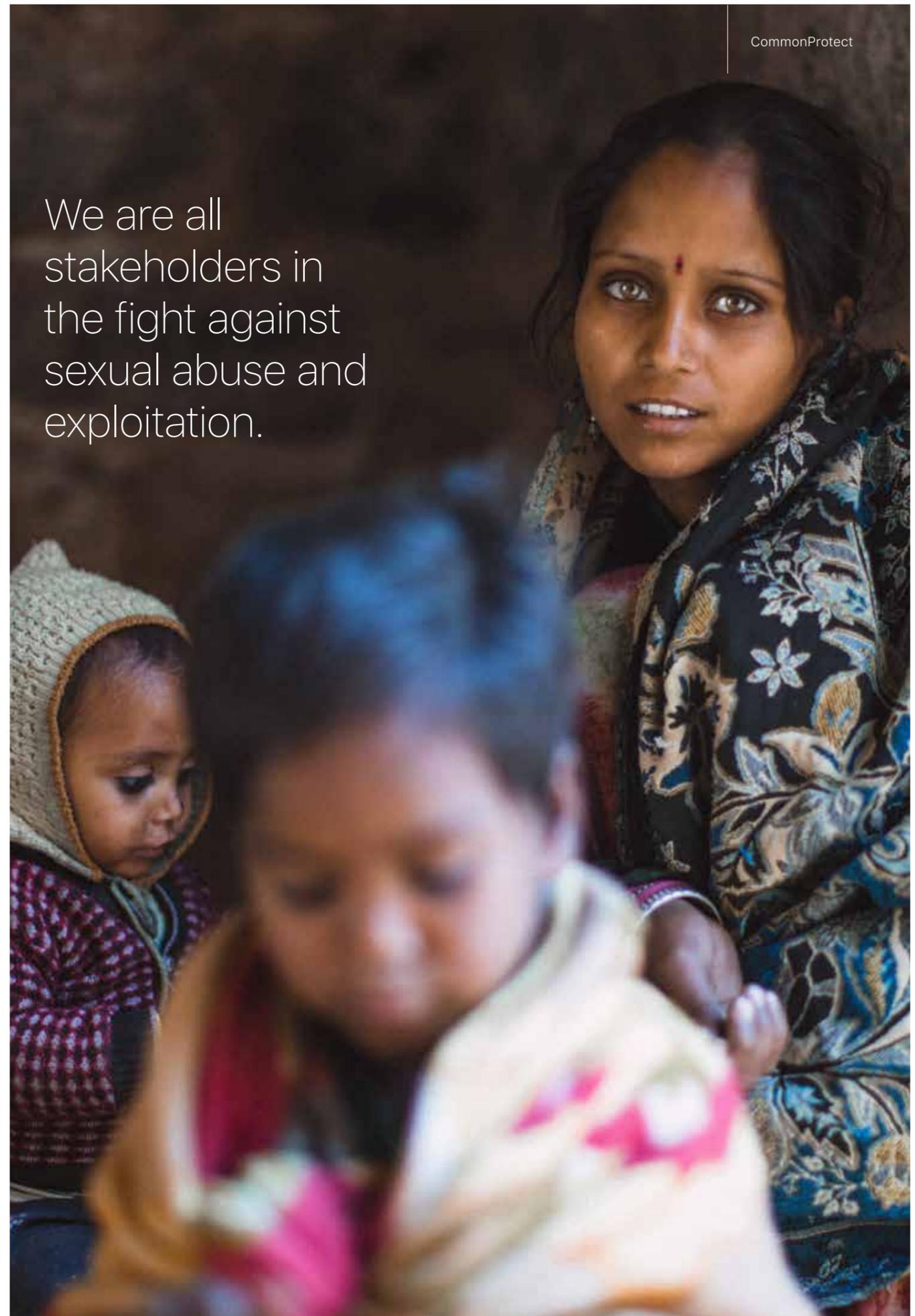
The Covid-19 pandemic has unleashed an unprecedented crisis and reinforced the vulnerabilities of individuals who already suffer the consequences of poverty, lack of regulation and supportive child and family services. Those plunged further into the depths of financial despair are forced to engage with criminal activity when faced with little alternative. Criminal organisations working during the pandemic have been able to utilise victims' desperation, resulting in the abuse and exploitation of children, whether physically, sexually or for the provision of cheap labour.

Prevention is key and whilst education and awareness-raising initiatives are important, they do not go far enough. Robust legal frameworks, holistic policies and proper data collection are needed to combat this secondary crisis arising from the pandemic. Global cooperation and coordination is required if the issue of child sexual abuse and exploitation is to be tackled and the adverse impacts on child safety from the pandemic are to be reversed. Across the globe, efforts to tackle the problem are thwarted due to low reserves of financial and human resources.⁹⁴ Institutions and local communities need to be able to work together to ensure that outreach programmes can reach even the remotest and most impoverished communities. To succeed, adequate budgetary allocation, information sharing and cross-border cooperation is needed to inform, fund and deploy these crucial services.

The 2030 Agenda for Sustainable Development should, according to the SR Report, be the blueprint for building a society in which no one is left behind.⁹⁵ Efforts must be increased and resources allocated to achieve targets 8.7 and 16.2 of the Sustainable Development Goals to ensure that measures to leave no child behind are embedded into the legislative and policy response to a sustainable and resilient recovery from Covid-19. All stakeholders—public and private—need to establish a comprehensive framework for the coordination and allocation of roles and responsibilities to avoid confusion, duplication or gaps in efforts. The response to the Covid-19 pandemic needs to be moved beyond the confines of crisis management to an opportunity to improve the child protection mechanisms required for the continued future protection of those most vulnerable in society across the globe.

The Special Rapporteur concludes that we are all stakeholders in the fight against sexual abuse and exploitation, and effective coordination and technical and financial support is needed for those nation states that lack the capacity or resources to protect the vulnerable in their societies.

We are all
stakeholders in
the fight against
sexual abuse and
exploitation.



INTRODUCTION

Protecting Children from Sexual Exploitation and Abuse

Children must never be blamed or held criminally liable for crimes committed against them.

One way to stem the tide of violence against children is to introduce legislation that will protect children from these forms of exploitation and abuse, and enable them to seek justice for the crimes committed against them.

At a national level, laws provide a framework and the appropriate tools to punish offenders and protect survivors through the criminal justice and child protection systems. Additionally, laws may act as deterrents to those who would perpetrate sexual exploitation and abuse against children.⁹⁶

The enactment and implementation of legislation is a way for governments to emphasise the importance of protecting children.⁹⁷ Research has shown that the enactment of legislation is often accompanied by a series of preventative efforts, demonstrating the political will to address the issue.⁹⁸ Conversely, when a country lacks comprehensive legal protections to defend children against sexual exploitation and abuse, it signals to society that such forms of violence are acceptable and that perpetrators will not be held accountable for their actions.⁹⁹

International and regional human rights' legal instruments outline a legal and systematic framework to guide states as duty bearers regarding child rights and protection, as well as signalling a state's commitment to addressing these issues. The UNCRC prohibits all forms of violence against children, including sexual exploitation and abuse.¹⁰⁰ In 2000, the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography significantly strengthened the international legal framework for states to criminalise and prosecute the sexual exploitation of children.¹⁰¹ Additionally, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, outlines the measures states must take to prevent human trafficking.¹⁰²

Regionally, the African Charter on the Rights and Welfare of the Child calls on African states to protect children from sexual exploitation and abuse by taking specific legislative, administrative, social and educational measures.¹⁰³ Furthermore, the International Conference of the Great Lakes Region (the **ICGLR**) enacted the Protocol on the Prevention

and Suppression of Sexual Violence against Women and Children.¹⁰⁴ In Asia, the SAARC Convention on Preventing and Combating Trafficking in Women and Children,¹⁰⁵ the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia,¹⁰⁶ and the ASEAN Regional Plan of Action on the Elimination of Violence against Children 2016–2025,¹⁰⁷ exist to strengthen regional responses to violence against children. Finally, the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse (**the Lanzarote Convention**) is dedicated specifically to the issue of sexual violence against children and places a broad array of obligations on its signatory parties to address these crimes.¹⁰⁸ States in Europe and beyond, including throughout the Commonwealth, can accede to the Lanzarote Convention.

All forms of sexual violence must be criminalised.

While it is only one part of the wider child protection system, legislation is evidently of great importance and forms the crucial foundation on which all child protection efforts must be placed.

The need for comprehensive and effective legislation

To achieve its goals of protecting children from all forms of CSEA and ensuring access to justice, legislation must be comprehensive and effective.

One of the first steps to effectively protect children against CSEA is to clearly define them in the law as any person under the age of 18. This ensures that all children are protected under the law. All forms of sexual violence must be criminalised, including child

sexual abuse, child sexual exploitation, child marriage and other harmful traditional practices, online CSEA and CSAM, the trafficking of children, grooming and sexual harassment, sexual activity in front of children, the sexual exploitation of children in travel and tourism (SECTT), and other emerging forms of CSEA. The sentences applied to these offences in legislation should reflect their severity.

Definitions and terminology surrounding CSEA offences should be gender-neutral so as not to exclude either male or female survivors from potential legal recourse for crimes committed against them. Laws against homosexuality also contribute to poorer protections for children who are exploited or abused by offenders of the same sex. As asserted by the UN Special Rapporteur, Mama Fatima Singhateh, one of the most crucial aspects of child protection is that children must never be blamed or held criminally liable for crimes committed against them.¹⁰⁹ Therefore, the terminology used must not serve to undermine the crimes or further victimise children. The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, developed in 2016 by a group of 18 international partners and published by ECPAT, establish best practice for terminology in legislation and policy combatting CSEA.¹¹⁰

Defining a legal age of consent is critical to protecting children from CSEA. The legal age of sexual consent refers to the legal age at which a person can give consent to engage in sexual activity. This is important to ensure that adults cannot claim that sexual activity with younger children was consensual—children under the age of consent are deemed legally unable to grant their consent. Throughout the Commonwealth, ages of consent range between age 12 to 18. Alongside a legal age of consent, in order to prevent the further criminalisation of children, close-in-age defences should be introduced for consensual sexual relationships between peers under 18. Furthermore, in matters regarding the age of consent, a perpetrator should not be permitted to use the defence that they believed the child to be over the age of consent.

Statutes of limitation, which set a time limit after an event by which legal proceedings must be initiated, should not be in place for CSEA offences. This is pertinent as survivors of CSEA may take months or even years to come forward, whether due to shame and societal stigma, memory loss, or being too young at the time of the event to fully understand the nature of the crime.¹¹¹ Recent evidence suggests that eliminating or extending statutes of limitation can lead to greater reporting and increased convictions for CSEA offences.¹¹² Mandatory reporting laws, whereby caregivers and professionals working with children are penalised for not reporting suspected cases of CSEA, can enable early detection of cases and limit further harm committed against children.

To address the abuse of children beyond national borders, extraterritorial legislation is a key element in the fight against CSEA globally. Extraterritorial jurisdiction over CSEA legislation, without conditions of double criminality in place, ensures that legal authorities can hold their citizens accountable for crimes even if committed abroad. Furthermore, to facilitate cross-border crime prosecution efforts, countries should provide for the extradition of those accused of CSEA offences abroad.

When introduced, comprehensive and effective legislation provides law enforcement with the ability to proactively investigate and prosecute CSEA offenders, as well as identify and intervene to protect more potential victims.¹¹³ Furthermore, prevention, protection, recovery and children's rights to participate are all areas that can be addressed through the introduction of wide-reaching national legislation.

...laws and policies are only as good as their implementation and enforcement...



...barriers exist which limit children's access to justice for crimes committed against them...

Beyond legislation: prosecution, protection and prevention

There are many components that make up the system to protect children from sexual exploitation and abuse beyond legislation.

National child protection policies are essential tools that provide a framework for action towards guaranteeing children's rights to be protected from these forms of violence. Measures outlined in policies can include the effective coordination of child protection efforts across government departments and institutions, as well as ensure the allocation and best use of resources.¹¹⁴ Policies are also key to ensuring governments' and other stakeholders' accountability, as they serve as a benchmark against which commitment to addressing CSEA can be measured and impact evaluated.¹¹⁵

Weak implementation and enforcement significantly limit the functioning of the criminal justice system, even when comprehensive and effective legislation addressing CSEA exists.¹¹⁶ Indeed, as highlighted by the UN 'laws and policies are only as good as their implementation and enforcement'.¹¹⁷ When

introduced, strong legislative and policy frameworks must also be accompanied by adequate resources to enable effective implementation, monitoring, and enforcement.¹¹⁸

A significant step towards ensuring the implementation and enforcement of laws is the establishment of a dedicated and well-resourced police force with an explicit remit to investigate and assist in the prosecution of CSEA offences.¹¹⁹ The involvement of child protection professionals such as social workers in these investigations is crucial in order to centre the needs of survivors and improve support provided to them.¹²⁰ Ongoing training must be delivered to police officers, social workers, as well as other criminal justice and child protection professionals, including prosecutors and the judiciary, to continually develop specialist knowledge and skills.¹²¹

All too often, barriers exist which limit children's access to justice for crimes committed against them. To enable children, caregivers and others to report both online and offline CSEA and access support, reporting mechanisms that are safe, well-publicised, confidential and accessible 24/7 should be established.¹²²

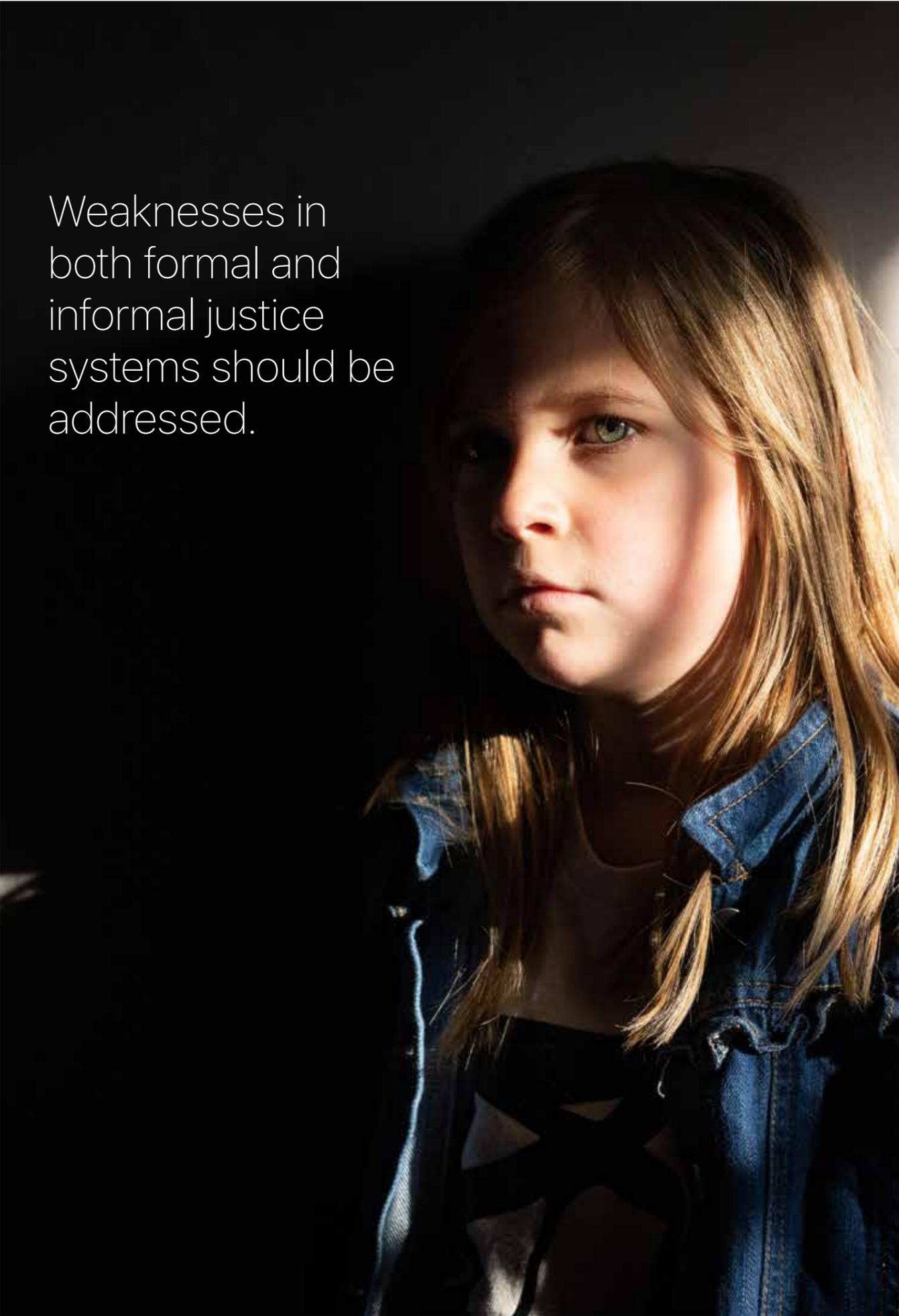
For many survivors of CSEA, interaction with the police and criminal justice system, including their participation in the court process, can lead to additional traumatisation.¹²³ Not only does this potential for re-traumatisation impact on survivors' willingness to report CSEA offences to the police or provide witness testimony, the hostile environment of the criminal justice system towards children can impede their ability to give their best evidence.¹²⁴ A survivor-centric approach must therefore be adopted, whereby negative police attitudes towards survivors are addressed and survivors who come forward are offered comprehensive and age-appropriate support and services, including counselling, legal advice, detailed explanation of the criminal justice process, and medical attention.¹²⁵ Furthermore, during proceedings states must take measures to ensure that survivors are protected from re-traumatisation through the implementation of child-friendly justice. This can include the use of recorded video evidence rather than in-person testimony, CCTV and similar techniques to block child survivors from seeing the accused in court, the protection of survivors' identity in media reporting, and advocates providing support whilst the child is giving evidence.¹²⁶

Research has found that child survivors' sense of justice for offences committed against them is not always predicated on the criminal prosecution of offenders.¹²⁷ It is essential, therefore, that the wants of the child are taken into account and that different forms of justice are explored. Outside the scope of the formal justice system, which includes formal state-based justice institutions and procedures such as police, prosecution, courts and custodial measures,¹²⁸ informal or 'traditional' justice systems exist in many Commonwealth countries. Issues with the formal justice system, including a lack of confidence and trust in it, the backlog of cases and length of time taken to process cases, a limited awareness of children's rights, and the inability to participate in court proceedings due to geographical location, influence many people's preference for informal justice.¹²⁹ However, informal

justice systems are often discriminatory towards disadvantaged groups and do not always adhere to international human rights standards.¹³⁰ Weaknesses in both formal and informal justice systems should be addressed to ensure access to justice for all survivors, however they prefer.

To ensure their impact, laws and child protection policies must be introduced alongside preventative measures, including a register of offenders and measures to limit their contact with children, proactive investigation and intervention efforts, education and training, and other prevention strategies.¹³¹ States must also take action to address the underlying risk factors which make children vulnerable to exploitation and abuse in all its forms. The collection and dissemination of data on CSEA threats, vulnerabilities, risks and responses must be implemented and coordinated at a national level.¹³² This data should be used to inform policy and programming responses regarding child protection, as well as monitor progress.¹³³

Targeted awareness-raising and education efforts are also vital to preventing the sexual exploitation and abuse of children.¹³⁴ Increasing the knowledge base amongst the public and professionals working with children is essential, including education about children's rights, child protection, what support is available for survivors, and how to report a suspected case of CSEA.¹³⁵ Furthermore, children themselves must be made aware of their rights and provided with comprehensive and age-appropriate sexual education.¹³⁶ Societal norms and harmful traditional practices that increase children's vulnerability to CSEA can be addressed by educating communities and their leaders about the topic.¹³⁷ High rates of under-reporting resulting from shame, societal stigma towards survivors, widespread acceptance of gender-based violence, and the taboo subject matter of CSEA, can also be addressed through awareness and education initiatives. As highlighted by the UN Special Rapporteur, 'strong community-level engagement is indispensable to generate sustainable change'.¹³⁸



Weaknesses in both formal and informal justice systems should be addressed.

SPOTLIGHT

The Lanzarote Convention: An international benchmark for the protection of children against sexual violence



Lanzarote Committee Secretariat

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) is the most ambitious and comprehensive international legal instrument on the protection of children against sexual exploitation and sexual abuse.

It requires its parties to address all possible kinds of sexual offences against children, including child sexual abuse, exploitation of children through prostitution, grooming and corruption through exposure to sexual content and activities and offences related to child abuse material. The Lanzarote Convention takes a holistic approach, focused on the prevention of sexual violence against children, the protection of children after violence has occurred, the prosecution of criminal offences against children listed in the Convention¹⁹⁹ and the promotion of national and international cooperation.

A successful implementation of the Lanzarote Convention contributes effectively to the realisation of Goal 16 of the United Nations Sustainable Development Goals, specifically target 2 aimed to end abuse, exploitation, trafficking and all forms of violence and abuse of children by 2030.

Sexual violence against children is one of the worse forms of violence against children and a global phenomenon affecting countries across the world. The Lanzarote Convention has a global reach and is open to accession by any country in the world. The Lanzarote Convention entered into force in 2010 and has been ratified by 48 states so far, including all 46 members of the Council of Europe, including the Russian Federation and one non-European member (Tunisia). Amongst these parties are three Commonwealth countries, namely Cyprus, Malta and the United Kingdom.

Advantages of accession

The immediate advantage of acceding to the Lanzarote Convention is that of joining a group of countries bound by the same ground-breaking instrument, unique in the world, gathered in the Committee of the Parties to the Convention (the **Lanzarote Committee**).

The Lanzarote Committee is composed of representatives of the parties to the Lanzarote Convention (the members), participants (Council of Europe observer states that have been invited to accede to the Convention, some relevant international organisations and Council of Europe institutions and bodies), and observers (several relevant international non-governmental organisations).

The functions of the Lanzarote Committee comprise two main tasks: firstly it has a **monitoring function**, which ensures the implementation of the Convention by the parties and secondly, it has a **capacity-building function** aimed at facilitating the collection, analysis and exchange of information, experience and good practice in order to strengthen the parties capacity to prevent and combat sexual exploitation and sexual abuse of children.

Monitoring role

Specifically, the Lanzarote Committee prepares regular monitoring rounds on the implementation of specific provisions of the Lanzarote Convention by the parties. All parties are monitored at the same time, which facilitates comparison among them. These monitoring rounds are thematic and so far have focused on the Protection of children against sexual abuse in the circle of trust (first monitoring round) and the Protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies – Addressing the challenges raised by child self-generated sexual images and videos (second monitoring round, currently underway). Additionally, the Committee undertook two urgent monitoring rounds, one concerning all parties on Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse and a second one concerning Hungary on Protecting asylum-seeking children in the transit zones at the Serbian/Hungarian Border.

Child Participation in the Second Monitoring Round

The Lanzarote Convention is in line with the principles of international human rights and ongoing work at the Council of Europe to advance children's rights, in particular, child participation. Article 9(1) of the Convention requires parties to "encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children."

In the second monitoring round, a group of children were consulted on challenges to be met and promising practices to be followed to ensure the protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies. Their opinions provided complementary information to the questionnaires addressed to parties on the protection of children against the criminal exploitation of self-generated sexual content involving children (in particular sexually explicit images and videos).

The thematic monitoring rounds enable the Committee and the parties to examine a specific issue closely and understand the extent to which the provisions of the Lanzarote Convention are being implemented, regarding the national regulatory framework and through other measures. The Committee highlights and discusses promising practices, which serve as an inspiration to other parties seeking to advance

their work in the protection of children from sexual exploitation and sexual abuse. A striking example of a promising practice that was presented to the Lanzarote Committee and acknowledged as such in its first monitoring round is that of the Icelandic Barnahus (Children's House), which was duplicated with success in other parties to the Lanzarote Convention (most recently in Slovenia).

Icelandic Barnahus/Children's Houses

In Iceland, the Barnahus/Children's House is a child-friendly, interdisciplinary and multiagency centre where different professionals work under one roof, investigate suspected child sexual abuse cases, and provide appropriate support for child victims. The activities are based on a partnership between the state police, the state prosecution, the university hospital and the local child protection services, as well as the Government Agency for Child Protection, which is responsible for its operation. The basic concept of the Children's House is to provide child-friendly services and prevent re-victimisation, including avoiding subjecting the child to repeated interviews by many agencies in different locations.

The Lanzarote Committee is also tasked with assessing compliance with the recommendations adopted in its monitoring reports. So far, it has worked on assessing compliance with the recommendations in its Special Report on protecting children affected by the refugee crisis from sexual exploitation and sexual abuse. This process enables an assessment of what measures are

in place in different parties, following the adoption of the Special Report and the related recommendations. The compliance reports enable the Lanzarote Committee to identify gaps in the parties as well as the different types of measures in place (awareness raising, protocols, victim services and national and international cooperation, etc).



...the most ambitious and comprehensive international legal instrument on the protection of children.

The Lanzarote Convention has a global reach and is open to accession by any country.



Capacity building role

The second function of the Lanzarote Committee is that of capacity building: exchanging information, experience, and good practices. The Lanzarote Committee follows international trends and emergency situations, as described above. This is one of the many advantages that countries have once they have ratified the Convention. Parties can learn from each other and find solutions to problems they face in their own country. These benefits can be enjoyed by the Commonwealth countries through accession.

The exchanges held through regular meetings of the Lanzarote Committee provide opportunities for parties for international cooperation, and also drive momentum for parties to discuss common challenges; bring to light international trends concerning new forms of sexual abuse against children, such as through ICTs, legislation on criminalisation, and promising practices on the protection of child victims; as well as new and innovative trends, such as the automatic detection of online sexual exploitation and sexual abuse against children. It is also an occasion for the Lanzarote Committee members to exchange views with external specialists and increase their knowledge and capacities for better protection of children against sexual exploitation and sexual abuse.

How to accede to the Lanzarote Convention

Any country in the world can accede to the Lanzarote Convention, therefore this includes all Commonwealth countries.

The accession process at the Council of Europe level consists of three steps:

1. Request for accession in an official letter (signed by the Minister of Foreign Affairs or a diplomatic representative) addressed to the Secretary General of the Council of Europe.
2. Consultation, by the Secretary General of the Council of Europe, with the parties to the Convention to obtain their unanimous consent.
3. Decision on the request by the Committee of Ministers of the Council of Europe. Should the Committee of Ministers decide to invite it, the requesting state has five years to deposit its instrument of accession.¹⁴⁰

Website: www.coe.int/Lanzarote

Email: Lanzarote.committee@coe.int

Child Protection in the Commonwealth

What is the Commonwealth?

The Commonwealth of Nations is a voluntary association of 54 independent and equal countries. The modern Commonwealth of Nations was established in April 1949 with the signing of the London Declaration.¹⁴⁹ Almost all member countries of the Commonwealth are former colonial territories of the British Empire. The Commonwealth was established with the intention that countries formerly under British administrative rule could come together as sovereign equal states and work alongside each other to define and achieve shared goals.¹⁵⁰

With a combined population of 2.4 billion, equivalent to one-third of the world, member countries are spread across five regions: Africa, the Americas, Asia, Europe, and the Pacific.¹⁴¹ More than 60% of people living in the Commonwealth are aged 29 or under.¹⁴²

The Commonwealth network of countries represents an integral part of the rules-based international order, with its emphasis on democracy, the rule of law, human rights and the civic space. The Commonwealth Charter enshrines the values and aspirations which unite the Commonwealth and expresses the commitment of member states to improve the lives of all the people in the Commonwealth.¹⁴³

The Commonwealth fosters collaboration between its member states, civil society and other organisations to create change. Similar legal and political systems, and the use of English as a common language, facilitate learning-and-sharing and collective action across the Commonwealth. This approach of bringing people together to work collectively across the Commonwealth has achieved great success in recent years, with issues such as LGBTQIA+ discrimination, modern slavery and child marriage being addressed through a Commonwealth lens by a variety of organisations.¹⁴⁴

The role of the Commonwealth in the protection of children from CSEA

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 address the issue of CSEA throughout the Commonwealth, Commonwealth-wide action and partnership is needed. As a global problem, it requires a global solution.

Every child in the Commonwealth has the right to be protected from all forms of violence, as enshrined in the United Nations Convention on the Rights of the Child (UNCRC).¹⁴⁵ Additionally, through the United Nations Sustainable Development Goals, all Commonwealth member states have made a commitment to ending child sexual exploitation and abuse: SDG 16.2 calls explicitly for the elimination of violence against children, and other SDG targets address specific forms of violence and harm, such as child marriage and female genital mutilation (target 5.3), and child labour and child trafficking (target 8.7).¹⁴⁶

The Commonwealth, therefore, has an important obligation to uphold in protecting children from child sexual exploitation and abuse (CSEA).

Due to a shared history and common law tradition, many Commonwealth countries face similar challenges in addressing these forms of violence against children, as is demonstrated throughout this report. The legacy of the British Empire's rule can still be seen across the Commonwealth, in laws and social attitudes that negatively impact the lives of women and girls, as well as those of diverse sexual orientations and gender identities.¹⁴⁷



The Commonwealth is a ready-made, if underutilised, framework for the advancement of child protection around the world.¹⁴⁸ Its network presents a fantastic opportunity for effective international cooperation and common action between its member states, as well as its intergovernmental organisations, associated and accredited organisations and civil society. Furthermore, events such as the Commonwealth Games and the Commonwealth Heads of Government Meeting provide platforms for global impact, discourse and change on important issues.

The findings throughout this report demonstrate that all Commonwealth countries can take steps to better protect children from CSEA, whether through legal reform, improved implementation and enforcement, more comprehensive and fully-resourced child protection systems, or increased awareness and education—or all of the above. The joining of forces is key. Throughout the Commonwealth, governments, Commonwealth-accredited organisations, civil society, parliamentarians, law enforcement and criminal justice professionals, social workers, and survivors all have a significant part to play. Working together, we can build a Commonwealth that protects children from these forms of violence, and delivers justice for those who have been exploited and abused.



SPOTLIGHT

A tragedy that cannot continue: Child marriage and the laws in the commonwealth

Brian Speers
President, Commonwealth
Lawyers Association (CLA)

60% of all child
marriages occur
in Commonwealth
countries.

For girls, one of the most widespread tragedies is child marriage. The Commonwealth Lawyers Association (CLA) considers that the laws of the Commonwealth should be invoked to address the scourge of child marriage. This article summarises the findings in the Commonwealth Lawyers Association Child Marriage Report.¹⁵¹

Of course, this is not just a Commonwealth problem; it is a global problem. However, 60% of child marriages in the world occur in Commonwealth countries, despite those jurisdictions hosting only 32% of the global population.

The CLA found that although in many jurisdictions there is legislation, it remains insufficient to address child marriage from a legal perspective. The legal frameworks of many countries actively enable marriages involving children, either through an

absence of constitutional minimum ages for marriage or discriminatory ages for marriage between males and females. There are few countries which have criminal sanctions against those conducting or enabling a marriage involving a child.

It is said that as they evolve, countries must cope with convention, custom and practice, and religious beliefs. While no doubt these are difficult paths to navigate, in the CLA's view minimum, internationally recognised standards should be applied, upheld and enforced.

What is child marriage?

Child marriage refers to any marriage where at least one of the parties is under 18 years old. While it will undoubtedly be claimed that marriages are arranged in accordance with customary or religious practices, the fact remains that in many Commonwealth jurisdictions, marriage under the age of 18 remains prevalent despite being banned. This leads to child sexual exploitation and abuse.

The overwhelming majority of those subject to child marriage are girls. The evidence clearly shows that this impacts on the contribution that young women can make to society. Being married early, and having children early, affects a girl's health, impacts on their education and training, confines their horizon to one of subservience, child rearing and support, and does not enable them to break free of that self-perpetuating cycle. Indeed, the CLA report describes child marriage as a form of gender-based violence, being a discriminatory practice and a violation of the human rights of children.

Child marriage amongst girls is most common in South Asia and Sub-Saharan Africa. Three of the ten countries with the highest rates of child marriage are found in the Commonwealth countries of Bangladesh, Mozambique, and India. The drivers are complex and interrelated, and are often underpinned by rigid gender and cultural beliefs about the role of girls. Poverty plays a major role in perpetuating child marriage and is a critical factor explaining why parents frequently encourage their daughters to marry. Child marriage is often a financial survival strategy. There are complicated motivating factors between cultures and generations in effect reducing the status of a girl in many communities within her household. As a girl does not have the same status, then the notion that a marriage is an important way to secure a girl's wellbeing has become well-rooted.

The CLA Report found that, at the date of its publication, 375 million women in Commonwealth member countries were married before their 18th birthday. This represents approximately 52% of women aged over 18 years in the Commonwealth.

Every year, 8.8 million girls in the Commonwealth are married as children—the equivalent of 24,000 every minute.

In the UNICEF State of the World Report 2016, the highest prevalence was found in Bangladesh at 52% of children married, closely followed by Mozambique at 48% and India at 47%. Furthermore, Nigeria has a significant prevalence rate of 43% Malawi at 46% and Uganda at 40%. Other Sub-Saharan Commonwealth jurisdictions reveal similarly high percentages, such as Botswana at 38% and Sierra Leone at 39%, and it is noticeable that in more developed Sub-Saharan jurisdictions such as South Africa and Namibia, the prevalence rate drops to 6 and 7% respectively.

Taking a broad regional sweep, Africa contains 11 Commonwealth countries with a prevalence rate of between 20 and 48%. The Commonwealth jurisdictions within Asia, particularly in India and Bangladesh have significant levels of child marriage and can be characterised by plural legal systems and weak enforcement of marriage laws. However, in the region, smaller countries such as Brunei and Singapore have almost no issues with child marriage at all. This may reflect a correlation between poverty in India and Bangladesh, and relative prosperity in Singapore and Brunei.

In the Caribbean and the Americas, the problem with child marriage is less severe. In Europe, again the problem is mild, although the minimum age in the UK, Cyprus and Malta is 16 rather than 18. There is an issue with the risk of child marriage occurring within certain ethnic communities, particularly between England and Pakistan.

The Pacific region of the Commonwealth has limited information available, although Australia and New Zealand have well-developed legislative frameworks. The island nations within the Pacific are small with low populations and information has been difficult to extract.

The legal position

The legal position throughout Commonwealth jurisdictions differs. There is some suggestion that consistent legislation across Commonwealth jurisdictions would assist in terms of public perception, enforcement, and uniformity of message.

The role of law cannot therefore be underestimated in providing an objective framework. However, it must also be respected and enforced in order to be effective. It should be noted that many countries with high rates of child marriage do legally prohibit the practice. In many communities, enforcement is difficult due to complications in gathering evidence, resistance among others to speak out and fear of ostracization. Strategies of education, information and support are more likely to have an immediate impact than those focusing solely on law.

Aside from legislative frameworks, a constitutional framework can be important, and the vast majority of Commonwealth countries have in fact no constitutional provisions requiring a minimum marriageable age of 18 or over. Eighty-six percent of Commonwealth constitutions do not specify a minimum marriageable age at all; only three Commonwealth member states (Malawi, Uganda and Kenya) have a constitutional provision which sets the minimum age at 18 years or older, although in these jurisdictions child marriage rates remain high.

Another area that provides a legal framework is the ratification and implementation of international treaties and protocols. Unfortunately, while many Commonwealth jurisdictions have recognised treaties, not all have successfully implemented them.

Other domestic laws can be relevant to child marriage; these include criminal laws prohibiting sexual conduct by an adult with a child, and laws criminalising adults officiating over a marriage

involving a child. However, these are rarely enforced. Nevertheless, there have been instances of these laws being the subject of case law, such as the Prohibition of Child Marriage Act 2006 in India. Most notably, the Supreme Court held that sex with an underage wife constituted rape in the landmark ruling of *Independent Thought -v- Union of India W.P. (Civil) No.832 of 2013*.

In South Africa, under the Recognition of Customary Marriages Act 1998, both parties to a customary marriage must consent and be over the age of 18. Since 2008, a series of cases have emerged concerning the limits of customary marriage, and, in 2014, a defendant was convicted in relation to the practice. In the case of *Nuvumelani Jezile*, the defendant appealed his conviction and the court, in coming to its decision that the law had been broken, cited numerous international conventions alongside provisions of the South African constitution. This establishes that legal cases can make an impact, although their rarity ensures a high degree of publicity and comment.

NGOs and women's rights organisations in countries where child marriage persists endeavour to challenge its existence. In 2015, for example, *Mifumi Limited*, a feminist organisation in Uganda, appealed a decision of the constitutional court to the Supreme Court, challenging the constitutionality of *lobola* (bride price) as a requirement for a valid marriage. The Court found that the appellants had not provided evidence of valid customary marriages without the consent of the bride or groom, and that consent therefore was not fettered by the payment of *lobola*. A further example took place in Tanzania, where the Law of Marriage Act 1971 allows a court to give leave for girls who are under 14 or older to marry where special circumstances make the marriage desirable. In 2016, a court application on behalf of an NGO challenged the sections of the Law of Marriage Act, which permitted a girl to marry at 14 years when the age of marriage was 18 years for a male, and the High Court there found these provisions to be discriminatory and unconstitutional.

These case examples illustrate that courts can be an entry point for legal interventions if there are constitutional or legislative protections in place.

Those who enable child marriage should be criminally sanctioned; the law should require a minimum age of marriage and mandatory registration of births and marriages; the legal profession should assist by using courts to challenge child marriages, either on the basis of unconstitutionality or non-compliance with a legislative framework. It remains to be seen whether more case law will develop, particularly as this matter increasingly comes under international focus and attention.

Conclusion

The concept of child marriage represents a violation of the fundamental human rights of children, with girls predominantly affected.

The varied factors interacting to place children at risk of marriage include poverty, social or cultural norms, religious laws and inadequate legislative frameworks and registration systems. These combined with weak enforcement create a most unsatisfactory picture. The legal framework can be changed. Enforcement can be changed. However, to change cultural norms, as well as customary and religious practices, is a greater challenge.

Nevertheless, the law does have a role to play and, given the high prevalence of child marriage in the Commonwealth, there is certainly a role for legal activity in the Commonwealth to ensure the elimination of child marriage over time.

In the introduction to the CLA report on the role of law in eliminating child marriage in the Commonwealth, my immediate predecessor as CLA President comments "for a child to lose her childhood, a student to lose her education, and a healthy young girl to potentially lose her life in childbirth simply because she is a girl, is a Commonwealth tragedy that cannot continue. Children are individuals in the present with hopes and dreams and innocence and boundless promise."

It is vital that Commonwealth countries work together towards upholding their rights and enabling children throughout the Commonwealth to realise their potential.

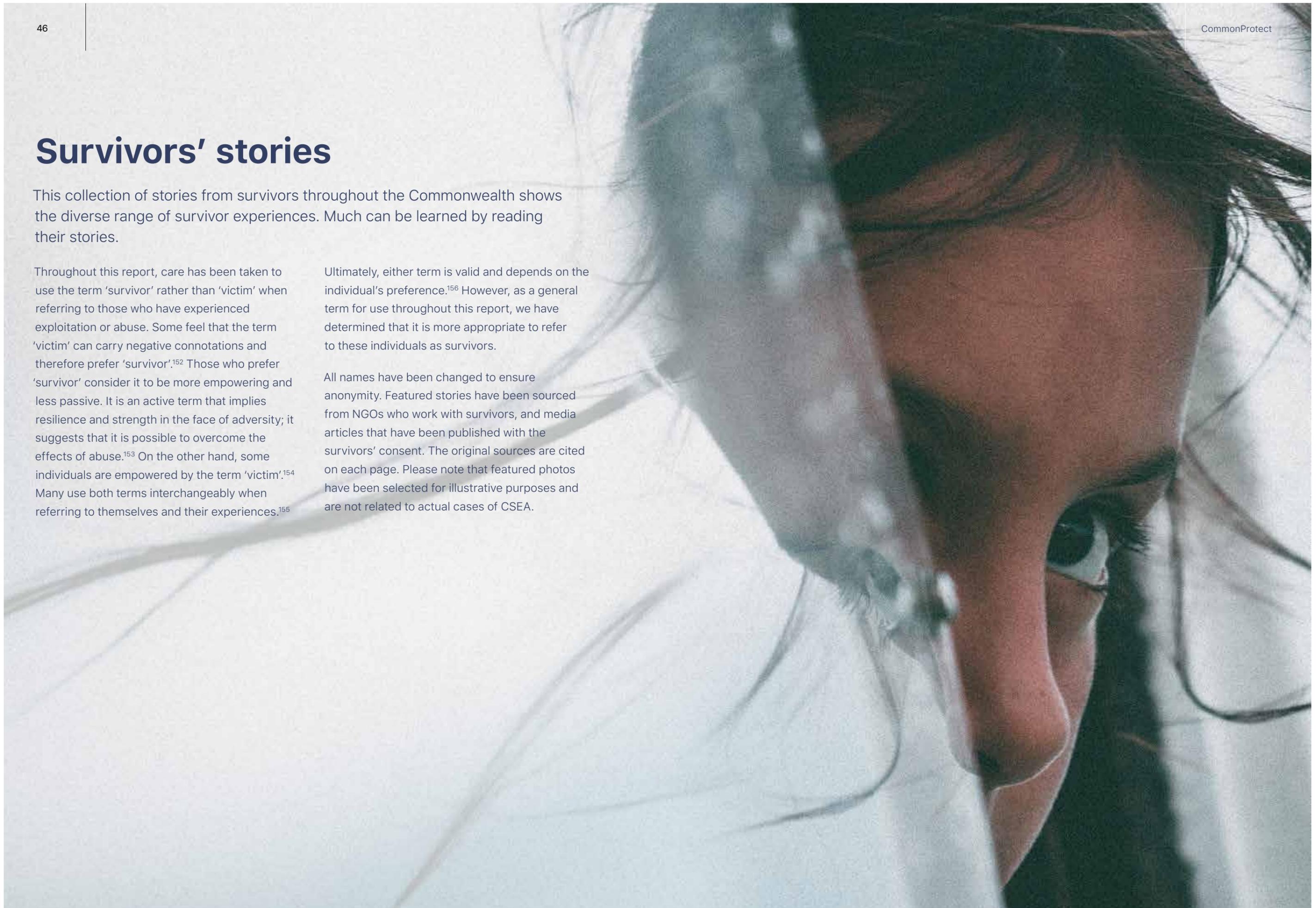
Survivors' stories

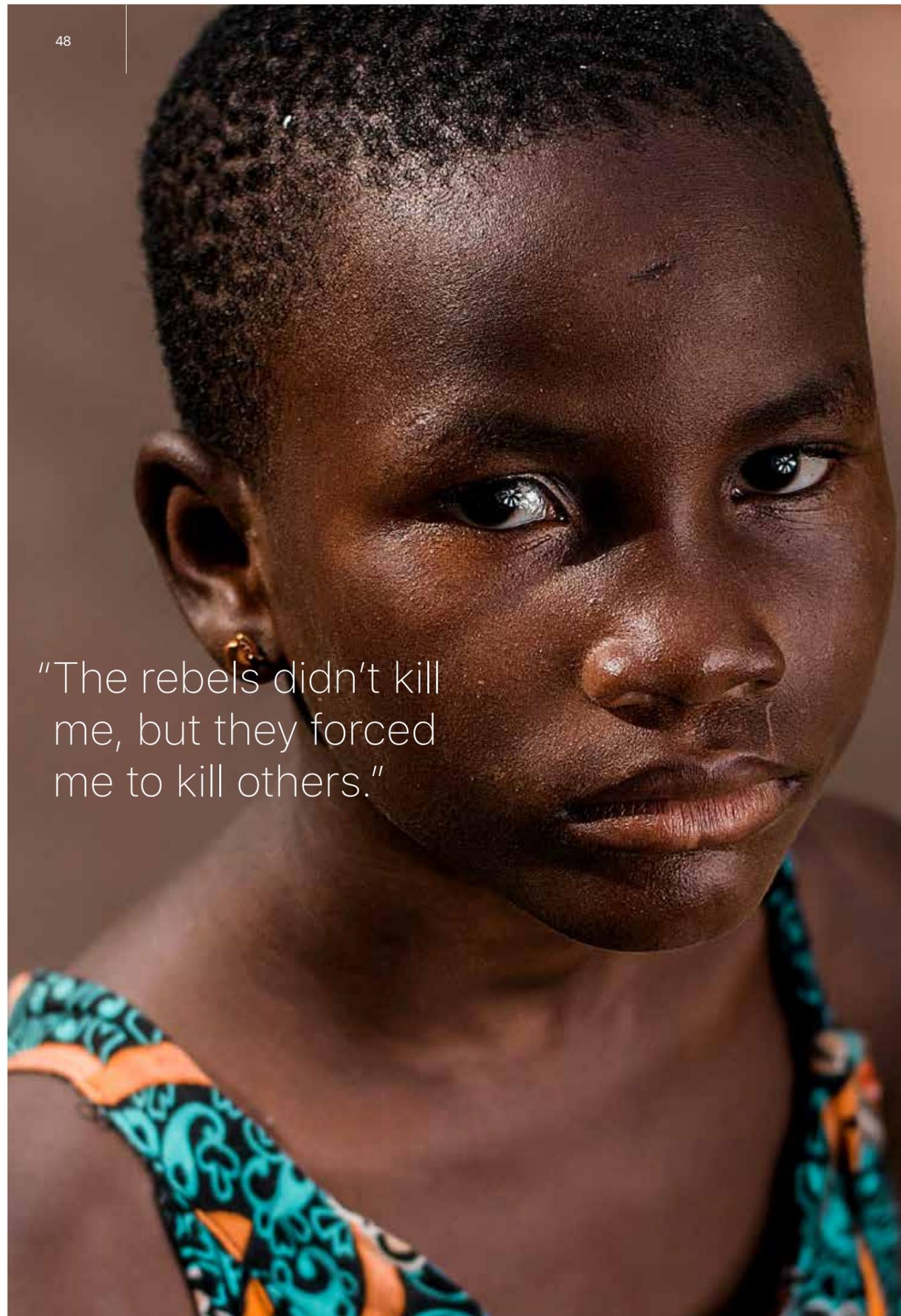
This collection of stories from survivors throughout the Commonwealth shows the diverse range of survivor experiences. Much can be learned by reading their stories.

Throughout this report, care has been taken to use the term 'survivor' rather than 'victim' when referring to those who have experienced exploitation or abuse. Some feel that the term 'victim' can carry negative connotations and therefore prefer 'survivor'.¹⁵² Those who prefer 'survivor' consider it to be more empowering and less passive. It is an active term that implies resilience and strength in the face of adversity; it suggests that it is possible to overcome the effects of abuse.¹⁵³ On the other hand, some individuals are empowered by the term 'victim'.¹⁵⁴ Many use both terms interchangeably when referring to themselves and their experiences.¹⁵⁵

Ultimately, either term is valid and depends on the individual's preference.¹⁵⁶ However, as a general term for use throughout this report, we have determined that it is more appropriate to refer to these individuals as survivors.

All names have been changed to ensure anonymity. Featured stories have been sourced from NGOs who work with survivors, and media articles that have been published with the survivors' consent. The original sources are cited on each page. Please note that featured photos have been selected for illustrative purposes and are not related to actual cases of CSEA.





"The rebels didn't kill me, but they forced me to kill others."

Florence's story

In Uganda, Florence was nine years old when her life suddenly changed.

Rebels with the Lord's Resistance Army (LRA) descended on her home whilst she and her family were asleep. The rebels kicked down the door and barged into their hut. One man held Florence down, ripped off her blouse and tied her up. She watched in horror as another man severely beat her mother. Florence's grandfather and others were tied up, and the rest of the village were forced to walk and walk without rest to an unknown destination. The rebels told Florence not to be afraid because they would take her back home, but she didn't believe them.

"The rebels didn't kill me, but they forced me to kill others. I was trained to fight and shoot a gun. At first I refused, but they beat me and threatened me with death. The rebels made examples out of some of the children to warn the rest of us what would happen if we disobeyed their orders."

The rebels forced the boys in the group to rape, whilst Florence and the other girls were all raped. "All the girls were divided among the male fighters as 'wives'." When Florence was ten, she was married against her will to a Brigade Commander. "The first time he forced me to have sex, I bled and cried a lot. I was in great pain, but my 'husband' had a gun next to him and I had seen him use it before so I tried to stop crying." From then on, he would rape Florence every day. "Whenever I tried to resist, he beat me to the point of paralysis. Sometimes I felt so weak because we had no food or water, but I had to go to him anyway."

Her abuser had a total of 20 'wives' including Florence, some of whom were very young. "If the rebels raided a village and abducted a beautiful girl, she would be forced to marry the Brigade Commander." When her 'husband' left to go and raid a village, Florence would be in charge of his other 'wives'. "I knew that if any of them escaped, I would be killed."

A year into her captivity, Florence was finally able to escape. "A big fight erupted not far from where we were being held between LRA members and Ugandan government soldiers. I decided to use the opportunity to run away, as I would rather die trying to escape than die in the bush as a sex slave."

Florence returned home to her village, where her mother accepted her but she was shunned by her neighbours and community. "Life was difficult even at home. I suffered from extreme insomnia, haunted by memories of the rebels. I was still breathing, but somehow I didn't really feel alive. My mind kept replaying the past."

When she was 12, Florence tried to return to school, but she couldn't concentrate on what her teachers were saying. She found other people who had suffered like her, but she still felt very alone.

One day when she was 15, Florence was walking home from school when a man a few years older than her forcibly took her into his hut. "I tried to fight the man, but he was too strong. No one was around to help me or hear my screams." Florence returned home after the attack but her mother chased her away, telling her to go back to the man because he was her husband now. "I didn't want to go back to him; I wanted to go to school. However, I had nowhere else to go, so I returned to him and soon grew pregnant with my daughter." As she was now living with the man as his wife, her family accepted her, but Florence was deeply unhappy. "I spent a year with my new 'husband', but he drank too much alcohol. We would fight and he would beat me badly for no reason. After one particularly vicious beating, I took my child and fled to my mother's home."

Syed's story

"I just couldn't find the courage to speak about it."



In Pakistan, Syed was walking to school one morning when a group of men kidnapped him. The men took Syed to a room where they sexually abused him, making a video of the attack. They used the recording of his rape to blackmail Syed for years.

"I was too scared to tell anyone. I just couldn't find the courage to speak about it."

Syed's abusers continued to threaten him and demand money from him, even when he left his village and moved to the city. "I was giving most of my salary to them, just to stop them from spreading the video in the village or posting it on the internet."

Despite his efforts to keep it hidden, however, the gang eventually published the video of Syed's abuse online. It was seen by many people in Syed's family's village, along with over 90 videos of other children being abused.

Following this, Syed spoke to fellow survivors he was able to identify from the videos and convinced them to come forward with him. "We went to the village elders and influential people. Later, we went to Lahore and protested in front of the parliament." These efforts drew media attention to the case and eventually some, although not all, of the accused were arrested.

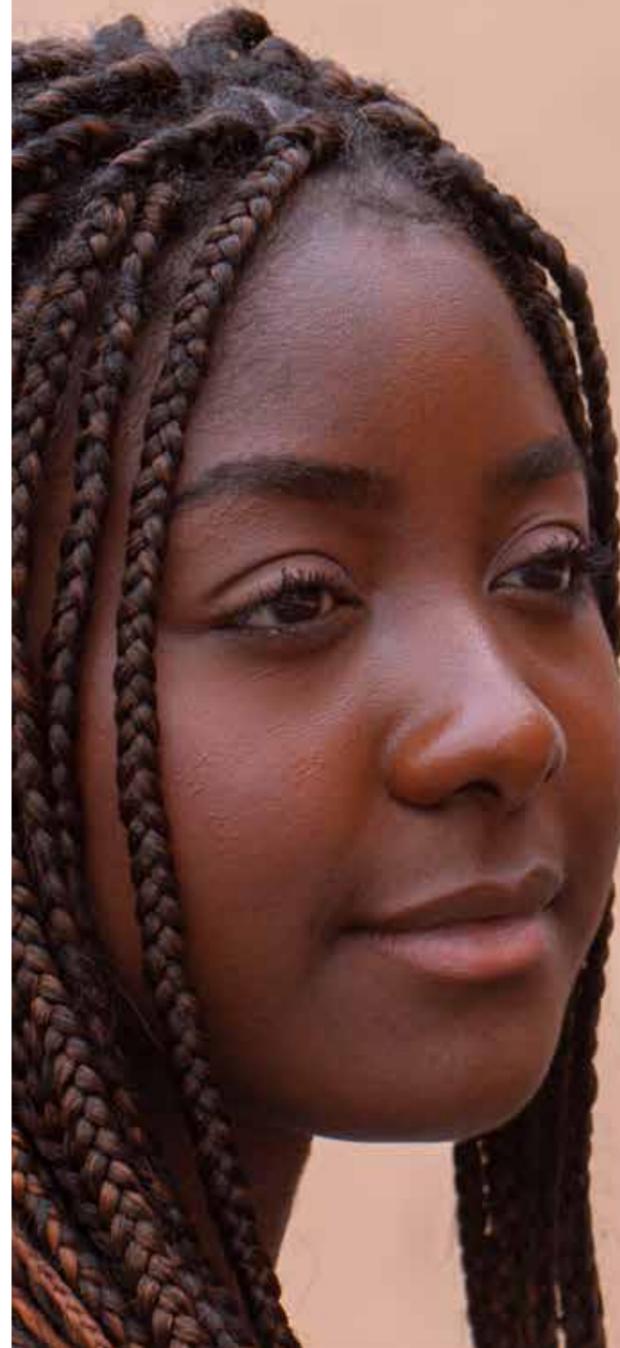
Mia's story

Growing up in Barbados, Mia's home was abusive. Her stepfather beat her mother repeatedly and sexually abused her two older sisters. When she was 14 years old, he turned his attention to Mia. "It was very traumatic... I wanted to know why this man who I called my father was doing this to me," she recalls.

Mia's mum was aware of the abuse, but never spoke out or defended her daughters from being assaulted by her husband. *"My mum knew, but her excuse was it was because of the situation she was in. He was her husband and the breadwinner,"* Mia says. The lack of support from her family led Mia to a very low point in her young life, and she attempted to overdose on pills.

She was taken to hospital where medical professionals helped her, and she decided to report her stepfather's abuse to the authorities. Unfortunately, nothing came of Mia's report. Despite her and her sisters being relocated to various foster homes, they ended up back in their home with their abuser after a period of time, and no charges were laid against him for his crimes. "It was as if nothing had happened," she says.

"I wanted to know why this man who I called my father was doing this to me..."





"If even one man had tried to save me, my life would have been changed..."

Jyoti's story

When she was 13 years old, Jyoti was taken to Kolkata by the man she thought she was going to marry, leaving behind her family and school. When they arrived in the city, he told Jyoti that he wanted her to stay with his aunt until her parents stopped looking for them. He told her that he would return for her in a few days. "I was reluctant to see him go, but I trusted his decision," she explained.

That night, Jyoti saw several girls standing outside on the street near the aunt's house. When a man approached one of them, she led him into her house. Jyoti wondered what was going on and, in the morning, she asked the aunt about these girls. The aunt told her that the man she thought loved her had sold her, and she would have to join the girls on the street in order to pay off her debt.

For a whole month, Jyoti resisted the 'aunt', who she learned was really a brothel madam. The owner of the brothel grew impatient and raped Jyoti, as he did to all new girls. He ordered the brothel madam to beat Jyoti with a leather belt every day. *"I still bear these marks on my body. I was kept locked inside a room, with no food or water, for days."*

To 'break her in', Jyoti was raped several times a night for nearly a month before the madam started selling her to men for money. "It was typical for me to have 10 to 12 buyers every night. They were usually abusive, treating me as if they owned my body. I have a deep scar on my neck from a knife blade, which I got trying to save a young girl in my house from being gang-raped. It almost killed me."

Jyoti made several failed escape attempts throughout her time in the brothel and no one ever tried to help her.

"If even one man had tried to save me, my life would have been changed. But all of them stood there like mute spectators."

Ruth's story

"Every time, I had to stay and sleep with him."

At eight years old, Ruth was raped for the first time by a Dutch man who was visiting Ghana. "He pretended to take care of me and paid my school fees," she remembers. This sexual exploitation and abuse continued for years. "Whenever he visited Ghana, he asked for me to be brought to him to come and collect my money. Every time, I had to stay and sleep with him."

Ruth also witnessed him abusing at least two other Ghanaian girls. "I know because I slept next to them when he did it," she says.

Source: **Modern Ghana**

Ruth's family were pleased that a rich man had offered to take care of her, and were unaware that she was being abused by him. At the time of the abuse, Ruth was in the care of a woman who knew what the man was doing to her, but stayed silent in exchange for the house he bought her. Ruth felt she had no one to turn to, and so only entrusted her secrets to her diary until many years later.

Joni's story

"If I went and told my Dad, I'd get a hiding."

Joni was seven years old when he began to be abused by the priests and brothers working and living near his primary school in Fiji. "There were two main ones that would do it to us regularly. Almost like a daily thing," Joni says. The sexual abuse happened so repeatedly that Joni and the other young children thought it was normal.

While they were playing in school, they would be approached by the men and lured into their homes with treats. Then, they would be sexually assaulted and molested. "They take us into their room, have a shower and come out without their towel, naked, and they undress us and start fondling us," he recalls.

Source: **1 News**

Emily's story

"He betrayed her trust in the most hideous way possible..."



Emily was three years old when she was first abused by her caregiver. This man repeatedly raped and sexually tortured Emily, and uploaded videos and images of her being abused to the internet. "Emily was in the hands of someone who should have looked after her, nurtured her. He betrayed her trust in the most hideous way possible." Once online, these recordings of Emily were seen by thousands of offenders all over the world.

Her abuser made sure that his face was never seen, and he distorted any image that would expose the crime scene. Eventually, five years after the abuse began, Emily was rescued by the police. Her physical

abuse ended and the man who stole her childhood was imprisoned. Emily's abuse did not end there, however, as the images and videos of her continue to be shared and circulated online by offenders, often for profit.

"Knowing an image of your suffering is being shared or sold online is hard enough. But for survivors, fearing that they could be identified, or even recognised as an adult, is terrifying," said one of the investigators involved in Emily's case.

The challenges of developing a comprehensive response to organised child sexual abuse

Organised child sexual abuse refers to the sexual abuse of one or more children by multiple adult perpetrators who act in concert.¹⁶⁰ Organised abuse is one of the most serious forms of child maltreatment and a common scenario for the production and distribution of child sexual abuse material (CSAM).

The propensity of child sex offenders to network with one another and conspire in the sexual exploitation of children has been recognised for over 40 years.¹⁶¹ While organised abuse is a serious form of organised crime, state responses to organised abuse have been halting and uncertain. It is sometimes assumed that organised abuse is a particular problem for low- and middle-income countries, however high-income countries have also struggled to acknowledge and address organised abuse. Organised abuse reveals significant and ongoing failures of child safeguarding and responses to child sexual abuse. While there are persistent obstacles and challenges to developing a comprehensive response to organised abuse, examples of promising practices and constructive policy shifts are also evident.

Michael Salter
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 Faculty of Arts, Design and
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What is organised abuse?

The term “organised abuse” was coined in the early 1990s to describe complex child protection cases in high-income countries such as England, the United States and Australia, involving multiple children who disclosed sexual abuse by networks of perpetrators.¹⁶⁷ These cases included family-based organised abuse (often orchestrated by one or both parents), organised abuse in institutional settings (such as childcare, churches and schools), and the street-based exploitation of children missing from home or

children in out-of-home care.¹⁶⁸ Children in organised abuse cases disclose severe and sadistic forms of maltreatment and presented as highly traumatised. Their presentations were congruent with an adult cohort of mental health patients who describe similar patterns of exploitation in their formative years.¹⁶⁹ This group of victims and survivors typically disclose the production of CSAM as part of their abuse.

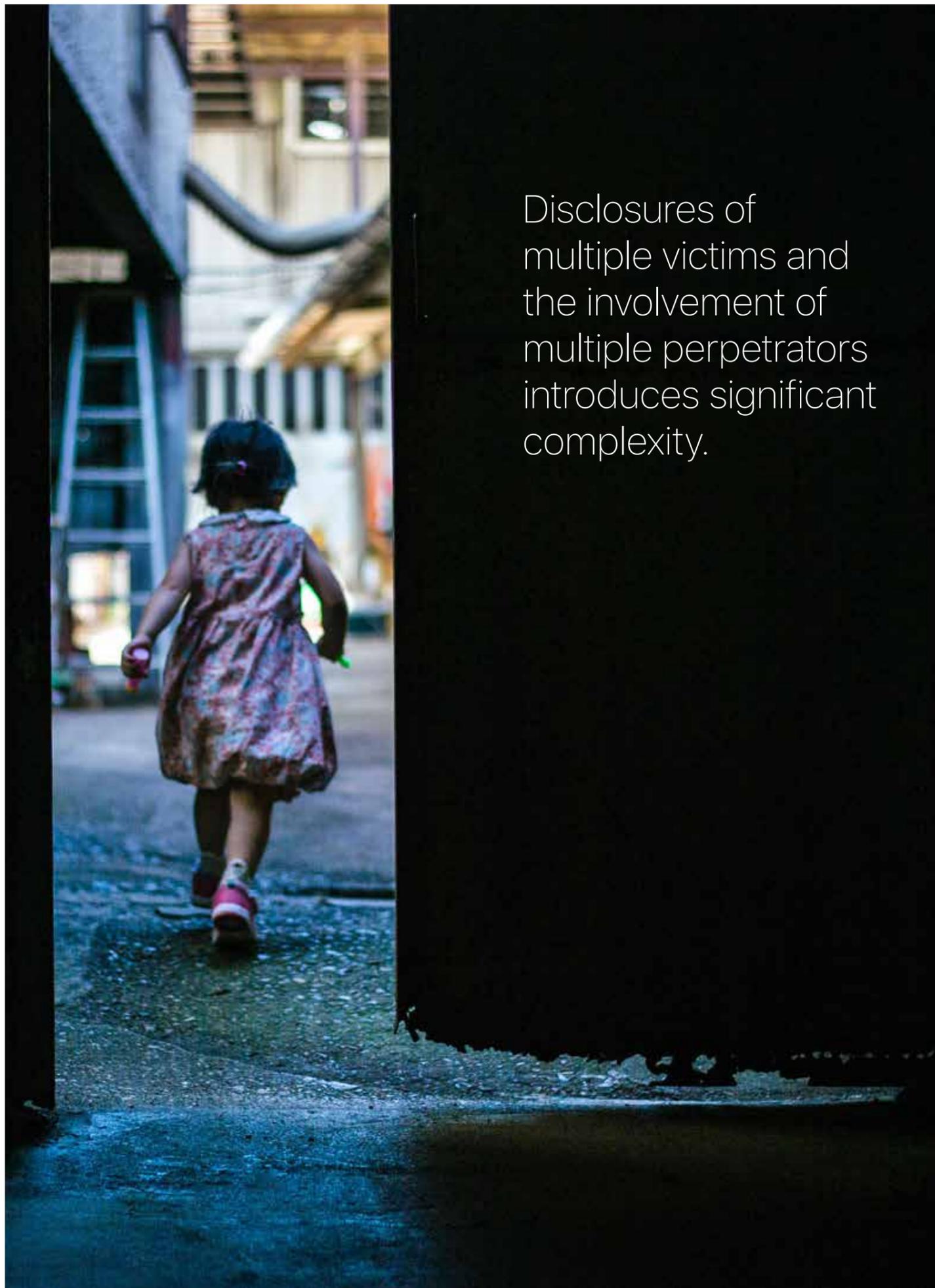
When organised abuse cases first emerged in the 1980s, they highlighted the need for increased coordination across all agencies involved in

The propensity of child sex offenders to network with one another and conspire in the sexual exploitation of children has been recognised for over 40 years.

to the prosecution of multiple perpetrators based on the evidence provided by multiple young and vulnerable witnesses.¹⁶¹ Investigative missteps and failures to secure prosecutions in some organised abuse cases have been highlighted in sceptical media coverage as evidence that organised abuse allegations are baseless and the product of “moral panic” and “false memories”.¹⁶² The consequent media backlash complicated the efforts of child protection and mental health practitioners to develop a specific response to the problem of organised abuse. By the late 1990s, the proposition that child sex offenders might collude in the abuse of children was widely rejected in media and scholarly literature.¹⁶³

Paradoxically, this sceptical position was firming up at the same time that the popularisation of the internet was providing undeniable evidence of the scale of organised abuse. Child sexual abusers have proven to be highly sensitised to the opportunities offered by new technologies to contact each other and facilitate the abuse of children. Organised abuse networks have formed online while face-to-face networks make extensive use of online technologies to groom and surveil victims and distribute CSAM.¹⁶⁴ Reports of child sexual abuse material have increased exponentially over the last 25 years to a point of unprecedented availability, with a distinct trend towards the more serious abuse of younger children.¹⁶⁵ The so-called dark web has enabled the development of communities of child sexual abusers numbering in their millions.¹⁶⁶

The accumulation of digital evidence has disrupted—although not entirely displaced—scepticism over organised abuse. Other developments, including recurrent scandals over clergy and institutional abuse as well as revelations of sexual violence by high-profile individuals, have underscored a collective propensity towards passivity, denial and complicity in the face of the mass abuse of children. There has been a paradigm shift in public and state willingness to acknowledge and address organised abuse, although current responses are uneven and shifting. However, many challenges remain.



Disclosures of multiple victims and the involvement of multiple perpetrators introduces significant complexity.

Contemporary responses to organised abuse

Responses to organised abuse and conceptualisations of it are driven by terminological and legislative distinctions that are somewhat arbitrary when applied to complex fact scenarios involving multiple perpetrators and victims of abuse. Over the last two decades, the vocabulary of “trafficking” and “sexual exploitation” have become prominent in legal and policy frameworks that address multi-perpetrator, multi-victim cases of sexual abuse. However, definitions of these terms vary considerably between jurisdictions with significant impacts on policy and practice.¹⁶⁷

The policy language of “sexual exploitation” originally targeted commercial (that is, profit-driven) abuse of children, although most organised abuse is not motivated by financial gain, and hence this language excluded the majority of relevant cases.¹⁶⁸ Contemporary definitions of sexual exploitation recognise abuse that includes any inducement or benefit to a victim or perpetrator, however this definition is so broad that it arguably includes most cases of child sexual abuse, which typically includes such elements. Jurisdictions often focus on particular scenarios of sexual exploitation linked to media scandal or policing priorities. For example, in the United Kingdom, media exposure of groups of men targeting girls in out-of-home-care led to a policy response to child sexual abuse that targets street-based “grooming”.¹⁶⁹ In contrast, in Australia, child sexual exploitation is generally framed as an online offence, since Commonwealth legislation on child exploitation focuses specifically on telecommunications services.

In the United States, “trafficking” has become a frequent nomenclature when referring to the organised sexual abuse of children, although the relevance of this term varies in other countries due to legislative differences. The terminology of trafficking is politically fraught as it can conflate child sexual exploitation with the sexual exploitation of adults and voluntary sex work, and is linked to other policy issues, including illegal migration and border security concerns. Responses to trafficking are frequently led by law enforcement with a focus on victim remedies that facilitate their cooperation with police investigations, rather than on underlying victim-perpetrator dynamics and impacts.¹⁷⁰

While the terminology of “trafficking” and “exploitation” addresses the common elements of organised abuse, they do not specifically recognise the presence of multiple perpetrators which constitute organised abuse as a form of organised crime. Victims of organised abuse report being terrorised into silence and compliance, developing traumatic and dissociative conditions that inhibit their ability to disclose or provide testimony, and being stalked and threatened by networks of offenders.¹⁷¹ State agencies and police units who target organised crime have often failed to address the extent of organised abuse and the threat that it poses to victimised children and adult survivors.¹⁷²

Key scenarios of organised abuse are routinely overlooked by state authorities. A major block to a more fulsome understanding of organised abuse appears to be the prevalence of parental perpetration. Research based on victim reports and criminal prosecutions consistently finds that parents are the largest and most serious category of perpetrators of organised abuse.¹⁷³ A recent study of the most highly traded CSAM series found that the most popular images were made by fathers abusing their prepubescent daughters.¹⁷⁴ However, governments and state authorities in high-income countries have proven to be reluctant to recognise and address familial sexual abuse as a specific policy priority, preferring instead to target extra-familial abuse and online abuse.¹⁷⁵ Children subject to familial organised abuse are likely to grow to adulthood in the absence of a protective intervention, accruing chronic and acute psychological and psychosocial disability.

Promising practices

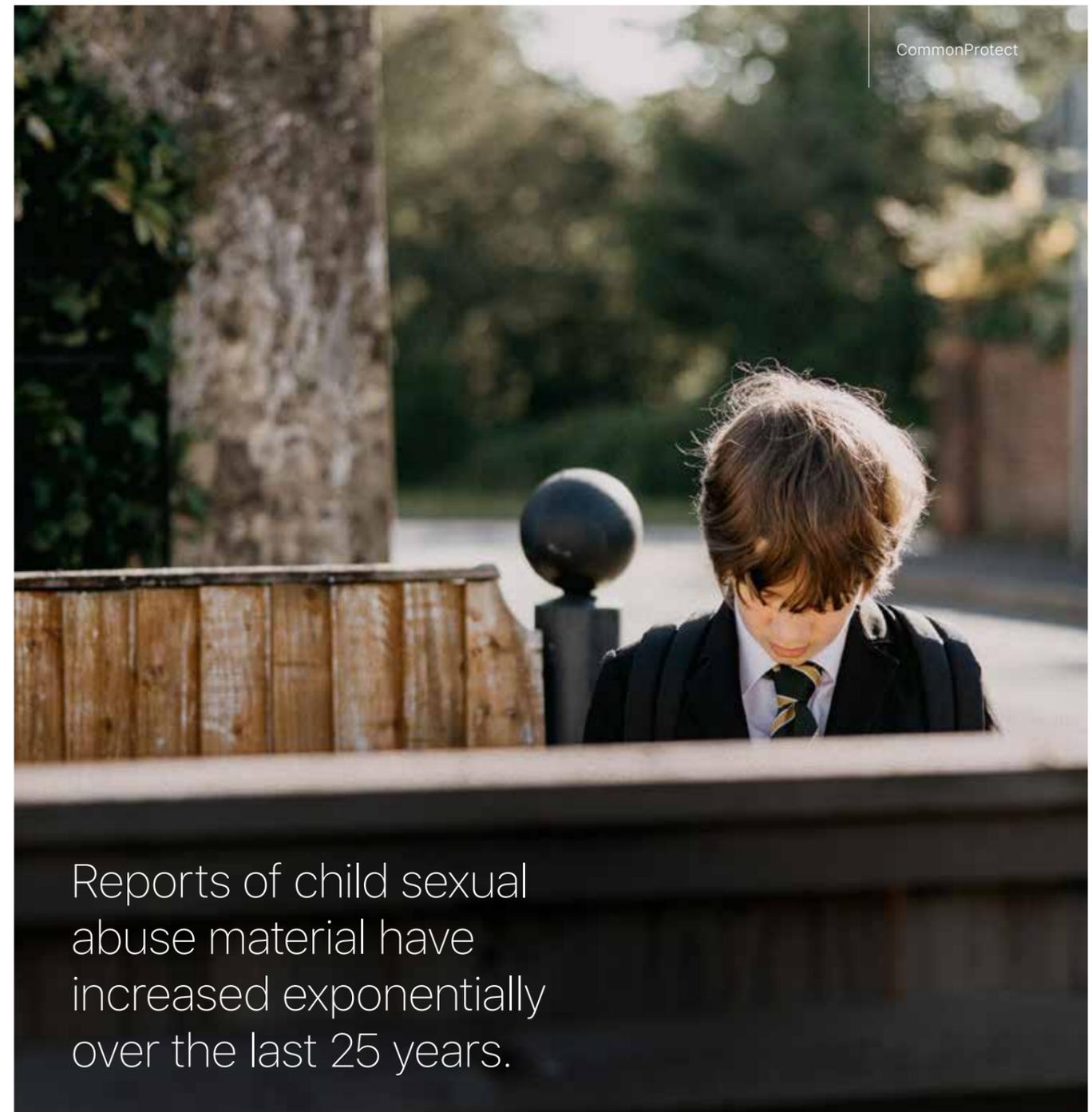
Responding to organised abuse requires acknowledgement of the problem, which can be challenging for government and state authorities. The persistence of networks of sexual abusers is evidence of both political and policy failure, in that child safeguarding mechanisms and systems are clearly failing to detect, intervene in and prevent the egregious exploitation of children.

Victims of organised abuse report being terrorised into silence and compliance.

There is therefore a political disincentive to acknowledge this problem. The prevalence of family-based organised sexual abuse suggests that, at the very least, some child sex offenders are siring children with the intention of abusing them, which raises questions about familial privacy and parental control over children that are without simple resolution.¹⁷⁶ While many jurisdictions have responded to the challenges of complex child protection cases with the development of interagency protocols and joint investigative teams, the investigation and prosecution of organised abuse remains infrequent and fraught.

An effective response to organised abuse should be driven by evidence rather than service prerogatives or legislative distinctions. Such a response would take into account victim report studies which include the “dark figure” of unreported or unknown incidents as well as evidence gleaned from police investigations and prosecutions. It is common for child and adult victims reporting multi-perpetrator abuse to encounter significant disbelief from frontline professionals.¹⁷⁷ Therefore, there is a need for professional training in organised abuse, as well as interdisciplinary collaboration and information sharing between law enforcement, mental health professional and social workers. Organised abuse requires intelligence-driven policing that includes data-matching between victim reports, such that one or more perpetrators named by different victims can be flagged, as well as other innovative examples of policing practices. For example, police may engage in the active disruption of known networks of child abusers through strategic policing interventions even in the absence of criminal charges.

Child victims and adult survivors of organised abuse are vulnerable and easily intimidated witnesses who find the investigation and prosecution process very



Reports of child sexual abuse material have increased exponentially over the last 25 years.

destabilising. Investigation and prosecution strategies need to be trauma-informed to facilitate victim cooperation and the provision of high-quality witness evidence. Victims and survivors require specialist, effective and affordable mental health care as well as measures to address other common psychosocial needs amongst this population, including housing.

Child victims and adult survivors of organised abuse often have safety concerns linked to the online circulation of CSAM of their abuse. At present, it is very difficult for survivors to find information about the extent of the online circulation of their CSAM or to find

support to have this content detected and removed. The ongoing circulation of this content directly undermines their safety. A significant proportion of CSAM survivors report ongoing threats and harassment from CSAM consumers.¹⁷⁸ Organised abuse survivors require support from online safety agencies who can proactively monitor and seek the removal of their CSAM where it has been detected. More broadly, it is clear that effective internet regulation is a crucial tool in addressing the harms of organised abuse, not only to reduce and remove CSAM but to inhibit the formation of online networks of offenders.¹⁷⁹

Country Reports: Africa



REGIONAL SNAPSHOT

Africa

Areas of concern

Terminology and societal stigma

Legislation across Africa criminalising CSEA uses outdated terminology such as “defilement” and “carnal knowledge”.²⁰⁵ Instead of placing the emphasis on the perpetrator’s actions, many of these terms emphasise the victim as having been “damaged” in a moral sense. Combined with a pervasive culture of shame and parental desire to ensure that their children are perceived as “clean” by the wider community, this terminology discourages the reporting of abuse. If the only way to make a perpetrator answer for their actions in the criminal justice system is to prove to the world that a child has been made “unclean”, many parents prefer to reach an out-of-court settlement with the perpetrator.

“CSEA is surrounded by social stigma, family pressure and indifference. Speaking about CSEA often brings shame to the family.”

Researcher for The Gambia

A culture of silence exists throughout the region, which means survivors rarely report their abuse, thereby almost ensuring that perpetrators do not face punishment for their crimes.²⁰⁶

“Many cases of CSEA go unreported due to the fear of being stigmatised.”

Researcher for the United Republic of Tanzania

Treatment of children of different genders

Gender-based violence is prevalent throughout the region, exacerbated by harmful gender norms which perpetuate the victimisation of women and girls, and silence male survivors.²⁰⁷

Furthermore, in many countries, there is evidence of discriminatory legal treatment of children according to their gender. In several countries, there is the need to

harmonise laws regarding CSEA offences against male and female children, and amend CSEA legislation to be gender-neutral.²⁰⁸ The criminalisation of homosexuality in some countries leads to the exclusion of male survivors (in particular) from legal protection and recourse.²⁰⁹

“Offences are narrow since they do not reflect evolving trends in social attitudes, values and sexual practices.”

Researcher for Uganda

Inaccessible & under-resourced justice systems

Across the region, countries’ legal frameworks for the protection of children are effective in theory, but inaccessible in practice.

The financial cost of pursuing a case in court imposes a barrier to justice for CSEA survivors from low-income backgrounds, who are often at a greater risk of being exploited or abused.²¹⁰ Where free legal assistance does exist, departments are overburdened with cases and many survivors are unaware that such help is available.²¹¹ Furthermore, the length of time that many cases take to come to court makes justice inaccessible for many who cannot afford to miss work.

Under-resourcing limits the investigation of CSEA offences in many countries, with several police departments described as “under-skilled” or incapable of gathering sufficient evidence to secure convictions.²¹² Furthermore, monitoring and data collection strategies are limited for CSEA and other related issues throughout the region.²¹³

“The number of cases filed in court vastly outweighs the resources the judiciary has to resolve them.”

Researcher for Kenya

Regional trends

- Sexual exploitation of children in travel and tourism (SECTT)
- Child trafficking for sexual exploitation and forced labour
- Harmful traditional practices (Child marriage, FGM and witchcraft)
- Online CSEA
- Limited collection and sharing of CSEA data

Risk factors

- Widespread poverty
- High refugee and migrant populations
- HIV/AIDS prevalence
- Increasing accessibility to technology
- Under-reporting



Due to a widespread lack of faith in many countries’ criminal justice systems, it is common for survivors and their families to opt for informal justice or turn to traditional courts.²¹⁴

Protection against online CSEA

In many countries in the region—but not all—current legal frameworks are limited in the extent to which they protect children from sexual exploitation and abuse, and other harmful conduct, online.²¹⁵

“There are no clear guidelines on how issues of online abuse or violations against children are to be addressed.”

Researcher for Ghana

Other countries do have internet-related laws which are primarily directed at the production and distribution of child sexual abuse material (CSAM).²¹⁶

The Gambia

In recent years, the Gambia has entered into a period of recovery after 22 years of authoritarian rule (1994–2017). The transition to democracy and respect for human rights have been difficult, due to the multiple drivers of fragility, including political fragmentation based on ethnic identities and tensions within the political class.¹ The impact of Covid-19 is affecting progress most notably in the economic and political dimensions of fragility,² and it is youth and children who bear the brunt of this fragility and its impacts on vulnerabilities.

From 2017 onwards, the government of the Gambia has been committed to delivering transitional justice,³ with gender-based crimes and violence against children during the previous regime a major priority to address.⁴

The Truth, Reconciliation and Reparations Commission (TRRC) was established in 2017, alongside the Truth, Reconciliation and Reparations Commission (TRRC) Act, by the newly-elected government to help the national process of healing and reconciliation by addressing the alleged human rights abuses committed during the years of authoritarian rule.⁵ The Truth Commission began public hearings in January 2019 and proceedings ended in May 2021 with numerous crimes having been uncovered.⁶ Witnesses have testified to multiple instances of human rights abuses by the Jammeh government and a culture of impunity, including killings, torture, arbitrary detention, sexual violence, and forced disappearances.⁷ Evidence indicates that sexual abuse and rape, including of children, was widespread and potentially systematic in state institutions and the security apparatus during the Jammeh regime.⁸

The Gambian state has put in place legislative and policy frameworks for the promotion and protection of the rights of children. It has also harmonised its legislation with child related international legal instruments that it has ratified. Yet major gaps remain in the effective implementation and enforcement of these laws and policies, as well as legal ambiguity, with the result that they are often carried out with impunity.⁹

Despite marked improvement, it is clear that the Gambia still has a long way to go to address these forms of violence against children (both past and present), enhance the full prosecution of cases, strengthen the child protection community structures,

and empower communities to deal with instances of sexual abuse and exploitation, including harmful traditional practices.¹⁰

CSEA Profile

There is very limited data on CSEA or record of CSEA cases in the Gambia, largely due to poor record keeping which is mostly not electronic.¹¹ Further, there is a 'culture of silence' in the country whereby issues of sexual exploitation are viewed as personal or private matters, not to be discussed within the wider community.¹²

According to UNICEF Gambia, sexual abuse and exploitation of children continues to occur in the community, home and school.¹³ The Network Against Gender-based Violence, an organisation working to establish One-Stop Centres throughout the Gambia, recorded 941 cases of sexual violence between 2014 and 2018, of whom 88 per cent were children.

There is evidence that some teachers abuse their position of authority by sexually harassing girls, many of whom are aged under 18, and engaging in sexual relations with them in exchange for better grades, reductions in school fees, money, food, or items such as mobile phones and new clothes.¹⁴ Sexual harassment of girls by peers is also a common problem in schools, where it is rarely reported to authorities because of the culture of silence.¹⁵ There is a serious need for sensitisation on the issue to be included in school curricular.¹⁶

Very limited information or data is available on the prevalence of child sexual abuse materials in the Gambia. The cases recorded that have involved child sexual abuse materials have usually occurred in connection with other manifestations of commercial sexual exploitation of children.¹⁷

Poverty is widespread in the Gambia and is compounded by high inequalities.¹⁸ The socio-economic impact of the Covid-19 pandemic may have led to increased girls' vulnerability to violence and abuse, particularly in the home.¹⁹ Poor children in the Gambia are less likely to attend school regularly, and receive fewer years of education.²⁰ Absence from school, either due to unpaid school fees or more recently due to school closures forced by the Covid-19 pandemic, increases children's vulnerability to child labour and sexual exploitation.²¹

As well as poverty, the high prevalence of HIV/AIDS in the Gambia is concerning due to strong links to children's vulnerability to commercial sexual exploitation.²²

The Gambia is a source, transit and destination country for trafficking in children for commercial sexual exploitation purposes;²³ human traffickers exploit both Gambian and foreign children and traffic them for sexual exploitation by Gambian nationals and tourists.²⁴ The growth of and reliance on the tourism industry in a climate of poverty and poor enforcement of laws around child abuse has helped to create a domestic market for sexual exploitation catering primarily to Europeans and which poses real challenges for child protection.²⁵

The majority of the children being exploited in travel and tourism are girls between the ages of 14 to 17, but the number of boys involved is increasing.²⁶ The commercial CSEA of children is highly prevalent in tourist development areas, including major hotels, beaches, restaurants and nightclubs.²⁷ International organisations report that travelling offenders gain access to children through intermediaries or already have information from the internet about areas where they can have access to children.²⁸

At a press conference in February 2020, called in response to a British newspaper article claiming that lax laws made children vulnerable to abuse by British travelling offenders,²⁹ the Minister of Tourism, Arts and Culture, denied the prevalence of child sex tourism in the country, saying 'there is no sex tourism in the country. We have nothing like sex tourism. We cannot allow sex tourism in the country because it is against our laws, culture and tradition. The Government will never accept sex tourism to be practiced in the Gambia'.³⁰ The Minister for Women, Children and Social Welfare sought to reassure the general public 'that there is zero tolerance for child

abuse or child exploitation and any person found wanting will face the full force of the law'.

Social structures and norms mean that gender inequality and discrimination is pervasive in the Gambia, with girls particularly vulnerable to harmful cultural or traditional practices such as FGM and child marriage, and to other gender based violence, including witch hunts. At least 34 per cent of young women are married before 18 and 50 per cent of girls between the ages 0–14 have undergone FGM.³¹ In September 2019, the Gambia Bureau of Statistics (GBoS) found that one in five adolescent girls aged 15–19 are currently married, half of whom are in polygynous union. In addition, one in 10 married adolescents aged 15–19 have a partner who is 10 or more years older.³²

Child marriage in the Gambia is driven by poverty, religious beliefs, a lack of education and fears over premarital sex.³³ It is often culturally accepted as a means of controlling the sexuality of girls.³⁴ Local traditions interpret Islamic scripture as permitting and even encouraging child marriage, which thus perpetuates the practice.

Legislation prohibiting child marriage was instituted through amendments to the Children's Act (Amendment) 2016, whereby 'a person below the age of 18 cannot marry in the Gambia, irrespective of personal law'.³⁵ Under Shariah or customary law, there is no minimum age of marriage, which is permitted upon physical maturity, a life event that normally occurs well before the age of 18. As approximately 95 per cent of the population falls under Shariah law, child marriage remained common and effectively a legal practice in the Gambia prior to this 2016 amendment.³⁶ Section 239 of the Children's Act provides that provisions of the Act supersede the provisions of all other laws pertaining to children, except the Constitution. In 2020, a bill to amend the Civil Marriages Act was making its way through the National Assembly to abolish the marriage of minors by preventing registration and also to ensure the consent of parties (not simply that of parents).³⁷ This Act provides for marriages registered by the state. However, most marriages in the Gambia are not registered.³⁸

As there is often significant support for the practice of child marriage in communities, the problem cannot be tackled without societal changes in attitude. The Gambia Committee on Traditional Practices Affecting

the Health of Women and Children (GAMCOTRAP) undertakes advocacy on sexual and reproductive health and rights and children's rights, and workshops with religious leaders.³⁹

Poverty and low levels of education are consistently correlated with high rates of child marriage: children from the poorest Gambian households are more likely to be married before 18 years of age (a prevalence rate of 62.7 per cent) than those from richer households (prevalence of 28.7 per cent). In the Gambia, 59 per cent of girls with no formal education are married before the age of 18, compared to 48 per cent of girls with primary education and 15 per cent with secondary education.⁴⁰ This highlights the importance of access to education as a preventative measure. In the context of family poverty, child marriage is perceived to offer some form of child protection in that it relieves the financial burden on the family and prevents girls from being pushed into tourism-related sex work.⁴¹

Girls across the Gambia continue to be at risk of female genital mutilation (FGM).⁴² Many Gambians continue to believe that FGM is sanctioned by their culture and religion, hence the need for them to circumcise girls.⁴³ Uncut women are erroneously considered to be unclean and therefore unable to offer prayers to Allah.⁴⁴

In 2018, according to UNICEF and Gambian NGOs, approximately 76 per cent of girls and women between the ages of 15–49 had been subjected to FGM, and 51 per cent of daughters aged 0–14 had undergone FGM, as reported by their mothers.⁴⁵ 44 per cent of women aged 15–49 approved of FGM, whilst 49 per cent thought it should stop.

Following the concerns expressed by the CEDAW Committee in 2015 about the very high prevalence of harmful practices in the Gambia, legislation was enacted as a reform strategy to prohibit FGM through amendments to the Women's Act. The Women's (Amendment) Act 2015 bans FGM and imposes stringent punishments for perpetrators.⁴⁶ However, the current law does not directly criminalise and punish FGM performed by medical professionals, nor does it criminalise cross-border FGM. The smuggling of girls across borders to Senegal for FGM remains a challenge in some communities.⁴⁷ Despite criminalisation, many people will not report FGM cases to the authorities, either because they do not

agree with the law or because they are uncomfortable reporting family members or neighbours who are engaged in the practice.⁴⁸

The legal ban on both FGM and child marriage is noteworthy as it manifests political will on the part of the Gambian state in the context of meeting international convention obligations. However, the continuing prevalence of child marriage and FGM shows how difficult it is to bring actual practice into conformity with 'top-down' legal frameworks like national constitutions and international treaties.⁴⁹ In the Gambia, therefore, although legislation exists to protect women's and girls' rights and advance gender equality, it can be weakened by the existence of a plural legal system, customary and religious laws and strong social norms.

In general, the topic of child sexual abuse is surrounded by social stigma, family pressure or indifference which discourages reporting of cases to the police.⁵⁰ Sexual abuse and exploitation is perceived as a 'personal' matter to be dealt with privately. Speaking about sexual abuse or exploitation brings shame or even harm to the family.⁵¹ Where incidents are disclosed, out-of-court settlements are strongly preferred. There is, therefore, limited reporting of instances of child sexual abuse and exploitation and, consequently, limited data to collect.⁵² The culture of silence, coupled with weak law enforcement, significantly hinders protection of children from sexual exploitation.⁵³

In May 2020 a spokeswoman from the Department of Social Welfare outlined that child marriage and FGM are still predominant issues in Gambian society 'as the laws are being ignored'. She pointed out that rape and sexual violence cases involving children are on the increase in the country, and that perpetrators 'are walking free in society', and highlighted the need to strengthen the child protection system to achieve social justice for children.⁵⁴

Following the end of the authoritarian regime, there have been concerted efforts to combat the strict taboos that exist about sex and victim-shaming culture throughout the Gambia, as well as address the harms done to children throughout the regime.⁵⁵ For example, a special hearing of the TRRC was held in October 2019 to encourage more survivors of sexual and gender-based violence to come forward and testify about their experiences.⁵⁶ Special

Rapporteur on the Sale and Exploitation of Children, Maud de Boer-Buquicchio, has commended the Gambia for embarking on the truth and reconciliation process to reverse its abusive legacy and which had created momentum to break through the deeply embedded culture of silence and stigma surrounding the issue of sexual abuse of children, and that until recently had largely been regarded as a private family matter.⁵⁷

Nevertheless, some civil society activists and survivors feel the TRRC has under-investigated and failed to acknowledge the true extent of sexual and gender-based violence and exploitation under the Jammeh regime by not asking those testifying more systematically and expressly about sexual violence.⁵⁸ As a case in point, some officials from the security sector and other positions of power testified to the TTRC in July 2019 and accepted responsibility in a number of high-profile murders, tortures and arrests, but no question was asked of them about their knowledge or even participation in sexual crimes.⁵⁹

Criminalisation/Legislation

The legal system of the Gambia is based on a tripartite system and is complex: English law, including common law and the principles of equity and statute law; customary law, which is administered by district Tribunals; and Islamic/Sharia law, which is administered by a traditional Cadi (Kadhi or Qadi) Court system.⁶⁰ The latter two systems apply only to indigenous Gambians and Muslims. Common law is administered in areas of criminal law. Informal or customary law and Sharia law are often used to address family law matters and issues concerning child rights.⁶¹ The overlap between the Sharia legal systems and the national legal system can sometimes result in inconsistent levels of legal protection for children. The prevalence of informal or customary law to handle matters relating to child rights further undermines state legislation on child protection and human rights.⁶² The government has recognised that harmonisation of all the different types of laws in the Gambia is necessary.

The transition from an authoritarian regime to a democratic government has served as an opportunity for public debate and legal mobilisation to prevent past abuses and includes comprehensive criminal justice and security sector reform. The state is undertaking key constitutional and legal reforms to

bring Gambian laws into harmony with international obligations and human rights standards.⁶³

Classification of Sexual Offences with Children

The legal framework of the Gambia includes several pieces of legislation that address CSEA offences. The Children's Act 2005 (the **Children's Act**), the Criminal Code 1990 (the **Criminal Code**), the Sexual Offences Act 2013 (the **Sexual Offences Act**), the Trafficking in Persons Act 2007 (the **TPA**), the Tourism Offences Act 2003 (the **TOA**) and the Women's Act 2010 (the **Women's Act**) proscribe acts and omissions that constitute sexual abuse and exploitation of children, and stipulate punishment for any person who participates (through an act or an omission) in the sexual abuse and exploitation of children.

The Children's Act is in line with international norms and standards related to the protection and promotion of the rights of children as contained in instruments such as the CRC and ACRWC.⁶⁴ Child abuse is defined under Section 2 as the contravention of the rights of the child which causes physical or mental harm to the child. Section 29 of the Children's Act prohibits any parent, guardian, custodian, or carer who encourages or causes the seduction, prostitution of, sexual assault, or indecent assault on a child under his or her care. This therefore includes teachers. The punishment is 10 years' imprisonment. Sections 31 and 38 make it an offence to procure, use or offer a child for the production of pornography or for pornographic performance. Sections 39 and 40 prohibit human trafficking and slave dealing of children. These crimes carry a penalty of life imprisonment.

The Criminal Code 1990 (amended 2020) includes provisions to secure the protection of children from CSEA. In particular, under offences against morality, Section 126 addresses instances of 'indecent assault' against women and girls, Section 127 prohibits the 'defilement' (i.e. rape) of children, and Sections 129 and 130 forbid the procurement of children for sex or 'prostitution'.

The Sexual Offences Act 2013 criminalises all forms of sexual violence, exploitation and harassment against vulnerable groups, including children (Part IV), for example rape and 'defilement' (i.e. rape of a child). The 2013 legislation amended the law and procedure relating to the prosecution of rape and

other sexual offences and addressed some of the barriers that have impeded prosecution in the past. The act also expanded the definition of the crime of sexual assault to include conduct in which the victim is coerced into sexual acts and applied the amendments retroactively to perpetrators who would otherwise have escaped punishment. However, in practice this legislation has largely not been enforced.⁶⁵

The Women's Act domesticates CEDAW and the Maputo Protocol and it harmonises and consolidates all laws related to the rights of women and the girl child in The Gambia. The Act was enacted in 2010 after a comprehensive review of all laws affecting women and was amended in 2015 to criminalise FGM, in line with the recommendation of the CEDAW Committee.⁶⁶ Section 28 of the Women's Act prohibits parents and guardians from withdrawing girls from school for the purpose of marriage.

The Domestic Violence Act 2013 is aimed at combating domestic violence. It provides protection for the survivors of domestic violence, particularly women and children and for other related matters. Domestic violence under Section 3 is given a broad definition to include physical abuse as well as sexual and economic abuse, emotional, verbal and psychological abuse. Under Section 4, the Act covers not just marriage but a whole range of intimate living conditions collectively termed as 'domestic relationships'.⁶⁷

The Tourism Offences Act 2003 establishes offences and punishments dealing with sexual exploitation of children in travel and tourism (SECTT). It prohibits CSEA offences by a tourist or any other person, including a prohibition on trafficking, taking or distributing indecent photographs of a child, sexual abuse of a child, exploiting a child sexually, and the permitting of CSEA by owners, occupiers or managers of premises. Gambian law also allows for the prosecution of suspected sex tourism offences committed abroad. The legal framework in the Gambia includes the criminal offences of conspiracy, attempt, and aiding and abetting of CSEA.

The Information and Communications Act 2009 deals with the distribution of CSEA content and the safety of children online. Section 174 of the Information and Communication Act criminalises anyone who distributes, shows, possesses with intent to distribute or show, advertises, takes or permits to be taken any

indecent photograph of a child. The power to prosecute rests with the police before the Magistrate courts and Attorney General's Chamber and Ministry of Justice before superior courts. The Ministry of Information and Communication Infrastructure is currently (2021) reviewing the Information and Communication Act of 2009, with a view to addressing child pornography issues in a more robust manner to ensure a safer environment for young people, in particular the abuses on the internet targeting young people and also bullying using ICT.⁶⁸

Lanzarote Convention

The UN Convention on the Rights of the Child is implemented domestically in the Gambia through the Children's Act. In combination with the Criminal Code, the Sexual Offences Act, the TPA, the TOA and the Information and Communications Act, the Children's Act implements the principles embedded under the Lanzarote Convention.

The Children's Act adopts a similar definition of a child to Article 3 of Lanzarote Convention; a "child" means any person under the age of 18 years.

Similarly, Section 45 of the TPA sets out provisions pertaining to non-discrimination in the protection of witnesses, which are similar to those embedded under Article 2 of the Lanzarote Convention. Section 45 states, among other things, that the survivors of trafficking will not be subjected to discriminatory treatment on the basis of race, colour, gender, sexual orientation, age, language, religion or political or other opinion. Section 45 also sets out that proceedings under the Act will be conducted in a manner which is not detrimental or prejudicial to the rights of the survivor and promotes the psychological and physical safety of survivors and witnesses.

Articles 27 to 29 of the Lanzarote Convention provide guidelines on appropriate sanctions and measures to be taken against those guilty of committing criminal acts of sexual nature against children. These provisions have been implemented into domestic law through prescribed monetary fines and penalties, including incarceration attached to CSEA offences.

Furthermore, Article 26 attaches liability to corporate entities for criminal acts contained within the Lanzarote Convention. This has been implemented into local laws under Section 65 of the Children's Act. A body corporate will be held liable where it is proven

that the offence under the Children's Act had been committed: on its instigation; with the connivance of; or attributable to any neglect on the part of the director, manager, secretary or other officer of the body corporate. If a body corporate is found guilty of an offence it will be held accountable for the transgression and liable to make reparations as required by the court. Section 41 of the TPA contains similar provisions on corporate criminal liability.

The Council of Europe Convention on Cyber Crime (the **Budapest Convention**) is the first international treaty on crimes committed via the Internet and other computer networks, including dealing with child pornography, and provides a benchmark.⁶⁹ The Children's Act, in combination with the Criminal Code, the Sexual Offences Act, the TPA, the TOA and the Information and Communications Act, put into law the principles embedded in Article 9 of the convention. Specifically, Part IV of the Information and Communications Act deals with the protection of children and the provisions have similar effect to that of Article 9 of the Budapest Convention regarding offences related to child pornography.⁷⁰ Sections 31 and 38 of the Children's Act make it an offence to procure, use or offer a child for the production of 'pornography' or for pornographic performance. Section 174 of the Information and Communication Act criminalises anyone who distributes, shows, possesses with intent to distribute or show, advertises, takes or permits to be taken any indecent photograph of a child.

Age of Consent & Definition of a Child

In the Gambia, the age of consensual sex is 18, as defined under Section 2 of the Children's Act.

Section 241 of the Children's Act repealed and amended all other definitions relating to the age of consent, which were prescribed across other domestic legislation.⁷¹ This includes but is not limited to the: the Criminal Code, the Adoption Act 1992, the Maintenance of Children Act 1990, the Criminal Procedure Code 2009 and the Prisons Act 1953.

One issue regarding the age of consent and age of maturity is the fact that a proportion of children in the Gambia are not registered at birth, leading to them being vulnerable to exploitation, forced marriage or disappearance, since their age cannot be easily proven.⁷²

Trafficking

The Trafficking in Persons Act 2007 (the **TPA**) establishes offences and punishments dealing with child sex tourism, child trafficking and child sexual abuse and exploitation. It prohibits all forms of trafficking, including the trafficking of children for sexual purposes.

Exploitation is defined in Section 2 of the TPA to include commercial sexual exploitation. Section 28 prohibits all forms of human trafficking, including trafficking of children for sexual purposes.

Since its introduction, three convictions have been secured under the TPA to date.⁷³

The Children's Act and the TOA also have provisions criminalising the trafficking of children, whether on its own or in conjunction with sexual exploitation including forced or coerced prostitution.

Extraterritoriality

Existing legislation in the Gambia criminalises foreign travel which promotes the commercial sexual exploitation in travel and tourism of children. However, the law does not specifically prohibit the crime of exploiting or abusing a child abroad.

Part IV of the Children's Act implements extraterritorial jurisdiction into domestic legislation for a variety of CSEA including: the exportation and importation of children for prostitution; the procurement of children for sex or prostitution; the kidnapping and abducting of children; trafficking in children; and dealing in child slaves.

Section 39 of the TPA deals with offences committed outside the Gambia. It permits the prosecution of offences under the Act committed outside the Gambia by citizens or legal residents. Such offences are to be dealt with as if committed in the Gambia.

Extradition

Extradition in the Gambia can only take place under the framework of the Extradition Act [1986] or by way of an extradition or mutual legal assistance treaty.

CSEA offences are considered extraditable under Section 6 of the Extradition Act. The Schedule to the Extradition Act includes extraditable CSEA offences.⁷⁴ All offences under the TPA are extraditable offences.

The common practice is that extradition treaties are incorporated into local law as subsidiary legislation to the Extradition Act, therefore conforming with the provisions of the Extradition Act containing restrictions on the extradition of persons.

Treaties which were originally signed by the United Kingdom with non-commonwealth countries under the applied United Kingdom Acts from 1870 to 1935, such as the Bilateral Extradition Treaties signed with the US in 1931, are also applicable to the Gambia by virtue of the saving provision under Section 25(2) of the Extradition Act. In addition, the Gambia currently has an extradition treaty in effect with Senegal.

Under Section 6 of the Extradition Act, there is a dual criminality requirement for extradition to take place. This means that, among other things, the facts constituting the offence for which extradition is sought must also constitute an offence under the laws of the Gambia.

The Gambia has also signed a Multilateral Cooperation Agreement to Combat Trafficking in Persons, Especially Women and Children in West and Central Africa (the **Multilateral Cooperation Agreement**).⁷⁵ This agreement was signed by the governments of Member States of the Economic Community of Central African States and the Economic Community of West African States, including Benin, Burkina Faso, Cote d'Ivoire, Ghana, Guinea, Mali, Niger and Togo. It was agreed to combat child trafficking in West Africa by investigating and prosecuting trafficking offenders; rehabilitating and reintegrating trafficking survivors; and assisting signatory countries to implement these measures. The Multilateral Cooperation Agreement came into force in July 2006.

Statutes of Limitation

No limitations statute applies to criminal matters in the Gambia.

Outdated Terminology

Terms such as 'defilement' and 'carnal knowledge' are referenced in the Gambia's legislation and are a legacy of the colonial period. These terms could be considered harmful, as they reinforce gender-stereotypical views about sexuality and who can be experience sexual abuse.⁷⁶

Other

Sentencing

Section 4 of the Sexual Offences Act 2013 contains different penalties for rape and defilement (i.e. rape of a child), depending on certain aggravating factors. In a first conviction, Sections 4(1)(a)(ii) and (iii) cover rape that is committed under coercive circumstances. The accused will be liable for imprisonment for a period of at least 15 years where the rape is committed with a child under the age of 13; by reason of their age, the child is exceptionally vulnerable; or the child is under 18 and the offender is the child's parent, guardian or caretaker, or is otherwise in a position of trust or authority over the child. In a second or subsequent conviction, Section 4(1)(b) provides for where the rape is committed under the coercive circumstances listed above, the accused will be liable for imprisonment for a period of at least 20 years. Under Section 4(2), the minimum sentences in Section 4(1) are not applicable where the accused was under the age of 18 at the time of the commission of the rape, as the court may impose a more lenient sentence. Sections 4(5)(1) and (2) provide that where the accused commits the offence of rape of a girl between the ages of 16 and 18, they will be liable on conviction to imprisonment not exceeding a period of seven years. It is a sufficient defence if it is proven that the accused had reasonable cause to believe and did, in fact, believe that the girl was of or above the age of 18.

The Children's Act provides for 10 to 14 years' imprisonment for conviction of commercial sexual exploitation of children, depending on the type of offence, 10 years' imprisonment for conviction of procurement of a child for prostitution, and five years' imprisonment for conviction of practices related to child pornography.⁷⁷ However, possession of 'child sexual abuse materials' is not criminalised.⁷⁸

The Trafficking in Persons (Amendment) Act 2010 increased the penalties for trafficking, with a

minimum sentence of 50 years and a maximum of life imprisonment. Where the survivor of trafficking is a child, an offender can be liable to the death sentence, although at the time of writing a moratorium exists on use of the death penalty in the Gambia. These penalties are stringent and, regarding sex trafficking, commensurate with penalties prescribed for other serious crimes, such as rape.⁷⁹ When the survivor is a child, the means of trafficking are considered irrelevant. This makes prosecution in cases of trafficking easier, as it eases the burden on the State in proving the means of trafficking, which may be highly specialised and obscure, and therefore prevents CSEA offenders from avoiding accountability due to a lack of prescriptive evidence. Fines and sentences are listed for individuals involved in the trafficking of children. Such crimes of association include a person who acts as an ‘intermediary’ and anyone with information concerning trafficking who fails to notify the police. A person who acts as an ‘intermediary’ for the purpose of trafficking, or employs or allows a trafficking survivor to work for them, is liable to a fine of between 50,000 to 500,000 GMD (around 707 to 7,074 GBP) as well as a term of imprisonment for no less than fifteen (15) years and no more than life imprisonment. A person with information concerning trafficking who fails to notify the police is liable to pay a fine of 10,000 to 50,000 GMD (around 141 to 707 GBP), a term of imprisonment for from 12 months to three years, or both.

Regarding CSEA offences committed abroad by citizens or residents of the Gambia, a person may be liable under Part IV of the Children’s Act for up to 10 years’ imprisonment, with or without the option of a fine, up to the maximum penalty of life imprisonment. For the crime of organising, promoting or encouraging foreign travel which promotes child prostitution, Section 32 of the Children’s Act imposes a fine of at least 200,000 GMD (around 2,800 GBP), imprisonment for up to 10 years, or both.

The Children’s Act Amendment 2016 criminalises child marriage with a penalty of up to 20 years’ imprisonment.

Under the Children’s Act, for a person who imports any harmful publication such as a book, magazine, film, picture, video or audio tape which is harmful for the moral development of children (Section 60), the punishment is a fine up to 50,000 GMD or imprisonment for a term not exceeding five years, or

both fine and imprisonment. For any person who prints, publishes, sells, hires or possesses any harmful publication, commits an offence (Section 61), the punishment is a fine of at least 50,000 GMD or imprisonment for a term of at least three years or more than five years or to both fine and imprisonment.

Section 32A of the Women’s (Amendment) Act 2015 imposes imprisonment of not more than three years, a substantial monetary fine (50,000 GMD), or both, for anyone convicted of circumcision of a female child; if the child dies, the penalty for conviction is life imprisonment.⁸⁰ Section 32B imposes a three year jail term and/or a fine of 50,000 GMD for persons that aid, abet or facilitate the process of circumcision. A fine of 10,000 GMD is imposed on those persons that have knowledge of the commission of the practice, but fail to report the practice.⁸¹

Treatment of Children of Different Genders

The laws of the Gambia make no distinction in their application in relation to age or gender. However, age serves as an aggravating factor in sentencing and may be used as a defence. Section 4(5)(1) of the Sexual Offences Act provides for imprisonment up to seven years where a girl between the ages of 16 and 18 is raped. However, as stated above, section 4(5)(2) provides a defence if it is proven that the accused had reasonable cause to believe and did, in fact, believe that the girl was of, or above, the age of 18.

Gaps in Criminalisation

There are certain gaps which the Gambia should address to better criminalise CSEA offences. These include:

— The inconsistency between the Constitution and the Children’s Act regarding the legal definition of a child. For instance, Section 29(2) of the Constitution provides for the protection from exploitation of children under the age of 16, whereas the Children’s Act defines a child as a person under the age of 18. There is no preference towards either of these provisions. However, Section 29 of the Constitution highlights that the spirit of the constitutional provision is to prevent children under the age of 16 from economic exploitation and labour. In contrast the Children’s Act, the Sexual Offences Act or the TOA, aim (amongst other things) to prevent the sexual

exploitation and abuse of children. Therefore, the settled definition for the statutory age of capacity regarding children should be 18.

— Under the Children’s Act, marriage is illegal under the age of 18. However, certain customary laws and the Cadi (Islamic) Court, which hears and determines personal Islamic law matters in relation to inheritance, marriage and divorce, recognise marriages of individuals under 18. Cases relating to early or forced marriages are often viewed as private. Consequently, Gambian society in such instances view private matters as being distant from criminal matters which prevents cases from being reported; these cases are therefore not subject to the jurisdiction of the courts. This is in part due to inadequacy of knowledge and education on child marriage, and insufficient resources in detecting, investigating and prosecuting CSEA crimes.

— The Civil Marriages Act 1938 still provides exceptions to the minimum age. The law allows for the parent or guardian of a child to give consent to the marriage of unmarried minors. Section 8 of the Civil Marriages Act therefore also requires amending to ensure consistency with the Children’s Act.⁸² This legal amendment is important because in the Gambia there is no minimum age of marriage under Islamic Shariah or customary law, which is the dominant tradition governing family law. The Gambia should adopt the international standard of requiring 18 years as the legal minimum age for marriages in all forms, whether civil, religious or customary and for both women and men in the main statutes governing marriage.

— Under the Women’s Act, there is a major gap regarding FGM, insofar as it makes no provision for cross-border circumcision addressing both circumcisers who perform the procedure outside the country as well as girls forced to undergo the procedure in countries with weaker FGM laws.⁸³

— The current law does not directly criminalise and punish FGM performed by medical professionals.⁸⁴

— Extradition and mutual legal assistance agreements are not currently extended to the European Union (EU). This extension would enable effective enforcement of both the Gambia’s and the EU’s extraterritorial laws as a great number of tourists visiting the Gambia are citizens or permanent residents of EU countries.

— The Gambian law on child sexual abuse materials is under-developed. It is silent on the issue of ‘grooming’ children and does not provide for the criminalisation of knowingly accessing or mere possession of child sexual abuse materials. The Gambia also does not have any legal or policy provisions that require Internet Service Providers or financial institutions to monitor transactions for suspicious behaviour.⁸⁵

— Although the Children’s Act implements the Gambia’s obligations under international law regarding the protection of children, there are a number of implementation issues which highlight the realities of the Gambian political, social and economic environment, including the strengths and weaknesses of child protection institutions. Firstly, there is a lack of cases being brought to the justice system as a result of the ‘culture of silence’ when it comes to child sexual exploitation and abuse in the Gambia.⁸⁶ Even if cases are reported and investigated, often they are later withdrawn and settled privately. Secondly, the act has not been widely disseminated and promoted and, as a result, many key groups continue to lack understanding of the Children’s Act or are unaware of its existence.⁸⁷

Prosecution

Although the Gambia has made noteworthy efforts to reform laws and institutions to protect children from CSEA, the laws are hardly implemented and enforced, and institutions are often under-resourced.⁸⁸ Despite reports of child sexual offences happening in the country, and significant efforts to combat sexual exploitation of children in the tourism industry, only a handful of cases have been brought to court.⁸⁹ To-date, not a single alleged perpetrator of sale of children, sexual abuse, exploitation or human trafficking, has been prosecuted or convicted under the relevant laws.⁹⁰

A major barrier in litigating child and women’s rights in the Gambia has been the lack of knowledge of international human rights law by both judges and lawyers. This means that most lawyers are unable to cite international human rights law while judges and magistrates are unable to draw conclusions through the application of relevant international human rights law.⁹¹

There is widespread consensus regarding the importance of strengthening the Judiciary and the

administration of justice generally to bolster a democratic transition founded on the rule of law. During the Jammeh regime the Gambian government, for reasons of 'expediency and political convenience',⁹² relied on a system of contract judges—up to the level of Chief Justice—whereby judges were brought in from abroad and employed on the basis of contracts which were renewable at the pleasure of the Government, thus undermining the independence of the judiciary.⁹³ There were reports of rampant corruption and executive interference in the Judiciary, and that judges and magistrates had been arrested, detained or threatened during the Jammeh regime. In December 2017, the ICCPR identified a number of issues for the reform process including: the lack of judges to clear the huge backlog of cases; the need to combat corruption in the Judiciary; and the need to address the lack of material resources to run the courts.⁹⁴ The Judiciary Strategic Plan has aimed to address gaps in the reform process of the Judiciary.

The institutional reforms undertaken by the new Government have sought to strengthen the independence and capacity of the Judiciary. Justice Hassan B Jallow, a Jurist of international repute and the former Chief Prosecutor of the International Criminal Tribunal for Rwanda, was appointed Chief Justice of the Supreme Court. In terms of the supply and capacity of domestic judges, 12 new Judges of the High Court, Court of Appeal and Supreme Court were appointed from January 2017.⁹⁵ The Judiciary also operationalised the decentralisation of the justice delivery system by opening High Courts in the Regions to improve access to judicial remedies. New Magistrates have been appointed together with additional support staff for courts in the rural areas. The Court-connected Alternative Dispute Resolution (ADR) has been introduced as part of practice and procedure for the High Court and to help reduce the backlog of cases.⁹⁶ In June 2021, the Government achieved gender balance at all levels of the judiciary.⁹⁷

However, various serious shortcomings, as outlined in November 2019 by the Special Rapporteur, continue to hinder the Judiciary's capacity to carry out criminal prosecutions.⁹⁸

Initiating Prosecution

A complaint can be filed regarding a CSEA offence by any person. Under the Sexual Offences Act, the

"Complainant" is the person towards or in connection with whom the offence is alleged to have been committed, irrespective of whether the survivor has laid a complaint or if it was reported by someone else. The survivor of a CSEA offence is not obliged to participate in the trial or assist the investigators in the investigation of a reported crime once a criminal investigation is opened.

Part VII of the TPA dealing with Complaint and Arrest Procedure, provides under Section 42 that a survivor of human trafficking, or any person with information about an instance of human trafficking, may file a complaint with the police or other security services.

The Children's Act imposes a duty on parents and legal guardians to care, protect and maintain a child; this duty includes protecting the child from social and cultural practices which are detrimental to the child's physical and mental wellbeing. Section 75 of the Children's Act provides that where a person has information on instances of child abuse or of a child in need of care and protection, that person must report the matter to the Department of Social Welfare or the nearest police station.

Prosecution Process

In the Gambia, different pieces of legislation have different courts exercising jurisdiction. The court structure operates at two levels. The superior courts consist of the Supreme Court, the Court of Appeal and the High Court. The subordinate courts include Magistrates' courts, Children's Courts, Cadi courts and Tribunals. The Cadi courts are presided over by a local chief and a council of elders who profess the Islamic religion and have knowledge of Islamic law; these courts have jurisdiction over proceedings relating to personal status, marriage, divorce or inheritance.⁹⁹ Besides the formal court system, Gambian citizens use other dispute resolution mechanisms to pursue grievances and conflicts, including mediation and arbitration by community elders.¹⁰⁰

The Children's Court, established under the Children's Act, adjudicates on criminal and civil matters concerning children and applications relating to child care and protection cases and determines guardianship of CSEA survivors referred to the court by the Department of Social Welfare. There are four children's courts. Cases involving children's rights must be filed in the Children's Court, which consists

of a magistrate designated by the Chief Justice, assisted by a specialised panel.¹⁰¹

The 2015 CEDAW report highlighted the barriers faced by women and girls in accessing justice. The committee expressed concerns that the Cadi courts and District Tribunals are not gender sensitive and continue to apply discriminatory provisions.¹⁰²

Investigation & Evidence

The national police force Child Welfare Unit is responsible for receiving and investigating cases of child sexual exploitation and abuse.¹⁰³ Unfortunately the Unit is under-resourced and lacks the technical capacity to investigate and address complaints by children in a child-sensitive manner. It also has limited outreach and monitoring capacity.¹⁰⁴

In 2018 the Ministry of Justice set up a sexual and gender-based violence unit, which is to monitor, investigate and prosecute sexual and gender-based violence and provide counselling support for survivors.¹⁰⁵ However, this unit is also under-resourced and lacks specialised training and skills necessary to identify, investigate and respond to the reported cases of sexual exploitation of children.¹⁰⁶ There is also no accessible, confidential and child-friendly channel for children to report cases of sexual assault to the unit.¹⁰⁷

The poor enforcement of laws surrounding CSEA in the Gambia is blamed on lack of awareness of the existing laws and penalties, mistrust in the justice system, inadequate child protection services for survivors, inadequate capacities within the institutions which are supposed to oversee and investigate reported cases, and significant gaps in capacity to provide survivors with necessary child-appropriate services and assistance.¹⁰⁸ High level denial of the existence of the sexual exploitation of children in travel and tourism (SECTT) in the country may also be leading officials to not investigate any cases, as highlighted in the TIP Report 2019.¹⁰⁹

An example of a case highlighting the issue of lack of will to investigate and prosecute cases of child sexual abuse by the authorities is that of Veneau. In June 2018, Colonel Jean Veneau, a French diplomat, was seen raping a child on a beach.¹¹⁰ A group of witnesses arrested him and brought him to a police station. After a five month investigation, which showed evidence of rape and indecent assault on the

child, the case was passed on to the Ministry of Foreign Affairs for professional advice, due to the "crucial bilateral relationship with France" and the diplomatic status of the accused.¹¹¹

Procedure for Witness Testimony

Section 7 of the Sexual Offences Act prohibits use of the "cautionary rule" which requires judicial officers to exercise caution before adopting the evidence of certain witnesses on the grounds that the evidence of such witnesses is inherently potentially unreliable. For cases where the accused is charged with an offence of sexual or indecent nature, the cautionary rule cannot be applied; all claimants must be presumed reliable until proven otherwise.

Corroboration

Section 180 of the Evidence Act 1994 provides that all evidence related to rape and sexual offences must be corroborated. There are examples of this legislation being engaged to acquit alleged perpetrators of CSEA.

A recent case in the Court of Appeal displays the obligation for corroboration preventing a survivor's access to justice.¹¹² In this instance, an alleged perpetrator of CSEA was acquitted after it was found that evidence provided by three witnesses who had spoken to the survivor following the alleged CSEA, and the medical evidence confirming that CSEA against the survivor had taken place, did not corroborate the identity of the alleged perpetrator.

In this case, the Court of Appeal found that the witnesses concerned had narrated what they were told by the survivor, and as a result the witness testimony could not connect the accused person to the crime. Despite a dissenting judgement from one of the Justices that the survivor's evidence was credible, the majority of the Court found that none of the witnesses had in fact testified to witnessing the CSEA act taking place and consequently the defendant was acquitted.

Such a strict approach to corroboration appears to amount to a high evidentiary threshold that may create a bar to the successful prosecution of CSEA cases.

DNA

Deoxyribonucleic acid (DNA) has been a useful tool adopted throughout the world in prosecuting CSEA offences. However, there is no record of DNA evidence being used in a CSEA case in the Gambia because the justice system does not have capacity for any DNA trial.¹¹³

Unwillingness to Proceed with 'Formal' Trial

Many child abuse cases in the Gambia remain unreported. Anecdotal evidence suggests that the sexual abuse of children is surrounded by social stigma, family pressure or indifference, and a culture of silence that inhibits reporting of cases to the police.¹¹⁴

For similar reasons, it is also difficult to prosecute perpetrators of child marriage via formal legal proceedings. As girls are often forced into marriage by their own families, it is very unlikely that the child marriage will be reported. Even where the relevant authorities are notified, it is difficult to prosecute because the offenders are also the main witnesses to the events. If matters are brought to court, cases often collapse because of societal and economic pressure on the girl to withdraw her complaint. In one reported case, a court ordered the refund of a dowry paid for the marriage of a 15-year-old child instead of ordering the prosecution of the husband who had clearly married the girl as a child in contravention of the law.¹¹⁵

As with other areas of child sexual abuse, the phenomenon of child trafficking for sexual exploitation is not properly understood as it is highly underreported, due to the lack of faith in the administration of justice for children, lengthy investigations and court proceedings and the absence of prosecutions and convictions.¹¹⁶

Ultimately, a lack of trust towards the judiciary and investigative bodies is caused by the absence of convictions despite cases being brought forward, perceived corruption and the widespread immunity enjoyed by high-level officials in the Gambia.¹¹⁷

Gaps in Prosecution

In April 2021, the National Human Rights Commission (NHRC) strongly urged the state, as the

primary duty bearer, 'to take every legal measure and action to combat sexual abuse, violence and exploitation in society'.¹¹⁸ It further urged the Gambia Police Force to vigorously enforce the Children's Act 2005, Sexual Offences Act 2013 and all other legislation that protect children and women from sexual violence and for the Ministry of Justice to ensure that alleged offenders are prosecuted. On the back of the Special Rapporteur's Report to the HRC, the NHRC is taking a leading role in starting serious conversations in society to help sensitise the population to the issues around sexual and gender-based violence and has encouraged girls, women and children to report all forms of sexual and gender-based violence that they are subjected to or know about to the appropriate authorities.¹¹⁹

Evidently, there are gaps in the prosecution of CSEA offences in the Gambia that need to be addressed. These include:

- Law enforcement and judicial personnel lack adequate resources and training to investigate and prosecute CSEA offences. This includes inadequacy of knowledge and resources in detecting, investigating and prosecuting CSEA crimes, which limits successful prosecution and the conviction of offenders. This has a number of impacts, which include:

- Police are not conversant with local legislation.
- Police lack basic interviewing skills, which hinders the investigation of cases and their subsequent prosecution.
- Early and forced marriages are under-reported and not prosecuted based on customary and religious considerations despite their prohibition being proscribed by the Children's Act.

- Laws designed to protect children from CSEA may not be enforced due to corruption of officials. Cases have been identified which show that, despite reports to officials of child sex offences, the authorities have failed to act. Recent examples include:

- An unidentified diplomat was accused of raping a mentally challenged 17 year old girl in 2020. His diplomatic immunity was maintained by

his home state which consequently protected him from prosecution in the Gambia and he was able to leave the country.¹²⁰

- An amnesty was granted to a Norwegian paedophile serving a three-year jail term for abusing six children, which was reversed by the former Interior Minister as the amnesty was based on insufficient information.¹²¹

- The Network Against Gender-Based Violence (NGBV) reported 75 per cent of sexual violence survivors were schoolgirls. In some cases, it was found that teachers abusing their power were committing CSEA offences against their students which often resulted in child pregnancy.¹²² Such offenders were subsequently transferred to other schools where they would remain in a position to reoffend rather than being dismissed and prosecuted.¹²³

- There are difficulties prosecuting cases against foreign nationals. As referred to above, in a recent case where a French national in the Gambia was arrested for abusing a Gambian child, action to prosecute the case stalled following the actions of government ministries.¹²⁴

- When the UN Special Rapporteur on the sale and sexual exploitation of children visited the Gambia in 2019, she raised concern over the lack of efforts to prosecute perpetrators of child trafficking and sexual violence¹²⁵ and pressed the need for action in the Gambia including:

- The urgent need for resources, adequately equipped and child-friendly decentralised shelters and continued capacity building of frontline child protection actors, including Gender and Child Welfare Police Officers, Tourism Security Unit Officers and Immigration Child Welfare Officers.

- Continued sensitisation, awareness-raising and economic empowerment of impoverished communities and children to curb the culture of silence surrounding child sexual abuse and exploitation cases.

- The urgent need for the coordination of activities amongst various child protection

actors to ensure complementarity of interventions.

Protection

The National Child Protection Strategy 2016-2020 (NCPS) and Plan of Action was developed with the support of UNICEF,¹²⁶ at the same time as a National Social Protection Policy.¹²⁷ The NCPS outlines the strategies to improve child protection by increasing awareness and coordination among government agencies. This provides a multi-sectoral systemic approach to child protection from sexual abuse and exploitation, consistent with international standards.¹²⁸

In 2019, the Government established a new Ministry of Women Children and Social Welfare (MoWCSW), which is the body primarily responsible for child protection and preventing sexual exploitation of children.¹²⁹ In turn, it has established the Children Unit with responsibility to coordinate child protection interventions.¹³⁰

On Africa Day of the Child, 16 June 2021, the National Human Rights Commission issued a press statement outlining eight recommendations for the government to implement to build a Gambia fit for children which 'is a Gambia where children are protected by law and where the State ensures that communities where these children live respect these laws'.¹³¹

The Department of Social Welfare (DoSW) is the primary coordinating body responsible for child protection and its implementation in the Gambia. Other stakeholders involved in implementation include the Child Rights Unit of the Ministry of Justice, the Gender Education Unit of the Ministry of Basic and Secondary Education, all Child Welfare Units, the Gambian Tourism Board and other key stakeholders. However, there is a general lack of financial and human resource allocation for implementation which has impeded effectiveness.¹³²

Protection of Survivors During Proceedings

When a case is reported to the police force, the Tourism Security Unit or via 199, police officers will go to the venue or 'crime scene', together with staff from the DoSW. Section 16 of the Sexual Offences Act 2013 provides that the identity of a person who

makes a report of CSEA must be kept confidential. Staff from the DoSW take the survivor to a safe and private location where necessary procedures, such as a medical check-up, can be conducted.

Generally, Section 69 of the Children's Act requires the court to consist of a panel of three persons, including a first class magistrate and at least one female. In cases involving children, the court is empowered to sit in a different building from the one usually used by the courts.

Sections 69 to 72 of the Children's Act require that the privacy rights of the child be upheld throughout the trial. Accommodation must be made in the child's best interest, including the option for proceedings to be held in private or, if necessary, by video link. The parents or guardians of the child survivor must be present, whenever possible, and the child must be provided with legal representation by the State. The courts are required not to publish any information that may lead to the identification of the child. The court may, at its own discretion, order the attendance of a social welfare officer, probation officer and any other person to its sitting.

Those in need of legal aid and representation in criminal or civil judicial proceedings, including at children's courts, can access those services through the National Agency for Legal Aid.¹³³ The Agency has regional mobile aid clinics but it lacks the financial and human resources to reach vulnerable groups.¹³⁴ Consequently, there is insufficient awareness about the availability of legal aid for cases of sexual abuse and exploitation of children, which should be addressed.¹³⁵

Protection of Children in General

In 2012, the DoSW set up a National Child Protection Committee (**NCPC**) tasked with coordinating child protection activities at a national level.

The police services, immigration authorities and the DoSW each have child welfare units which deal with child protection cases including cases involving CSEA. The police service also has an additional vulnerable persons unit that focuses on people at risk, which includes child survivors of sexual exploitation. The Police Child Welfare Unit is focused on preventing, identifying, investigating and responding to child protection cases.

The DoSW operates as a service provider and an enabler aimed at improving access to quality social welfare services at the local, institutional and national levels. It provides support and services to orphans, vulnerable children and child survivors of abuse, exploitation and trafficking. The Social Development Policy instituted and implemented by the DoSW identifies childcare as one of its four priority areas.

The DoSW operates and maintains one shelter that temporarily accommodates survivors and seeks to repatriate those who have been trafficked in coordination with the National Agency for Trafficking in Persons. However, due to understaffing and underfunding, the shelter staff are often not able to locate the families, leading to the children running away, and finding themselves in the same vulnerable situations shortly after.¹³⁶ Where children are in remote locations and need to be transferred to the shelter, this often takes a long time due to poor means of transport. Pending transfer, there are usually no available child-friendly facilities for children to be housed in, such as emergency shelters or services in cross-border areas which might temporarily house children who ran away from their houses due to sexual or domestic abuse.¹³⁷

Section 66 of the Children's Act imposes a duty on the government to safeguard children and promote reconciliation between children and parents. Section 66 also makes it mandatory for the DoSW to provide accommodation for any child in need, including those children who are lost, abandoned or seeking refuge. It further imposes the duty on the department to make every effort to trace the parents or guardians of any lost or abandoned child and to return the child to the place where he or she ordinarily resides if safe to do so.

There are several reporting avenues for individuals to report abuse. There is one free hotline (the **199 Hotline**) operated by trained staff from the Department of Social Welfare which has been launched in 2020.¹³⁸ The previous hotline, which was set up by the National Plan of Action Against the Sexual Abuse and Exploitation of Children from 2011 to 2015, was suspended due to the low frequency of calls and inadequate training of the hotline operators.¹³⁹ The other telephone lines available to report CSEA offences are not dedicated hotlines, but rather landlines that are used for official purposes and can be contacted by non-officials to report and make enquiries about cases. The Police Child

Welfare Units and Tourist Security Units (**TSU**) have in place reporting systems and structures which address child welfare generally.

Protection of Trafficked Children

The National Agency for Trafficking in Persons (**NAATIP**) is the agency under the Attorney General's Chamber and Ministry of Justice responsible for administering, enforcing and monitoring the implementation of the TPA. Section 14 of the TPA sets out the functions of the NAATIP and includes: receiving and investigating reports of activities of trafficking; cooperating with governments of other states in the investigation and prosecution of trafficking offences; strengthening cooperation between all stakeholders; and taking charge, supervising and coordinating the recovery of survivors. Its implementing partners include the police services, the Department of Social Welfare, the Child Fund and the Immigration Departments. The TPA also provides for the establishment of a fund for survivors of trafficking and outlines how those should be allocated, however so far the financial support from the Government has generally been used only for operation and programme costs.¹⁴⁰ In some years, shortages of funds meant officials could not be trained, thus hindering the agency's ability to conduct investigations.

The NAATIP reformed and revitalised the inter-agency Trafficking in Persons National Task Force,¹⁴¹ which includes the Ministry of Justice, Department of Immigration, DSW, Ministry of Foreign Affairs, Women's Bureau, Gambia Radio and Television Services, Centre for Street Children, and the Gambia Police Force. Its role is to coordinate, administer, and monitor the implementation of the Trafficking in Persons Action Plan 2016–2020 and share information among law enforcement agencies.

In 2018, the HRC highlighted the need to enhance the identification of survivors and establish a referral system for survivors of trafficking. In the US TIP Report of 2020, the government's standard operating procedures for child sex trafficking survivors were reported to yet to be implemented and, as a result, the ability to proactively identify and remedy child sex trafficking survivors is limited.¹⁴²

In February 2020, the Ministry of Women, Children and Social Welfare announced the launch of an initiative, in collaboration with the International

Organisation for Migration (IOM), to develop a National Referral Mechanism (**NRM**) for the Protection and Assistance of Vulnerable Migrants in the Gambia. This would protect migrants and survivors of trafficking, including unaccompanied and separated migrant children, and provide them with assistance.¹⁴³ From January 2017 to December 2019 the collaboration resulted in the return of more than 5,000 migrants, mainly from Libya, Niger, Mali and North Africa, 33 cases of which were unaccompanied children.¹⁴⁴

Survivors of trafficking can access assistance in reintegration into families through the Children on the Move project of the West African Network for the Protection of Children.¹⁴⁵

Meanwhile, the Gambia Tourism Board is in charge of ensuring the implementation of the Tourism Offences Act, pursuant to which a special court was created in 2014, which deals with tourism related offences, such as sexual exploitation of children in travel and tourism.¹⁴⁶ The above state actors, all of whom deal with child protection, are yet to organise their cooperation on the issue.¹⁴⁷

Counselling

The DoSW provides counselling and psychosocial services to survivors of, including but not limited to, sexual violence, trafficking and rape.

Protection of Children in Disaster Settings

The National Disaster Management Act 2008 provides for an integrated and coordinated disaster management framework focusing on prevention, preparedness, response, mitigation, and recovery from disaster or emergency situations, and the management of their effects. The Act established the National Disaster Management Agency (**NDMA**) as a body corporate in April 2009 to coordinate all disaster-related issues in the country in close collaboration with all relevant partners.

The National Disaster Management Council (**NDMC**) is the Governing Body of the National Disaster Management Agency. The President of the Republic of the Gambia chairs the NDMC which includes various line ministries and is the highest decision-making body on all matters of disaster management in the country.

Despite this, there are no specific National Disaster Management structures focused on protecting children from abuse and exploitation during national disasters in the Gambia.

Other

Police Training

As evidenced in the Prosecution section of this report, there is a great need for further specialised training for members of law enforcement throughout the Gambia. Currently, a lack of adequate resources and training undermines their ability to investigate and prosecute CSEA offences.¹⁴⁸

Between 2014 and 2016, the Ministry of Justice, the government and civil society organisations have conducted training on the international and national legislative frameworks surrounding child abuse and exploitation.¹⁴⁹ The Department of Social Welfare has conducted training on case management for social workers.¹⁵⁰ The police have also conducted training on identifying and investigating cases of child sexual violence for the police and other child protection actors.¹⁵¹

Additionally, the NAATIP coordinates with international organisations to deliver awareness raising training workshops for officials at border posts, training for the Gambia Police Force on the dangers of trafficking in persons, and training of travel agencies and airlines and the Tourism Security Unit.¹⁵² It also trains civil society organisations on reporting trafficking cases, especially child sex trafficking.

Protection of Adopted Children

Part IX of the Children's Act sets out the measures and process regarding adoption of children.¹⁵³ It defines international adoption as the adoption of a Gambian child by a person who is not the citizen of the Gambia and whose ordinary place of residence is outside the Gambia. Section 109 provides the Children's Court with the jurisdiction to receive and determine adoption applications subject to the provisions of the Act.

Despite the legal framework being in place, there is no available information on the measures taken to monitor informal adoptions within the family and to

identify cases of potential abuse.¹⁵⁴ There is also a lack of data on illegal adoptions.¹⁵⁵

Collection & Dissemination of Data on Child Protection

Enforcement is further hampered by the fact that it is impossible to provide reliable data on the number of cases related to child sexual offences reported or on the number of children sexually exploited in the Gambia, due to the lack of data collection mechanisms and reporting.¹⁵⁶ Where data is available, it is not being shared between the various child protection agencies.¹⁵⁷ Inability to review the data makes it impossible to discover the root causes of child abuse in the country.¹⁵⁸ Although girls seem to be more exposed to these risks than boys, the absence of reliable data on boys being subject to abuse does not mean the issue does not exist.¹⁵⁹

The lack of data collection mechanisms in the Gambia seriously hinders its ability to prevent future cases.¹⁶⁰ The Department of Social Welfare is currently working on building a child protection information management system with the help of UNICEF.¹⁶¹

Prevention

To date, the government has undertaken significant legal reform and has made efforts to respond to recommendations arising from the international human rights framework. In early 2020, UNICEF Gambia reported that it was greatly encouraged by the Gambian Government's explicit stance on child abuse or exploitation, especially the statement by the Minister of Women, Children and Social Welfare declaring 'zero tolerance' for abuse or exploitation of children.¹⁶²

Certain community-led initiatives, such as the establishment of community child protection committees across the country or five youth neighbourhood watch groups within a tourist development of Senegambia, have shown that when empowered, the community can be a great supporter of child protection and preventative efforts.¹⁶³ However, these groups lack the skills and experience in counselling, child-friendly interviewing, referral support services and lack the incentives to refer cases to appropriate institutions.¹⁶⁴ They do not

always look at the best interest of the child, which should be the guiding principle.

Register of Offenders

There is no law in the Gambia that excludes convicted offenders from activities involving contact with children.

However, the Gambian Police Force Records Unit maintains records of all persons convicted of offences in the Gambia. The criminal record of all convicted persons is also accessible to the public upon request and payment of a searching fee.

Child Online Safety

The Information and Communication Act also gives the Gambia Public Utilities Regulatory Authority, established under the Gambia Public Utilities Regulatory Authority Act 2001, the responsibility for the regulation of information and communications services and networks, associated facilities and associated services. Section 138 of the Information and Communication Act gives powers to national security agencies and investigative authorities to monitor, intercept, and store communications.

Despite the Children's Act and the Information and Communication Act, to date there remains only limited legislative and policy provision in this area. For example, there is currently no dedicated taskforce in place to safeguard child online safety.

Distribution of CSEA Content Online

The Ministry of Information and Communication Infrastructure has plans to implement various measures to curb the spread of child abuse material, including awareness-raising on online grooming, engaging with Internet service providers, Internet cafes and social networking platforms to develop codes of conduct safeguarding protection of children online, which would include stricter monitoring, filtering and blocking of websites containing CSEA content.¹⁶⁵ All of these initiatives are still pending adoption.¹⁶⁶

Awareness & Education

The Ministry of Basic and Secondary Education has conducted awareness-raising activities among

children and teachers on the issue of sexual misconduct.¹⁶⁷ This included distributing a guide to the teachers on sexual harassment policy.¹⁶⁸

NAATIP has conducted community campaigns to raise awareness on trafficking among civil society, which has included how to report cases.¹⁶⁹ It organises a number of public awareness events, including World Day against Trafficking in Persons, in an effort to raise public awareness of child trafficking for sexual exploitation.¹⁷⁰ It has also provided training to Tourism Security Unit officers and law enforcement personnel within immigration, State intelligence and anti-drug agencies.¹⁷¹

The government has made some limited efforts to reduce the demand for the sexual exploitation of children in travel and tourism (**SECTT**).¹⁷² The Tourism Security Unit has set up police checkpoints in the Tourism Development Area to turn away all minors who approach the main resort areas without an acceptable reason.¹⁷³ It has also displayed posters in resort areas targeting potential buyers of sex. Hotels have endorsed the tourism code of conduct and adopted stricter rules which help prevent CSEA happening in hotels.¹⁷⁴ However, this has led to perpetrators turning to host child sex tourists in private residences outside the commercial tourist areas of Banjul for abuse,¹⁷⁵ making the crime harder to detect and with a noticeable increase in unregistered lodges and guesthouses popping up around commercial tourist areas.¹⁷⁶

The DoSW has organised Neighbourhood Watch Groups to monitor urban areas near tourist resorts for possible cases of child abuse or child sexual exploitation. NGOs reported in 2020 that of the original 11, only two remained occasionally active and both groups were untrained and lacked the capacity to investigate or effectively report potential cases. In 2020 neither group reported survivors or tourists engaged in SECTT.¹⁷⁷

The Gambian Tourism Board (**GTB**), in cooperation with civil society organisations, has held training sessions for people who work in the tourism sector, such as taxi drivers, hotel workers, tour guides, and Tourism Security Unit personnel. However, such training sessions need to be expanded to non-tourist areas to ensure there are no gaps which can be exploited by traffickers or perpetrators of sexual abuse.¹⁷⁸ In collaboration with the Child Protection Alliance, the GTB has also launched an electronic

signboard with messages on the Gambia's stance against SECTT at the arrival lounge of the Banjul International Airport.

Given that education is key in preventing children being victimised, the Government policy of ensuring access to free basic education to all children and to improving the functioning of the education system through measures aimed at increasing school enrolment and attendance rates and reducing the drop-out rates of both boys and girls at the primary and secondary levels is vital.

While clearly there are already efforts in place to increase awareness around child protection issues, these need to be built upon and developed further. Training and awareness-raising campaigns need to be repeated and expanded to society in general, especially vulnerable communities, as well as wider tourism industry and employment agencies, to help tackle impunity of perpetrators and reach out to survivors.¹⁷⁹ There is also a need to introduce campaigns informing and educating about sexual and reproductive health and affordable contraceptive methods.¹⁸⁰

Recommendations

There are several steps which should be taken as a matter of priority to help combat CSEA offences against children in the Gambia.

Legal

— Where Gambian systems of law or laws within the system are in conflict, they must continue to be harmonised as part of the legal reform process. For example, the 1997 Constitution recognises Sharia law in matters of marriage, divorce and inheritance to members of the communities it applies. The discriminatory provisions of the Constitution which uphold personal law and permit them to override or curtail the rights of women and girls need to be repealed.

— The Optional Protocol to the Convention on Rights of the Child on a communications procedure should be ratified.

— A national action plan and policy should be developed to address gaps in existing programs and policies. The action plan should determine specific

objectives, operational plans, designated actors, measurable targets, monitoring techniques and budgetary requirements which directly relate to child sex tourism. In particular, the National Plan of Action against the Sexual Abuse and Exploitation of Children for 2011 to 2015 should be renewed with more resources made available to ensure its effective implementation.

— Although Section 27 of the Children's Act prohibits any person from grooming children for CSEA and Section 38 criminalises acts that cause, encourage, allow, procure and permit a child to be exploited through prostitution, there is no specific law suppressing the grooming of children through online platforms.

— Legislation or a legally enforceable framework should be considered to exclude the involvement of CSEA offenders from activities involving contact with children.

— Laws requiring proceedings in CSEA cases to be conducted in a manner that safeguards children should officially and legislatively be introduced where they do not exist.

— Laws to protect against CSEA online which will criminalise attempts to groom children for CSEA on online platforms should be adopted. Internet service providers should be held accountable for monitoring suspicious CSEA behaviour.

— Legislation should be implemented which prescribes an obligation on the police and investigative services, and other first responders to lawfully collect DNA evidence, when appropriate, in instances of suspected CSEA offences. The collection of DNA into evidence and the obligation to preserve it are essential for both the survivor and the wider judicial process to ensure that all relevant information is presented in a case to promote legitimacy and due process.

— All laws should set the minimum age of marriage at 18 years for both boys and girls. This prohibition on child marriage must extend to all forms of marriage, including customary and religious marriages, and no exceptions or qualification to this minimum age should be allowed.¹⁸¹ Section 8 of the Civil Marriages Act should be repealed and replaced with a section specifying 18 years as the minimum age of marriage without exception in the Gambia.

This will also ensure consistency with the Children's Act and Women's Act.¹⁸²

— To aid enforcement of the prohibition against child marriage, national laws must require and facilitate the registration of all births and marriages.

— Laws and policies must support girls' education and encourage girls to stay in school for as long as possible and to return to school after pregnancy.

— The law needs to urgently address movement across national borders and criminalise and punish the performance and procurement of all cross-border FGM. The law could be further strengthened by specifically criminalising any FGM performed or assisted by members of the medical profession.

Prosecution

— Legalisation should be introduced which would require the development and implementation of infrastructure to protect CSEA survivors throughout the trial period. Such procedures should include enabling survivors to testify in a space without their abuser present, the ability to wait in a separate room from their abuser while within the judicial setting and the resources to arrive at court at different times or through different rooms from the perpetrator. Such policies should be designed with the child survivor's best interests in mind.

— There should be increased efforts to detect, investigate, prosecute and convict the perpetrators of the sale and sexual exploitation of children, including acts perpetrated in the context of trafficking, travel and sex tourism, at school, at home and in the community.

— More financial resources should be dedicated to the investigation and prosecution of CSEA offences to ensure that the existing legal framework regarding CSEA offences is enforced.

— In terms of FGM cases, increased support and protection for survivors and witnesses is essential.

— In terms of campaigning CSOs, a more proactive role in litigating on issues concerning FGM and child marriage to test the existing legislation in the domestic courts of the Gambia may be necessary to give them effect.¹⁸³

— Information on the number of investigations, prosecutions and convictions should be regularly published.

— International cooperation, assistance and information-sharing should be encouraged between agencies investigating CSEA within the Gambia but also with other countries, in particular with countries from the European Union.

— Monitoring and data collection strategies for overseeing the prevalence of CSEA, child marriage and FGM in the country should be established.

— Investigations and prosecutions should be carried out by appropriately trained individuals in a child-friendly manner, and that those individuals should have sufficient resources to collect and process evidence.

— Domestic policies should seek to foster legitimacy and trust of the state judicial system within communities to promote the reporting of cases and overcome the prevalence of privacy in 'family matters'.

Protection

— Comprehensive National Action Plans should continue to be developed and implemented to serve as the primary policy guide for child sexual abuse and exploitation, child marriage and FGM prevention and response. National Action Plans should ensure that interventions are coordinated and supported across all levels of state and non-state actors.

— A system of comprehensive support services provided by the Civil Society and other stakeholders should be made available to survivors of CSEA offences, including assistance in their protection from retaliation. This could be achieved by improving the case management system.

— Regarding child marriages, a child-friendly and confidential mechanism should be introduced for reporting instances of child marriage. Meaningful support should be provided to survivors, such as legal assistance and shelters. The rate of prosecutions in this area needs to improve to show commitment to enforcing the laws prohibiting child marriage.

— Coordination between child protection services should be improved.

— More resources need to be dedicated to child protection services to ensure there are more shelters and that they are sufficiently equipped and child-friendly, that staff working in this area are well-trained, there are adequate communication and transportation means available to staff and survivors, that there are child-friendly interviewing facilities and continued capacity-building and training which will help police officers identify, respond and investigate child abuse cases.

— Once comprehensive data is available on instances of CSEA in the Gambia, efforts should be made to study the data and discover root causes of the abuse.

— Movement-building and coalition-building among key stakeholders is an important component in driving legislative and policy change and is key to law reform and for political norm change. The continued and active involvement of CSOs, NGOs, the media, activists, the private sector and other relevant stakeholders is crucial.

Prevention

— Ensure that the tourism industry, internet service providers and operators and Internet café owners are aware of the legislation around CSEA, especially with regards to criminalising the organisation or promotion of or assistance in sexual exploitation of children and that they have a legal obligation to report suspected cases of online grooming and sexual exploitation of children.

— Continuous development of skills and training should be provided to all relevant stakeholders, such as the police services, judiciary, Department of Social Welfare, Tourism Security Unit and others.

— The National Human Rights Commission should take an active role in preventing child marriages and FGM as well as highlighting the issues of CSEA in society.

Cultural/Education

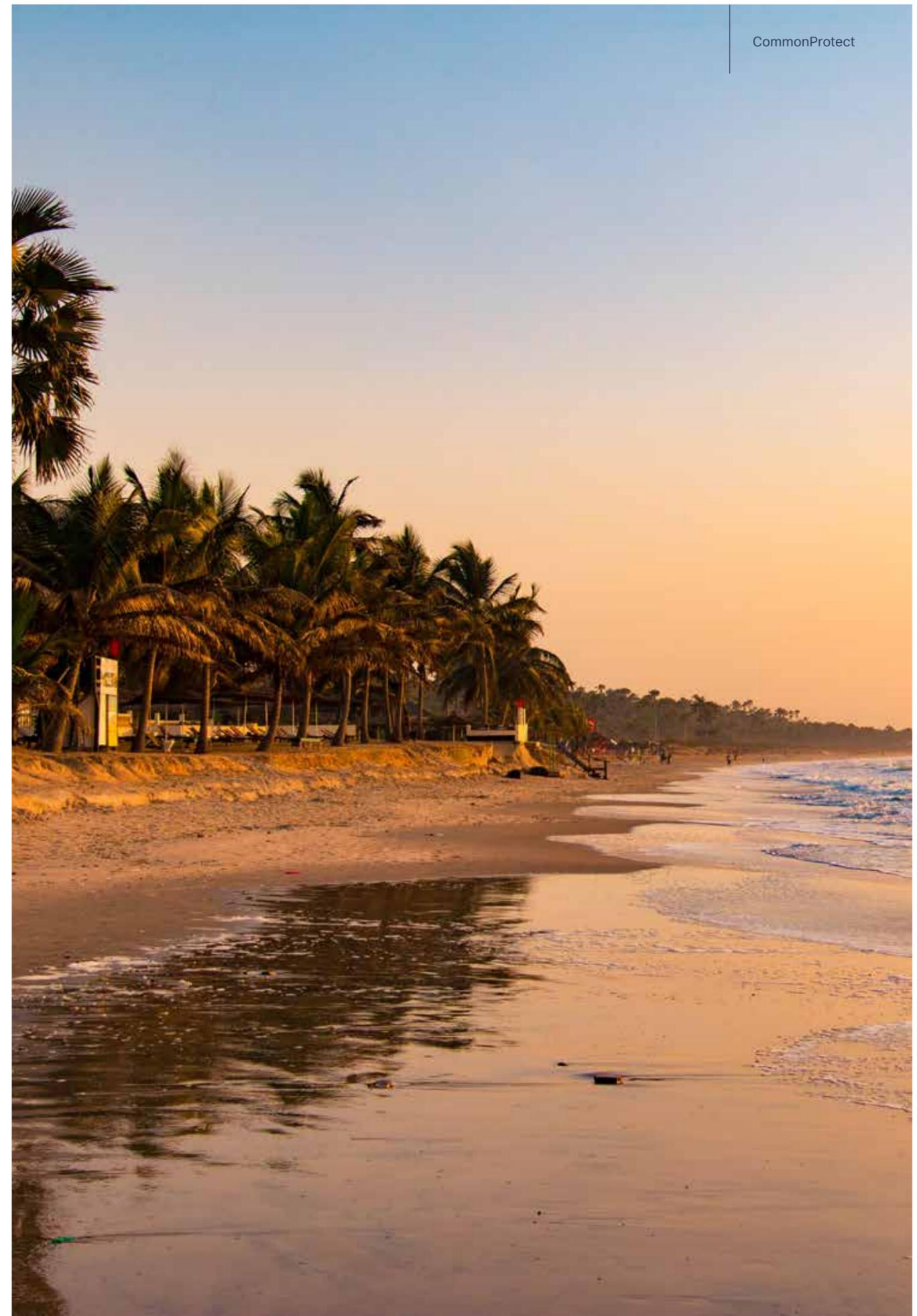
— Culturally relevant education programmes should be implemented directly within communities to develop a greater understanding of CSEA offences and their impact on children and families. Community and religious leaders should be consulted and involved in educational processes to promote the implementation and adoption of modern cultural practices which benefit and respect the fundamental rights of the child.

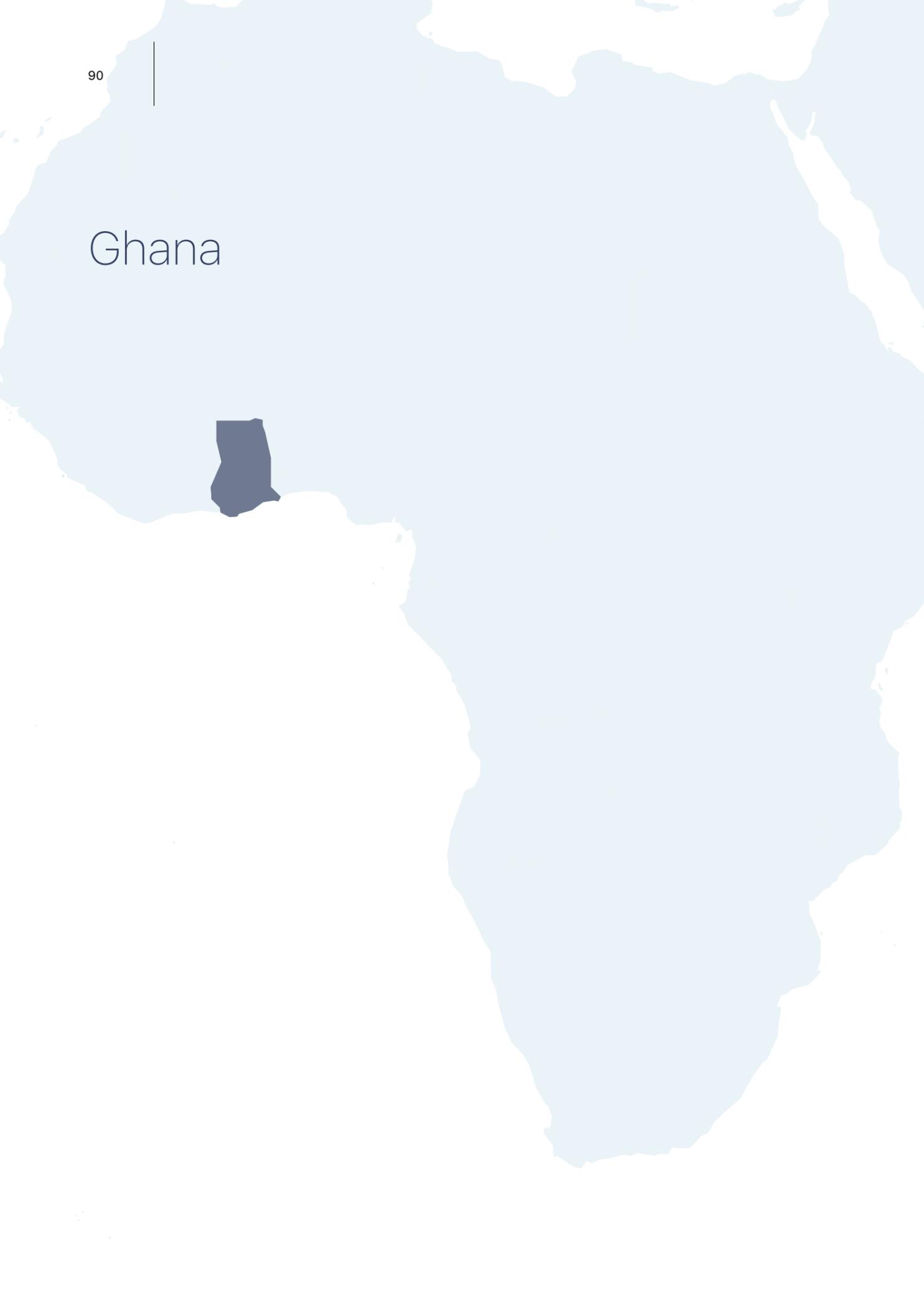
— Awareness raising activities should be conducted in schools and communities, including vulnerable and impoverished areas, to inform children and adults about criminal networks, traffickers, smugglers, suspicious charity organisations and other actors who may seek to lure children into sex tourism, commercial sexual exploitation and trafficking. The training should cover information on online grooming and sexual exploitation of children online.

— Ensure access to age-appropriate information on sexual and reproductive health, including as part of the school curriculum, for boys and girls alike.

— Regarding FGM, it would be beneficial to increase the involvement of local and religious leaders (including the Supreme Islamic Council) in education around the law, including their responsibilities and the importance of the law in protecting women and girls in their communities. Tribunals could be encouraged to make sure any prosecutions relating to FGM are clearly reported, including through local media such as community radio, and made available in local languages.¹⁸⁴

— Promote the registration of all children at birth.





Ghana

Ghana has demonstrated significant commitment to the protection of the rights of children. It was the first country to ratify the United Nations Convention on the Rights of the Child (5/2/1990). Ghana is also a party to many other international instruments relating to child protection, including The African Charter on the Rights and Welfare of the Child (1999); The Convention on the Elimination of All Forms of Discrimination against Women; The Convention against Transnational Organised Crime; International Labour Organisation Convention No.182 on the worst forms of child labour.

Ghana has developed a relatively comprehensive legal framework of justice for children, guided by the Constitution and the Children's Act 1998 (Act 560).¹ Within these pieces of legislation, it is stipulated that the best interests of the child is the primary consideration by any court, person, institution or other body in any matter concerning a child.² When dealing with children in conflict with the law, the best interests of that child must be balanced with the interests of the survivor and the need for community harmony and safety.

However, there appears to be disjointedness between law and practice, and between law enforcement and community approaches, regarding child protection and justice in Ghana.³ As outlined in the Government of Ghana's Justice for Children Policy 2015, the key institutions which are designed to promote children's access to justice are limited in their effectiveness, and fundamental questions have been raised about the knowledge of the laws and legal processes, and whether these structures and approaches can operate in the Ghanaian context and culture.⁴

Whilst gaps in legislation and policy do need to be addressed to ensure a stronger protective environment for children,⁵ the principal challenge for Ghana is to implement the existing framework in practice, including adjusting cultural attitudes towards CSEA offences.

CSEA Profile

There is very little data on the actual prevalence of CSEA offences in Ghana. Police reports from the Domestic Violence and Victims Support Unit (DOVVSU) provide data on the number of incidents of sexual abuse that are responded to. However, under-reporting reduces the accuracy of these

numbers. No data is available from the hospital system about the number of treatments administered as a result of CSEA. While the hospital caseload classification system records the nature of the injury, it does not record its cause.⁶

The Ghana Police Service reports criminal data on major offences, which includes robbery, 'defilement', murder, rape, narcotics and human trafficking.⁷ From this data, in 2016, 1,341 cases of children being raped were reported, which rose to 1,686 in 2017.⁸ In terms of the regional distribution of CSEA offences, the city of Accra has by far the highest number of reported cases.⁹ More up-to-date data has not been published by the Police.

Studies have estimated that the prevalence of CSEA in Ghana ranges from between 7 per cent and 33 per cent of children having been sexually abused at some point before reaching the age of 18, although such studies are potentially outdated, having been conducted in 1998 and 1999.¹⁰ This estimate is, however, in line with findings of other reports indicating that sexual violence against adults and children is prevalent throughout Ghana. For example, one study found that, for 20 per cent of women in Ghana, their first sexual experience was against their will, and in total 27 per cent of Ghanaian women report having been sexually assaulted in their lifetime.¹¹

School children and street-connected children are two groups that seem particularly vulnerable to sexual abuse.¹² A report prepared for PLAN Ghana in 2009 estimated that 14 per cent of school students aged 10–17 are sexually abused, with 53 per cent of sexual abuse occurring in school and 47 per cent taking place at home.¹³ A 2015 study found that 39 per cent of senior high school students interviewed had experienced some form of sexual abuse.¹⁴ The

prevalence of CSEA amongst street-connected children is also alarmingly high, as demonstrated by a 2007 study which found that 54 per cent of children living on the street interviewed had been sexually abused.¹⁵

Human trafficking is a major contributor to CSEA offences in Ghana. In 2010, it was reported that 70 per cent of human trafficking survivors in Ghana were children,¹⁶ while a more recent study by UNODC in 2018 confirmed this trend.¹⁷ In total, there are over 130,000 survivors of trafficking in Ghana, with over 20,000 trafficked children engaged in the fishing sector on Lake Volta.¹⁸ Overall, there is a lack of reliable data on the extent of the problem, but many NGOs in the country report that survivors often come from families who exist below the poverty line, which leaves children vulnerable to seeking work and thus vulnerable to trafficking.¹⁹

Girls are often trafficked to perform work such as cooking and cleaning, where they are vulnerable to sexual abuse and forced marriage.²⁰ In terms of children trafficked for sexual exploitation, NGOs report that children are often found selling sex on the streets, in brothels or around mining sites.²¹ Ghanaian children are also trafficked abroad, mainly to the Middle East and Europe.²² Additionally, Ghana is found to be a transit point for West Africans subjected to sex trafficking in Europe, especially into Italy and Germany.²³

Ghana is reported as one of the main destinations on the continent for offenders to travel to and abuse children—*extraterritorial CSEA*.²⁴ These crimes occur primarily in beach resorts and other popular tourist destinations, the perpetrators being largely German, British or American.²⁵ In 2015, ECPAT produced a special report on the rise of this practice in Ghana, concluding that urgent action in the area of stricter enforcement of the law among others was needed to combat the problem and protect children.²⁶

Religious and cultural factors can contribute to CSEA offences in Ghana; rape is often blamed on the ‘unavoidable lustful behaviour’ of men, or on rituals.²⁷ In many instances, older men, who have very poor socio-economic status, sexually abuse children for monetary and ‘spiritual’ gains to improve their socio-economic status.²⁸ In many communities throughout Ghana, Trokosi—the traditional practice in which young virgin girls (some of whom are just 9 years old) are sent to shrines as slaves to priests to atone for

the sins and crimes committed by their relatives—is practiced.²⁹ Often, the girls are sexually abused and impregnated by the priests, as well as denied any chance of formal education and healthcare.³⁰ The Trokosi law officially abolished the practice in Ghana in 1998, but this has not deterred adherents and the ritual persists in many parts of the country.³¹ It has been estimated there are still between 4,000 and 6,000 women and children under bondage in shrines in Ghana.³²

The Trokosi practice demonstrates the importance placed upon a girl’s virginity in some Ghanaian communities, which is also present in Ghanaian culture at large, according to researchers.³³ This value of the virginity of girls and concern with “protecting” it can result in CSEA offences not being disclosed by survivors, or hidden by their families to avoid shame.³⁴

Further harmful practices, such as forced marriage and female genital mutilation (FGM), are still present throughout Ghana, and affect hundreds and thousands of children across the country. Despite being made illegal in Ghana in 1994, it is estimated that between five to 15 per cent of women and girls are affected by FGM, with very few cases (if any) being tried in court.³⁵ Regarding child marriage in Ghana, UNICEF found in a 2017/2018 report that 19 per cent of girls were married before the age of 18,³⁶ thus showing the extent of child marriage in the country, even though forcing a child to marry is punishable by a fine or up to one year in prison under Ghanaian law.³⁷

In Ghana, there are certain beliefs and ideologies which may undermine the disclosure of CSEA offences. In some contexts, women and girls are taught to be aware of the ‘helpless’ nature of males, to behave and dress appropriately to avoid arousing the males’ uncontrollable desires. The female survivor of CSEA offences may therefore often attract blame and stigma instead of sympathy and support,³⁸ with survivors internalising these beliefs and discouraging the disclosure of CSEA offences.³⁹ This, coupled with a lack of trust in or financial inability to proceed with the formal justice system, means that CSEA offences often go unreported.⁴⁰ It is apparent that these factors, along with many others, result in a lack of actual protection for children in Ghana from sexual exploitation and abuse, even though there may be provisions in law which prohibit these offences. As Böhm explains, ‘legal protection

from sexual violence thus does not lead to actual protection where social class and gender relations play a role, or where executive powers who exercise the law may mean further danger and risk of re-victimisation.’⁴¹

Ghana is said to have one of the fastest growing economies in the world, however there are still significant levels of poverty within the country, especially in rural areas.⁴² This leaves children susceptible to abuse, including sexual exploitation and abuse, although the extent of the problem is hard to determine due to a lack of concrete data being collected.⁴³ A report published in 2016 contained in-depth interviews with police officials which revealed that most rape and ‘defilement’ cases reported occurred in low-income communities.⁴⁴

Another complication in the determination of the prevalence of CSEA throughout Ghana and the prosecution of such offences, particularly when the survivor is from a low-income community, is that there are both practical and conceptual difficulties in determining who is in fact a child regarding cultural and legal definitions. Principally, in low-income communities, parents often do not register their children at birth, making it difficult to ascertain the child’s exact age.⁴⁵ Additionally, in Ghana a child culturally reaches the age of majority when it attains puberty, even if they are not yet 18—the legal age of majority.

The online exploitation and abuse of children is a growing problem in Ghana; it has been on the rise but rates of prosecution remain low.⁴⁶ The number of reports related to child sexual abuse material (CSAM) being accessed, distributed or produced from Ghana rose from 750 to 7,000 between 2016 and 2019.⁴⁷ A 2019 report by UNICEF revealed that 17 per cent of children interviewed had received unwanted sexual messages online amounting to CSEA.⁴⁸ In October 2019, an agreement was signed between UNICEF and the Ghana Police Service in an attempt to provide training and resources to improve prosecution.⁴⁹ In 2020, the Internet Watch Foundation, in collaboration with the Government of Ghana and UNICEF, launched a new reporting portal allowing people in Ghana to report CSEA material they find online.⁵⁰

Criminalisation/Legislation

CSEA offences against children are addressed by the Criminal Offences Act 1960 (**COA**). The COA criminalises CSEA by imposing prison sentences according to the nature of the offence committed.

The sexual abuse of a child is encompassed under the term ‘defilement,’ which is described as “natural or unnatural carnal knowledge” of a child, in other words rape, or of sexual assault where there is no penetration.⁵¹ ‘Unnatural carnal knowledge’ is defined as sexual intercourse with a person in an unnatural manner. This includes penetration of any part of the body apart from the vagina.

Section 101 of the COA criminalises the rape of a child under 16 years of age. A person commits this offence where they engage in a sexual act with a child, irrespective of the child’s purported consent, and is liable on summary conviction to imprisonment for a term of at least 7 years up to 25 years. Section 106 of the COA makes it a crime for the owner or occupier of a premises to induce or knowingly permit rape of a child under 16 years of age on their premises. Section 107 criminalises the procurement of a person under 21 old, not being a sex worker or of known immoral character, to have ‘carnal or unnatural carnal connection’ (meaning penetrative sex, vaginal or otherwise) in Ghana or elsewhere with any other person.

Under the COA, it is also illegal to have custody, charge or care of a child under 16 and allow them to reside in a brothel or encourage ‘prostitution’.

Lanzarote Convention

Ghana has not acceded to The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**), which is a benchmark for criminal law reform to protect children against CSEA. The Lanzarote Convention contains guidelines on appropriate sanctions and measures to be taken against CSEA offenders. Implementing these into national law would strengthen the domestic approach to CSEA offences.

Although Ghana acceded to The Council of Europe Convention on Cybercrime (the **Budapest Convention**) in 2018, it has not implemented all of

the articles into domestic law. For instance, article 9, which lists the offences related to 'child pornography' which parties to the convention should establish, as well as defines 'child pornography', has not been implemented. The Budapest Convention covers the production, procuring, distribution, offering and possession of pornographic material. Its implementation into the national laws of Ghana would strengthen the safety of children online.

Age of Consent & Definition of a Child

The age of consent in Ghana is 16 years old, and the age of majority is 18. Section 19 of the Juvenile Justice Act 2003 provides that the court may presume a person or a victim to be a child where it appears to the court that they have not attained 18 years of age.

Although the Registry is responsible for registering all children who are born in Ghana, as mentioned above, the reality is that many children are not registered at birth. This is largely due to the high number of children born in rural areas away from hospitals. Children born in rural areas are often not captured by the system and consequently remain unmonitored. This creates problems relating to age determination of children in the criminal justice system.⁵²

The current age of criminal responsibility is 12. This is largely considered to be too low,⁵³ the United Nations' Committee on the Rights of the Child have recommended that this be reviewed upwards.⁵⁴

Trafficking

The Human Trafficking Act 2005 (HTA) was enacted for the prevention, reduction and punishment of human trafficking. It confirms that where a child (being a person under 18) is trafficked, the consent of the child, parent or guardians of the child cannot be used as a defence. The 2015 regulations for the HTA, which are non-discretionary and have the force of law, provide specific guidance on sentencing depending on the circumstances. In general, the term is at least five years and not more than 25 years. With respect to sex trafficking, penalties are generally commensurate with those prescribed for other serious crimes, such as rape. However, if a parent, guardian or other person with parental responsibilities facilitates or engages in trafficking,

they are liable to a fine, five to 10 years' imprisonment, or both. By allowing for a fine in lieu of imprisonment, these penalties are not commensurate with those of other serious crimes, such as rape.

Ghana ratified the United Nations Convention against Transnational Organised Crime (the **Palermo Convention**) in 2012. The HTA takes into account the provisions of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**Palermo Protocol**) and national legislation is aligned with the international framework.

There are issues with the definition of human trafficking in section 1(1) of the HTA, which defines human trafficking as:

"the recruitment, transportation, transfer, harbouring, trading or receipt of persons for exploitation within and across national borders by

(a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of the vulnerability, or

(b) giving or receiving payments and benefits to achieve consent."

This definition broadly reflects the definition of trafficking as contained in the Palermo Protocol, but to some extent broadens it. In practice, this has made the definition unclear, most notably due to the use of the conjunctive "or" between "trading" and "receipt" in the first paragraph. A number of advocates believe any single element listed at the beginning of Section 1(1) combined with exploitation and the elements required in subsections (a) or (b), is sufficient to constitute trafficking. In contrast, others believe each and all of the elements listed at the beginning of Section 1(1), combined with exploitation and the elements required in (a) or (b), must be present to constitute trafficking. In this latter scenario, the "or" would simply apply to "trading or receipt of persons," and all other actions would be required as if they were joined by the word "and."

The lack of definitional clarity causes concern for several reasons. Firstly, satisfactory levels of awareness on the issue of human trafficking cannot be achieved if there is confusion as to what behaviours constitute human trafficking. Second,

confusion pertaining to the definition of human trafficking limits the effectiveness of investigative and judicial procedures; if law enforcement cannot consistently and confidently identify cases they are prevented from using the judicial system to hold those responsible to account. Third, it is necessary to distinguish human trafficking from other crimes, as those other crimes may contain weaker penalties, lack survivor protections, and focus on the perpetrator rather than the person who has had their rights violated. The seriousness of human trafficking must be effectively recognised legislatively. Despite the confusion in interpretation of the definition, there are no available reports of cases in which prosecution failed due to lack of clarity in the definition, but it remains a concern for practitioners in this area.⁵⁵

Severe under-resourcing, combined with confusion in the interpretation of the law and the lack of shelter facilities for survivors of trafficking all result in delays in: investigations, operations removing potential survivors from exploitative and dangerous situations, and the commencement of eventual prosecutions. Issues with evidence collection also hampers prosecution, which could be addressed through increased collaboration between prosecutors and police during case build-up and operations to remove children from trafficking situations. To best meet the survivor protection provisions envisioned in the HTA, as an initial first step one shelter dedicated to the survivors of human trafficking could be established or funded by the Government in each region of Ghana.

Extraterritoriality

Currently, Ghanaian laws regarding the prosecution of CSEA offences committed by Ghanaian citizens and residents abroad are inconsistent. Although Ghana signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (**OPSC**), which obliges state parties to criminalise CSEA offences committed domestically and abroad,⁵⁶ it has been neither ratified nor implemented into domestic law.⁵⁷ There are, however, plans to do so. Indeed, Ghana has submitted two reports on the implementation of the OPSC to the relevant UN Committees, but it remains to be seen when this will be implemented.⁵⁸

Section 56 of the Courts Act 1993 (**CA**) provides that where an act which would be a criminal offence in

Ghana occurs partly within and partly outside of Ghana, anyone within or outside of the jurisdiction of Ghana who helps the offence to be committed may be tried and punished as if the act had been committed wholly within the jurisdiction.⁵⁹

Article 56(3) of the CA states that *"a citizen who while employed in the service of the Republic or of a statutory corporation does an act outside Ghana which if done in Ghana is punishable as an offence, (...) commits an offence as if the act constituting the offence was done in Ghana and may, subject to section 46 of the Criminal Procedure Code, 1960 (Act 30) be prosecuted and punished in Ghana."*

Statutory corporations are public enterprises established by an Act of Parliament. The above section could be considered to give courts extraterritorial jurisdiction when it comes to CSEA offences committed by people employed by the Republic (whether directly, or through a statutory corporation). However, under section 56(3)(d) a citizen who commits an act on the premises of a Ghanaian diplomatic mission, which if done in Ghana would be punishable as an offence, commits an offence as if the act constituting the offence was done in Ghana and may, subject to section 46 of the Criminal Procedure Code be prosecuted and punished in Ghana. Therefore, CSEA offences committed on premises of a diplomatic mission are prosecutable extraterritorially.⁶⁰

Ghanaian citizens who are not employed by the State or who commit offences in places other than Ghanaian diplomatic missions, would be covered by section 56(4) of the CA. Section 56(4) provides that an individual, whether a citizen of Ghana or of a third state, is liable to be tried and punished in Ghana if the individual commits an act which if done within the jurisdiction of the courts of Ghana would have constituted any of the following offences: slave trade or traffic in slaves; traffic in women or children; and any other offence which is authorised or required by a convention or treaty to which the Republic is a signatory, to be prosecuted and punished in Ghana wherever the offence was committed. This would therefore cover certain trafficking offences, but not all CSEA offences.

Under the COA any CSEA offence committed outside of Ghana is subject to the same penalties as if the crime had been committed in Ghana. In the same way as when CSEA offences are committed in

Ghana (see below), the child survivor does not necessarily need to file a complaint of the crime; the survivor's guardian or parent may lodge the complaint on behalf of the survivor.

Extradition

The Extradition Act 1960 outlines crimes which are extraditable offences. These include all CSEA offences.

Section 1 provides that where an arrangement has been made with any country concerning the surrender to that country of any criminals, the President by legislative instrument may order that the Extradition Act applies, subject to any conditions or qualifications that may be specified in the order.

Ghana is part of the Economic Community of West African States (ECOWAS) Convention A/P.1/8/94 on Extradition, which provides that a person cannot be extradited to another country to face trial for a CSEA offence which is not a crime in Ghana. It also provides that extradition will not be granted if the competent authorities of the requested state have passed a final judgment on the accused regarding the offence or offences for which extradition is requested. Extradition may also be refused if the competent authorities of the requested State have decided either not to institute or to terminate proceedings regarding the same offence or offences.

Statute of Limitations

Although there is a limitations act in Ghana (Limitations Act 1972), it does not impose a statutory limitation period for survivors to report CSEA offences.

Outdated Terminology

Terms such as “defilement” and “natural and unnatural carnal knowledge” are referenced in Ghana’s legislation. These terms could be considered harmful, as they reinforce gender-stereotypical and moralistic views about sexuality and who can be a survivor of sexual abuse.⁶¹

Other

Juvenile Offenders

The Juvenile Justice Act 2003 (JJA) and Ghana’s Justice for Children Policy highlight the importance of having a separate and distinct juvenile justice system that specialises in the handling of juvenile offenders or children in conflict with the law, and takes a restorative, rehabilitative and re-integrating approach towards justice, ensuring that imprisonment is only used as a last resort.⁶²

In line with this approach, Ghana has established the Juvenile Court which has exclusive jurisdiction over all juvenile offenders, other than those co-accused with an adult and those charged with an offence punishable by death (such as treason or murder). Where the case does not qualify to be tried in the Juvenile Court, the child will be tried by the regular criminal court but sent to the Juvenile Court for sentencing if convicted.⁶³

Concerns have been raised that the JJA does not contain clear guidance for age determination of a potentially juvenile offender at the arrest or investigation stage, therefore meaning that a child may be wrongly treated as an adult upon arrest until their age has been verified. This can have very serious consequences for the child as they may be detained in an adult facility, and their juvenile case may be filed with the wrong court, denying them their rights under the JJA to be tried in the Juvenile Court.⁶⁴ Considering the challenges regarding age determination in Ghana, it is possible that this will affect many children in conflict with the law.⁶⁵

Treatment of Children of Different Genders

The offence of rape is currently drafted as being gender specific, as it requires the act of penetration of the vagina by a penis.⁶⁶ It also specifically refers to the survivor of rape as female. If the prosecution fails to adduce evidence that the survivor experienced non-consensual sexual intercourse with a man by way of the penis penetrating the vagina, then the action will fail; penetration by any other means does not fall within the definition of rape in domestic law.⁶⁷

Consequently, the narrow and gender/anatomy specific drafting of the law in this instance prevents a male from seeking justice and reparation under rape

laws in Ghana; data gathered by DOVVSU evidences that males in Ghana who are survivors of rape have been unable to rely on the judicial system against their abusers. The definition of rape should be amended to refer to ‘person’ instead of ‘female’ and remove explicit references to penile penetration to make the offence gender neutral.

The offence of ‘natural and unnatural carnal knowledge’ as well as that of ‘defilement’ requires penetration by a penis; women are not recognised as perpetrators of this offence. The law could be amended to make the offence non-gender specific regarding the perpetrator, by including all forms of penetration within the offence.

Gaps in Criminalisation

Whilst the law in Ghana regarding CSEA is generally of a good standard, there are a number of gaps still to be addressed.

— Throughout Ghana, a lack of practical enforcement is apparent, despite laws being in place in theory. This is particularly evident in the case of child marriage, FGM and other traditional practices, as well as CSEA in general.

— There is a lack of a broad definition which includes all forms of CSEA and currently excludes male survivors. The law must be amended to ensure that rape cannot only take place through penile penetration, and that boys can be protected and seek justice for CSEA offences committed against them as well as girls. Furthermore, offences such as grooming of children, abuse of positions of trust, familial child sexual offences, and luring of a child through the internet are all offences which do not currently appear to be criminalised in Ghanaian law.

— Outdated terminology such as ‘defilement’ and ‘natural and unnatural carnal knowledge’ are present in Ghanaian law.

— Current laws criminalising CSEA offences in Ghana do not fully comply with the Lanzarote Convention, nor has the Budapest Convention been completely implemented in Ghanaian law.

— Extraterritorial jurisdiction over CSEA offences is not currently fully realised in Ghanaian law, and the OPSC has not yet been ratified or implemented.

— The definition of human trafficking in the HTA is unclear and requires amending to be most effective.

— The age of legal responsibility should be reviewed, in line with the recommendations of the UN Committee on the Rights of the Child.

Prosecution

In Ghana, as in many countries, jurisdiction over cases involving a child depends on the seriousness of the offence and the age of the perpetrator. The District Court handles summary offences punishable by a fine or up to two years imprisonment; the Circuit Courts handle most CSEA-related offences including incest, rape, defilement and indecent assault, human trafficking, offences under the Domestic Violence Act, 1997, Act 732; the High Courts handle the most severe cases that are triable on indictment and offences punishable by death, including murder, manslaughter, rape, possession of weapons. If the accused offender is also a child, the case will be tried in the Juvenile Court, unless an adult is co-accused with the child defendant or the offence is punishable by death.

Four cities in Ghana (Accra, Kumasi, Tema, and Takoradi) have specialised Gender Based Violence Courts as part of their Circuit Courts, which deal specifically with cases under the Domestic Violence Act 2007, including defilement, incest, and indecent assault.⁶⁸ Not only are these courts only present in four cities, but their effectiveness at handling cases involving child survivors and witnesses has been questioned, with the majority lacking the adequate skills and training.⁶⁹

The Ghana Police Service investigates all crimes including CSEA offences, and handles prosecutions in cases before the District Courts and Circuit Courts, with advice and direction from the Attorney General’s Office when necessary.⁷⁰ Reportedly, it has been observed that these police prosecutors can lack sufficient legal knowledge to successfully prosecute CSEA offences, particularly when a defence lawyer is involved. This lack of skills or experience on the part of the prosecutor can contribute to these cases involving children failing to reach prosecution, resulting in a lack of access for child survivors.⁷¹

Initiating Prosecution

Section 17 of the Children's Act 1998 states that any person with information on child abuse or of a child in need of care and protection, is obliged to report the matter to The Social Welfare and Community Development Department of a District Assembly. There are no restrictions on parents or legal guardians reporting CSEA offences on behalf of children.

The law makes prosecution of the rape of a child or 'defilement' cases mandatory; there can be no out-of-court settlement. This mandatory prosecution is seen as particularly important for young survivors who do not have a hand in negotiations, and could feel excluded, unsatisfied and without remedy for the abuse if an out of court settlement is reached. Cases may only be resolved out-of-court under the express order of state courts, and only for cases that do not amount to felonies or are aggravated in their degree. Felonies include rape, carnal knowledge of a person of 16 or above and the rape of a child (defilement).⁷²

Investigation & Evidence

There are two key units of the Ghana Police Service which were established to investigate and assist with the prosecution of CSEA offences against children.

The Domestic Violence Victim Support Unit (DOVVSU) is mandated to respond to violence against women, children and men in all domestic settings. As of 2020, the DOVVSU employs approximately 830 staff, including 46 senior police officers, and has 112 offices across Ghana.⁷³ However, the DOVVSU only has a presence in 112 locations across the country, meaning that a large part of Ghana is lacking a specialist unit to investigate and help survivors of these crimes.

In 2007, the Inspector General of Police established the Ghana Police Service's Anti-Human Trafficking Unit (ATHU) to investigate, arrest and prosecute perpetrators under the HTA, including child trafficking.⁷⁴

It has been reported by professionals working in the social sector that several difficulties are encountered when looking to investigate and prosecute CSEA offences. These include the facts that there is often a strong lack of cooperation from the public when

dealing with such cases, investigations are marred by widespread police corruption, and offenders, particularly those involved in commercial sexual exploitation, are highly organised and hard to detect.⁷⁵

Although the law calls for mandatory prosecution in cases of the rape of a child or 'defilement', it does not guarantee free medical care for survivors.⁷⁶ The medical report provided following the survivor receiving medical care can be a crucial piece of evidence in prosecuting the perpetrator. The burden on survivors to personally meet the high cost of medical care and the resulting report to be used in court cases impedes the survivor's access to justice.⁷⁷ This could be addressed through the justice system ensuring free medical care and medical reports for all survivors of abuse or by providing compensation for survivors who are in financial difficulty to ensure that all those impacted by CSEA crimes have equal access to effective reparation.

Furthermore, it has been found that Ghanaian police, as is the case with many police forces around the world, do not show a great deal of willingness to investigate crimes such as rape and CSEA. A 2015 study that focused on Ghanaian adults who had experienced sexual assault concluded that the majority of survivors interviewed were dissatisfied with police investigation of their cases due to a lack of interest or impoliteness shown by the police officers they interacted with.⁷⁸ The study participants found that the police constantly tried to shift the blame for the crime from the suspect to the survivor, and treated them with disrespect. Boateng asserts that this behaviour is common amongst law enforcement throughout Ghana.⁷⁹ This assertion is corroborated by a high-profile case from 2017. Media attention was drawn to the case after local police failed to investigate the alleged rape of a four year old girl.⁸⁰ A public outcry occurred at the police's handling of the incident, as well as traditional leaders' interference with the investigation, which ultimately led to Ghana's Inspector General of Police ordering the re-opening of the investigation.

There are numerous operational challenges that impact the prosecution of CSEA offences. For example, the lack of computers and office vehicles at DOVVSU affects the quality of service that can be given.⁸¹ Computers ensure better record keeping, investigation and monitoring of all cases filed, including those abandoned or withdrawn. DOVVSU

officials ought to be able to track cases and keep proper data on offenders in communities. The absence of a central (or regional) database lends itself to repeat offenders and recidivism.

Presumption Survivor is a Child

The law does not provide for any presumption that the victim is a child. Inability to determine the age of a child can significantly delay the prosecution process, particularly in cases such as 'defilement' where confirmation of the age of the survivor is key to securing a successful prosecution. Courts rely on evidence such as birth certificates, baptismal certificates, school or medical records, statements from family members, or, where necessary, a medical examination to determine a child's age. However, this process is often challenging and very slow, especially as the birth registration rate is very low for some communities in Ghana.⁸²

Procedure for Witness Testimony

The procedure for survivor and witness testimony in the majority of Ghanaian courts has been highlighted as not particularly child-friendly. For example, there are no provisions in law for using video-taped statements or closed circuit television for children's testimony, using aids such as dolls or diagrams to help with testimony, limiting the nature or duration of examination and cross-examination, using intermediaries, and in many cases the accused is permitted to directly cross-examine the child before the court.⁸³

The specialised GBV Courts have taken steps to introduce measures to create a more child-friendly environment for witness testimony. However, these courts only exist in four cities in Ghana, and these measures are reportedly not consistently used in all CSEA cases before the GBV Courts.⁸⁴

Corroboration

When pursuing a conviction, some crimes require the corroboration of evidence against the offender. For example, under section 107 of the Criminal Offences Act 1960 (COA), it is a crime to administer any drug, matter or thing to a person with the intent to have sexual intercourse with them. A person cannot be convicted of this offence on the evidence of one

witness alone, unless the witness evidence is corroborated with some other evidence.

The Evidence Act 1975 does not specifically require corroboration of children's evidence, but Section 7(3) does state that "unless otherwise provided by this or any other enactment, corroboration of admitted evidence is not necessary to sustain any finding of fact or any verdict." In practice, CSEA offences, including rape of a child or 'defilement,' are rarely prosecuted at trial unless there is corroborating evidence.⁸⁵

Unwillingness to Proceed with a 'Formal' Trial

A relatively small number of cases relating to children are processed through the formal criminal justice system.⁸⁶ This reluctance to utilise the formal justice system is due to a clear preference amongst some communities to resolve cases informally at the community level through more perceived restorative approaches.⁸⁷ The Ghanaian customary law has not been codified but it is recognised under the Constitution as a source of law.⁸⁸

In cases where mandatory prosecution does not apply to the offences, studies have shown that cases are often brought to court to elicit a guilty confession. Once the offender has admitted his guilt, under the pressure of the court system, the parties often then choose to withdraw the case and settle privately.⁸⁹

Opportunities could be explored to promote stronger linkages between the formal system and community practices. Family elders, religious leaders, chiefs and community members could be proactively engaged to increase community wide education on the dangers of CSEA offences, the importance of bringing perpetrators to justice, and, where the offences are committed by younger people, to support monitoring, rehabilitation and reintegration of juvenile offenders.

Despite many laws and institutions implemented to address these issues, the low socio-economic status of people in such communities and institutional procedural barriers make it difficult for the parents of children who are poor to seek redress when their (or their children's) rights are violated.⁹⁰ When pursuing a legal case for their child, the parents face fees relating to legal representation, court filings, acquiring medical reports required by the courts, transportation to the police station and the court, and will

additionally face the loss of wages while attending court. These costs, coupled with the fact that most CSEA offences are committed in low-income households, lead to a large number of offences being unreported and not prosecuted.

This situation is further exacerbated by the fact that overall trust in the formal justice system by families and communities as a means of resolving CSEA offences appears to be low.⁹¹ Consequently, families and communities often interfere when a survivor wants to report an offence. This external interference from families comes from the preference to treat CSEA offences as a “house matter”. This attitude is particularly prevalent where the offender is a family member or neighbour of the survivor; families do not wish to expose the perpetrator and prefer to receive monetary compensation.⁹²

Gaps in Prosecution

There is a large gap between law and practice in Ghana regarding CSEA offences, as evidenced throughout this chapter.⁹³ Several factors underpin low levels of prosecution for CSEA offences which must be addressed. These include:

- The mandatory prosecution for the rape of a child or ‘defilement’, whilst seen as important for young survivors, encourages families not to bring these cases to court, especially where the offender is a friend, family member or neighbour.

- Limited geographical spread of Gender Based Violence Courts means that specialised measures for CSEA survivors is only available in certain urban centres across Ghana, leaving many children without guidance and support during the prosecution process.

- Lack of free medical care for survivors of CSEA offences undermines their ability to pursue justice.

- Overall lack of child-friendly justice risks re-traumatisation for survivors and witnesses involved in CSEA cases, and can contribute to children or their parents withdrawing from involvement in criminal justice processes.

- Attitudes of police, traditional leaders and the wider society in Ghana contributes to a general lack of trust in the formal justice system and unwillingness

to proceed with a criminal trial for CSEA survivors and their families.

- Some of the processes involved in the justice system, the financial burden, and the complexities of the criminal investigation, discourages both parents and care providers from pursuing or following up on cases of child abuse.

Protection

Protection of Survivors During Proceedings

The lack of specialised measures to protect children whilst giving testimony in the majority of Ghanaian courts can result in further traumatisation for survivors, and may intimidate many witnesses into silence.⁹⁴

There is also a lack of provisions to protect children and support them while their case is being investigated and prosecuted. Whilst the Justice for Children Policy calls for a Victim/Witness Support Service to bolster support for children involved in court cases,⁹⁵ according to a 2018 report by UNICEF, it has not yet been established.⁹⁶ Furthermore, there are reportedly no social workers or victim support specialists attached to the courts or prosecutor’s office. This lack of consistent support for survivors and witnesses, as well as children’s parents, can contribute significantly to the withdrawal from and distrust of the criminal justice process.⁹⁷

Protection of Children in General

Section 16 of the Children’s Act 1998 states that District Assemblies have a responsibility to protect the welfare of and promote the rights of children in their area of authority. The District Assemblies also have a responsibility to ensure that within their district, governmental agencies liaise with each other in matters concerning children. The Social Welfare and Community Development Departments of District Assemblies are also mandated to investigate cases of contravention of children’s rights. Reportedly, there is inadequate implementation of children’s rights and their protection at the local level due to the limited capacities of these District Assemblies.⁹⁸

Support services for children who have experienced violence, abuse and exploitation are quite limited and tend to be concentrated in urban centres.⁹⁹ The Child

ensure that appropriate referrals for therapeutic support are made.¹⁰⁰ However, due to limited staff, resources and transportation, the Department of Social Welfare has limited capacity to provide ongoing counselling, supervision and recovery and reintegration services to children and families who live outside the district capital. Through national child labour projects supported by development partners such as UNICEF, comprehensive family tracing, recovery and reintegration packages are available in some districts for children rescued from trafficking or removed from some forms of child labour.¹⁰¹ However, these initiatives rely primarily on local NGOs for delivering support services, and the number of child survivors who benefit is quite small.¹⁰²

In general, the response system following a CSEA offence is one oriented towards the rescue and removal of children rather than working with families to address concerns in the home. The focus has been primarily on shelter-based, rather than family-based, solutions. However, the Justice for Children policy recognises the importance of the family and the community in preventing and responding to justice for children issues.¹⁰³ The 1992 Constitution identifies the family as the central unit of society and the core institution for raising children. Despite these provisions, amongst many communities, family trust in the justice system is weak.¹⁰⁴ A lack of family-orientated solutions and protections exacerbates this.

Reportedly, there are inadequate resources to run institutions mandated to handle issues involving children and CSEA offences, with inadequate provision of shelters for survivors and a lack of access to facilities and information.¹⁰⁵ The facilities that do exist do not make any provision for children with disabilities, who have additional hurdles in accessing such institutions and information.¹⁰⁶

Protection of Trafficked Children

Ghana is making increasing efforts to combat human trafficking, particularly in relation to children.¹⁰⁷ The Criminal Investigations Department (**CID**), under the Ghana Police Service, is responsible for conducting human trafficking investigations and has established an Anti-Human Trafficking Unit to deal specifically

Between April 2019 and March 2020, the government increased its overall protection methods for survivors of sex trafficking.¹⁰⁸ Services for women and children included shelter, medical screening and care, needs assessment, psycho-social care, education and skills training, interpretation for foreign national survivors, assistance obtaining identity documents, registration with the national health service, and assistance during legal proceedings.¹⁰⁹ Most of the survivors who received services in the new government shelter were Ghanaian women who returned from trafficking predicaments in the Middle East. Some Nigerian, Congolese, and Vietnamese survivors of sex trafficking also received care in the shelter.¹¹⁰

Although section 14 of the HTA tasks police and immigration officers with carrying out survivor rescue missions, due to a lack of government resources it is usually NGOs that ensure the protection of trafficked individuals. Indeed, the vast majority of survivor rescue operations are undertaken by NGOs.¹¹¹ The Department of Social Welfare operates only one shelter for trafficked persons, relying on NGOs and faith-based organisations to provide support to survivors in the 9 shelters run by them.¹¹² These shelters provide support and services to the survivors, including community reintegration.¹¹³ This is despite the Ministry of Gender, Children and Social Protection being responsible for the protection of trafficking survivors, including the provision of temporary basic material support, counselling, and start-up capital; identification and location of families; and funding development of employable skills and employment opportunities.¹¹⁴ Where the government is not able to refer a child trafficking survivor to one of the government operated shelters for abused children, they refer the child to one of the privately operated shelters that provide or coordinate the provision of services, including community reintegration. Generally, the available shelter capacity for child trafficking survivors remains insufficient for the number of children affected.¹¹⁵

Counselling

The DOVVSU and the Social Welfare Department are the two main agencies mandated to provide treatment to children who have been or are at risk of

sexual exploitation and abuse. The DOVVSU has clinical psychologists and counsellors stationed in all offices across Ghana to provide counselling services to survivors, as well as refer them to medical services. However, it is reported that resource constraints severely limit the effectiveness of the unit in providing these services.¹¹⁶

The Ghanaian police has Victim Support Units (VSUs) whose responsibility is to counsel and guide survivors of sexual violence and domestic abuse, including CSEA, through the investigation process.¹¹⁷ However, VSU officers are reportedly not adequately trained in counselling, particularly in dealing with children who have been abused, and their efforts are marred by a lack of resources.¹¹⁸ Furthermore, the counselling that they do provide mostly amounts to advice on medical and legal process, as opposed to physiological and emotional assistance that the survivors may need.¹¹⁹

It has been observed that neither the medical and psychological needs of CSEA survivors are adequately taken care of in Ghana. Treatment is often either limited or inaccessible to survivors, primarily due to its high cost.¹²⁰

Legal Aid

Although theoretically survivors should be able to receive free legal assistance from the Legal Aid Commission,¹²¹ the assistance is insufficient as the Commission is overburdened with cases and there are inadequate logistics for the facilitation of legal service. In practice, Legal representation under the national Legal Aid Scheme is made available only to persons charged with an offence. In certain cases, children may be offered pro bono representation by an NGO lawyer, but this is rare and therefore the majority of child survivors or witnesses are unrepresented in criminal matters.¹²²

Other

Police Training

Some Sexual and Gender-Based Violence (SGBV) response officers and managers have completed training on sexual and gender-based violence to better understand the concept and practice of crisis intervention via telephone hotlines.¹²³ Additionally, the United Nations Populations Fund supported the

re-activation of a 24/7 helpline for those who needed to report cases of abuse, get information about sexual and gender-based violence, domestic violence, or seek support for themselves or others facing any form of abuse.¹²⁴ However, there is no requirement for officers working in child protection to undergo safeguarding or other similar training which incorporates the prevention of CSEA offences.

Prevention

Section 22 of the Criminal Offences Act 1960 (COA) provides that every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completing thereof, is guilty of a misdemeanour. It is difficult to assess whether this has a tangible effect on prevention of CSEA.

Convicted Offenders

The law does not adopt measures to exclude convicted offenders from activities involving contact with children. Ghana does not maintain a list of those convicted of CSEA offences, and details of those who are convicted of CSEA offences are not public information.

Child Online Safety

Online abuse of children is a growing concern in Ghana.¹²⁵ Despite this, there are no specific policies or institutional frameworks to protect and safeguard children online. An Information & Communications Technology for Accelerated Development (ICT4AD) Policy exists, but it does not make provisions for the protection of children online. There are no clear guidelines on how issues of online abuses or violations against children are to be addressed. Reported cases of online abuses against children have been interpreted as isolated cases of child abuse or young people's non-adherence to rules.¹²⁶ Even though Ghana has ratified the UN Convention on the Rights of the Child and implemented the Convention domestically by enacting the Children Act 1998, neither the Act nor the Child and Family Welfare Policy has an online safety/protection consideration.

The National Communications Authority has not developed any specific guidance or policy to guide industry players and users on child online protection.

The Ministry of Communications' National Cyber Security Policy & Strategy published a document in 2015 outlining that child online protection policy measures will be implemented through multi-stakeholder engagement with government, industry, civil society, and relevant international child online protection agencies; the government will encourage dialogue at national and local levels to engage all concerned and create awareness of the possibilities and dangers of the internet. However, this is yet to be put into practice.

Awareness & Education

There is a gap in public education on the law surrounding CSEA offences, reproductive rights and adolescent sexual health. The number of child pregnancies is high and is linked to the inadequacy and lack of access to reproductive health care.¹²⁷ Survivors often report cases some time after the offence has occurred, and consequently do not benefit from medical care post-sexual assault, such as emergency contraception, which could prevent unintended pregnancies.¹²⁸

It has been reported that significant progress has been made in recent years in raising awareness about child rights and child protection issues across Ghana on both the national and local level, however, it seems that there is still room for improvement, particularly in ensuring consistency of messaging and working with local communities.¹²⁹

Recommendations

There are several steps that could be taken to help combat CSEA offences in Ghana, both legally as well as more socially.

Legal

— The legislature should conduct a reform in which outdated laws that do not capture, define or provide the requisite penalties and punishment for CSEA offences are repealed or amended. Such laws include those which create distinctions between 'natural and unnatural carnal knowledge' and the definition of rape.

— The gaps regarding extraterritorial laws should be addressed to clarify the government's position and indicate when such jurisdiction will be enforced.

— Further laws to protect against CSEA online should be adopted, criminalising importing or exporting child pornography and providing protections against child grooming.

— It would greatly assist to clarify and amend the definition of human trafficking; to articulate the particulars of the crime, establish an appropriate sentencing regime, and to create a distinction between human trafficking and other offences

— Ratifying the Lanzarote Convention would allow Ghana to strengthen its domestic laws by introducing all of the prevention, protection and prosecution objectives required of the Convention signatories.

Prosecution

— All ministries should be encouraged to work together to address and find solutions to combat community members and influential people interfering with the criminal justice system. To address this, cases pertaining to children and child abuse should be adjudicated within the state judicial system with limited influence from wider community members. Though it is recognised that alternative justice mechanisms can play an essential role in achieving effective justice, reparation and reconciliation for survivors, it is essential that communities trust the criminal justice system and feel confident in allowing due process to work on their behalf.

Protection

— A register of sexual offenders should be created to protect children from abuse and act as a deterrent.

— Policies and mechanisms should be implemented to help report and remove inappropriate content and child abuse materials online.

— It is important for policy and legislation to pay special attention to those who may be of greater vulnerability, such as indigenous or ethnic minority children, children in poor or rural settings or those who have some form of disability.

— Governments, donors, and policymakers are encouraged to take into consideration issues of sexuality and CSEA in their poverty reduction efforts

in low-income communities to address sexual and economic justice issues.

— The Ministry of Health should make concerted efforts to equip and guide health workers on what to do when faced with a case of child abuse, including the provision of child protection guidelines specifically designed for the health sector for handling child abuse.

— More resources could be dedicated to combatting human trafficking, in particular by ensuring there are sufficient shelters and services available to the survivors.

Prevention

— A robust, comprehensive and sustainable communication strategy on preventative education on child abuse should be implemented. For greatest impact, this communication strategy should target both the general public and providers at health facilities to enhance child protection and mitigate and manage the social consequences of child abuse on the child. To ensure the proper harmonisation of messages, stakeholders are encouraged to agree on common targets, appropriate messages, and the coordination of preventive education.

— The Ministry of Health should work with other partners in health and social care such as social workers, psychotherapists, teaching hospitals, police, judiciary, community systems, and non-government

organisations to create a unified social and medical approach to CSEA issues.

Cultural/Education

— Education and advocacy could make a real difference where cultural practices promoting CSEA are inconsistent with CSEA laws. In particular, greater awareness in young people about CSEA offences, their rights as individuals and as survivors of abuse and the importance of protecting children from CSEA, would be welcomed.

— The Ministry of Gender, Children and Social Protection should design innovative and inclusive approaches that engage communities and bring together parents, chiefs, and opinion leaders in promoting education on CSEA issues. In particular, the medical, social and economic consequences of child abuse on a child's development should be addressed in education settings so as to generate greater awareness of the issue with the goal of preventing and protecting children from future abuse.

— Health and social care workers would greatly benefit from support of the government to undertake continuous mandatory training to provide them with the skills and tools to manage cases of child abuse. Training could focus on topics including, but not limited to, how to support the child, how to educate and support the child's family, and how to build wider trust across communities to enhance child protection and mitigate and manage the social consequences of child abuse.



Kenya



Gaining independence in 1963, Kenya is a presidential representative democratic republic with a multi-party system. Following divisive and widespread post-election ethnic violence and human rights abuses in 2007 and 2017, including sexual and gender-based violence against women and girls, Kenya is a post-conflict state.¹ Kenya has made progress on all the basic human development indicators and is a lower middle-income country. However, this masks significant poverty, inequality, and large geographic disparities.² Kenya occupies a pivotal role as east and central Africa's economic, financial and transport hub, but its economic development has been impaired by high levels of corruption.

The government has been open about the child protection issues Kenya faces and has shown a commitment to addressing concerns in collaboration with its international, regional and local partners. Kenya has made good progress and scores 53.8 (where 100 is best) overall on the Economist Intelligence Unit's Out of the Shadows CSAE Index, and lies in the second quartile.³ This index benchmarks how child sexual abuse and exploitation are being prioritised at the national level. Kenya scores relatively well for legal framework (68.5) and government commitment and capacity (63.5). However, there are persistent delays in harmonising statutes that address children's issues under the Children Act (2001) and in voting on legislation and turning pending bills into laws due to competing political agendas;⁴ the pending Child Trafficking Bill being one instance.

Kenya has demonstrated its commitment to protecting children from CSEA by signing several international conventions and treaties. In 1990, Kenya became the first African country to ratify the UN Convention on the Rights of the Child.⁵ Kenya signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the **Optional Protocol**) in 2000,⁶ and ratified the UN

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2005.⁷

Signalling its obligation to address CSEA regionally, Kenya has signed the African Charter on the Rights and Welfare of the Child,⁸ and is a party to the International Conference of the Great Lakes Region (the **ICGLR**) Protocol on the Prevention and Suppression of Sexual Violence against Women and Children.⁹ Additionally, to address the sexual exploitation and abuse of children online, Kenya is a member of the WeProtect Global Alliance,¹⁰ and is a pathfinding country of the Global Partnership to End Violence Against Children.¹¹

However, both the Optional Protocol and the African Charter have yet to be ratified in Kenyan law, although the Kenyan Government has indicated an intention to do so and submitted a position paper on the Optional Protocol in April 2021.¹² It has been observed that Kenya has also not always been timely nor regular in fulfilling its state reporting obligations, although its reporting performance has much improved in recent years.¹³

Kenya's long-term national strategy, Vision 2030, recognises that maintaining its middle-income status depends on addressing societal inequalities by gender, income and geographic location,¹⁴ and the Government has committed to making efforts to address gender inequality and harmful cultural practices such as child marriage and FGM.¹⁵

CSEA Profile

In Kenya, violence in childhood is common. Thousands of children are subject to physical, sexual (incest, sodomy and defilement) and emotional violence, sexual exploitation, as well as harmful cultural practices such as female genital mutilation (FGM) and child marriage. Some children also experience the worst forms of child labour, trafficking, and online violence.¹⁶

The 2019 VACS (Violence Against Children Survey) confirmed that among the surveyed 18- to 24-year-olds, sexual violence was experienced by 15.6 per cent of females and 6.4 per cent of males before age 18.¹⁷ Between 2016–2019, the national Child Protection Report showed that the prevalence of cases of sexual violence against children was on average 3.4 per cent of all cases reported.¹⁸ The most prevalent forms of sexual violence were child sexual abuse, referred to as ‘defilement’, (52.5 per cent), child pregnancy (17.1 per cent), and child marriage (16.2 per cent). Between 2017–2019, the AHTCPU (Anti-Human Trafficking and Child Protection Unit) reported a caseload of 79 offline child sexual exploitation and abuse cases. The majority (72 per cent) of offline CSEA survivors were aged 13 or over and 91 per cent were female.¹⁹

The National Plan of Action against Child Sexual Exploitation 2018–2022 reported that child sexual exploitation in Kenya was on the increase.²⁰ The National Crime Research Centre’s 2020 study confirmed the worsening upward statistical trend in cases of gender-based violence and child sexual abuse, reporting they had reached ‘a soaring crisis’ during the Covid-19 pandemic.²¹ Between January and June 2020, the Ministry of Health documented 5,000 cases of sexual abuse, of which 70 per cent were children under 18 years of age.²² In July 2020, the President issued a call to action to investigate the rising number of child abuse cases and institute immediate prosecutions.²³

Children’s vulnerability to exploitation and human trafficking has increased in recent years.²⁴ The 2015/16 KIHBS Survey estimated 19,542 children were engaged in the worst forms of child labour (child trafficking, slavery, forced labour, sexual exploitation).²⁵ In 2019, the Kenyan Government reported that more than 850,000 children aged between 6–17 years were out of school²⁶ and therefore vulnerable to various forms of exploitation.

The IOM has established Kenya as a source, transit and destination country for child trafficking.²⁷ Girls are reportedly more prone to trafficking compared to boys, with 60.5 per cent of all trafficking cases reported, and half of these aged under 15 years.²⁸ There are reported cases of Kenyan girls being trafficked and forced into sexual and labour exploitation, mainly in Middle Eastern countries.²⁹ Children are predominantly trafficked into Kenya from Burundi, Ethiopia, Rwanda, Uganda, South Sudan, Tanzania and Nepal.³⁰ Such international and cross-border child trafficking has been increasing and occurs for the purposes of forced labour in farming, domestic servitude and commercial sexual exploitation in the coastal region of Kenya and in the capital.³¹ Reportedly, children are sexually exploited by people working in the eastern khat (miraa) cultivation areas (Meru County), the Nyanza gold mines in western Kenya, the Lokichar oilfields in Turkana County and by truck drivers along major highways and fisherman on Lake Victoria.³² Brothel-based child sexual exploitation has reportedly increased in Migori, Homa Bay, and Kisii counties, particularly around markets along the border with Tanzania.³³ Refugees living in Kenya’s Dadaab and Kakuma refugee camps are also vulnerable to abuse and exploitation, including sex trafficking.³⁴

Childcare institutions such as orphanages also play a role in some instances of CSEA and are recognised as a destination point for trafficked children, particularly in tourist areas such as the coastal region and places like Mombasa.³⁵ In 2014, Kenya issued an indefinite moratorium on inter-country and foreign resident adoptions to stop the sale of children and to protect children from abduction, trafficking and other forms of exploitation. The sale of trafficked children is also reportedly taking place in maternity hospitals for commercial sexual exploitation and other forms of illegal activities. In 2020, for example, three medical workers were charged with stealing and trafficking children.³⁶

International treaty bodies, including the CRC, have regularly expressed concern about the sexual exploitation of children in travel and tourism (SECTT).³⁷ Accurate data on the extent of children involved in sex tourism is difficult to obtain. A much-quoted 2006 UNICEF study of Kenya’s coastal areas estimated that 25 per cent –30 per cent of girls aged between 12 and 18 (10,000 to 15,000) were involved in SECTT.³⁸ Whilst the methods used to arrive at the figures have been critiqued,³⁹ there is evidence that

the rise in the tourism industry has created a steady rise in the commercial sexual exploitation of children, particularly on the coast where poverty is widespread. Furthermore, the number of recent court cases involving overseas offenders has increased, including offenders gaining access to orphanages.⁴⁰

Despite the above instances of child abuse by foreigners and strangers, most cases of child sexual abuse are perpetrated by individuals who are known to the survivor, with cases of intra-family sexual abuse highest among one- to five-year-old children.⁴¹ Nationwide, the perpetration of child sexual abuse by authority figures such as teachers,⁴² police officers, religious and political leaders, also continues to be an issue, and this can feed the supply side of the commercial sexual exploitation of children.⁴³ In 2019, the Teachers Service Commission reported that it had removed over 1,000 teachers from its register for defilement and other sexual offences against students, although many cases go unreported.⁴⁴

Rising levels of mobile phone use and internet access have made Kenyan children more vulnerable to online and technology-facilitated CSEA.⁴⁵ Whilst at one time it was seen as ‘a foreign issue’,⁴⁶ online CSEA is now acknowledged to be growing and expanding in Kenya through its various forms, including child sexual abuse material (CSAM). For example, the Anti Human Trafficking and Child Protection Unit (AHTCPU) of the Directorate of Criminal Investigations recorded 3,160 online CSEA cases in 2018 and 4,133 in 2019.⁴⁷ Whilst concerning, these figures only include cases which are actionable by law enforcement, and therefore the prevalence of online CSEA may be even higher. Furthermore, recent data from the 2021 *Disrupting Harm* household survey sample of Kenyan children aged 12–17 found that internet-using children in Kenya are subjected to online CSEA, often by someone the child already knows and via the most common social media and instant messaging platforms.⁴⁸ One foreign law enforcement agency has identified Kenya as a source of commercial forms of live-streaming of child sexual abuse, accounting for two per cent of that agency’s reports on this crime type.⁴⁹ Despite being a concerning issue, current measures to address the effective protection of children in Kenya have not kept pace with the country’s expanding digital environment and the emerging international trends.⁵⁰

There are many factors which contribute to child vulnerability to sexual exploitation and abuse in Kenya, but poverty is one of the biggest. The 2015/16 KIHBS (Kenya Integrated Household Budget Survey) findings show that children under 18 years comprise the largest share of the poor and more than half (53 per cent or 11.1 million) are multidimensionally poor.⁵¹ Furthermore, Kenya’s relative stability since independence has led to the arrival of thousands of refugees and asylum-seekers escaping violent political conflicts and humanitarian situations in neighbouring countries. The Dadaab and Kakuma refugee camps are home to some 430,000 refugees and asylum seekers,⁵² 52 per cent of which are aged 17 and under, and many of whom are unaccompanied.⁵³ In such emergency-affected contexts, children, particularly girls, face the risk of multiple forms of gender-based violence (GBV), including sexual violence, forced marriages and trafficking.⁵⁴

Throughout Kenya, deep-seated attitudes, social norms and patriarchal beliefs about gender, sexual behaviour and intimate partner violence impact children, particularly girls. The 2019 VACS (Violence Against Children Survey) revealed a high level of acceptance and normalisation of violence against children and women, especially in the domestic sphere.⁵⁵ Rape myths are prevalent, with some believing that rape is not a serious crime.⁵⁶ There are also beliefs that when a man has sexual intercourse with a young girl, he will not grow old, or that HIV positive status can be cured. These beliefs can cause sexual exploitation of children to be seen as a solution rather than a problem to address.⁵⁷

Harmful cultural practices continue to impede the full realisation of the rights of girls, such as early marriages, FGM and preference for the boy-child.⁵⁸ The perception that children are adults once they have reached puberty is a cultural factor that influences their vulnerability to sexual exploitation and early marriage.⁵⁹ The practice of negotiating a ‘bride price’ is still widespread, and means that girls are defined as an economic burden or a financial asset to be exchanged for goods, money, and livestock.⁶⁰

A ‘culture of silence’ characterises many aspects of Kenyan society—people see crimes happening but do not report or act, and rarely speak up in support of the survivor.⁶¹ Silence is especially pervasive around sexual violence and abuse. Kenyan social and

cultural norms also tend to place blame on the survivors of gender-based violence and sexual abuse, and exonerate the perpetrators rather than empathising with survivors.⁶² A stigma is also associated with reporting abuse, which can bring embarrassment and shame to survivors.

Child marriage has been illegal in Kenya since 2001, when the Children's Act became law, and yet it remains common. Social norms conflict with global normative goals and legal structures against child marriage.⁶³ The Kenyan government recognises the practice is perpetuated by diverse cultural and religious beliefs,⁶⁴ and is associated with adverse health and social outcomes for women and girls.

Rates of child marriage, particularly of those involving girls under the age of 15, have gradually been falling nationwide but the practice still exists despite government efforts to curb it. The prevalence of child marriage is 23 per cent according to the 2014 Kenya Demographic and Health Survey (KDHS).⁶⁵ There are pronounced differences in prevalence in different regions and between rural (29 per cent) and urban (17 per cent) communities.⁶⁶ The rate remains very high in northern Kenya (among the nomadic and semi-nomadic pastoral communities of the Samburu, Maasai and Pokot) and along the coast (Muslim communities), but is much lower in the urban areas of Nairobi and Central Kenya.⁶⁷ Turkana County has the highest prevalence rates in the country.⁶⁸

Poverty, exacerbated by climate change, has been identified as a high-risk factor for child marriage in Kenya.⁶⁹ For pastoralist societies, marriage unites families and bolsters access to resources in the face of increasing economic hardship and hunger: girls are a form of wealth and are exchanged for cattle as bride price.⁷⁰ Other factors are rural residence, gender inequality, gender norms, low formal education levels, insecurities amongst tribes and communities, humanitarian crises ('famine brides') and weak child protection systems. Such factors are similar to those underpinning child sexual exploitation. For certain communities, there is also a strong link with the practice of FGM which signals girls reaching puberty and therefore readiness for marriage.⁷¹

FGM is still widely practiced in Kenya. Data from the 2014 Kenya Demographic Health Survey (KDHS) indicated that a total of 4 million girls and women in the country have undergone FGM.⁷² While it remains

high, the rate continues to reduce at an annual average of 4.3 per cent,⁷³ but the reduction is not uniform across the country. Nationally, the number of circumcised adolescent girls between the ages of 15 and 19 is estimated to be just over one in 10.

Rates of FGM increased during the Covid-19 pandemic; the policing environment changed with the closing of schools, which had previously functioned as a safety net. Many rescue centres were also closed. In October 2020, local activists reported that in the previous three weeks, 2,800 girls aged about 12 from the Kuria community in south-western Kenya had undergone FGM, as local traditional leaders made the most of reduced police vigilance during the pandemic.⁷⁴ In areas with a high prevalence of FGM, there is an overall trend towards circumcising girls at younger ages and a worrying trend of some communities performing the rite on babies and infants, which makes it almost impossible to detect since the children are not in school or old enough to report it. One recent government study found an estimated 61 per cent of girls under five years old in one county had undergone the procedure.⁷⁵

Whilst there has been much focus on girls, in November 2020 the Committee of the ACERWC noted with concern that in some Kenyan ethnic communities, boys also undergo cultural rites and circumcision after which they are considered old enough to marry and drop out of school, thus denying them an education.⁷⁶

Criminalisation/Legislation

Kenya has a mixed legal system comprising Kenyan statutory law, Kenyan and English common law, Islamic Sharia law, and customary law, the latter not written down. The state legal system recognises the applicability of customary and religious laws to varying degrees in civil matters, particularly in the areas of personal law, notably family law covering marriage, divorce, inheritance, custody and guardianship of children and land tenure.

Generally, Kenya has made good progress in enacting important legislation targeting child sexual abuse and exploitation, and in providing guidelines for legal enforcement. Nevertheless, the legal framework still needs to be strengthened.⁷⁷ Existing bills, laws and policies are not necessarily harmonised, and in many cases are contradictory, often resulting in procedural and substantive

confusion.⁷⁸ In addition, many policies are adopted but are not always implemented, monitored or evaluated.

Classification of Sexual Offences with Children

CSEA offences are criminalised through several different pieces of legislation which seek to protect children. The primary piece of legislation dealing with CSEA is the Sexual Offences Act, but further acts amounting to CSEA are covered by offences under the Penal Code, the Counter-Trafficking in Persons Act, and the Computer Misuse and Cybercrimes Act. The rights of children to be protected from these forms of violence are enshrined in the Constitution of Kenya and the Children Act.

The Constitution of Kenya, 2010

The Constitution of Kenya (the **Constitution**) is the supreme and fundamental law of Kenya.⁷⁹ In 2010, the 1963 independence constitution was replaced with a progressive new constitution that makes the State the primary duty bearer in the care and protection of children. The Constitution, along with specific legislation, has strengthened the framework for child protection in several important areas, including trafficking in persons (TIP), sexual offences and the prohibition of FGM. However, endemic socio-economic factors and prevailing cultural attitudes mean that these protections are not fully realised. In practice, there is a gap between the progressive new rights commitments set out in the Constitution and the realities for many vulnerable groups, including women and children, on the ground.⁸⁰

The Children Act, 2001 (Revised 2012)

The Children Act of 2001, revised in 2012, is the main Act of Parliament dealing with matters relating to children and was a milestone in their protection.⁸¹ It contains provisions and procedures to be followed when dealing with child cases and establishes a Children's Court to determine all matters relating to children.⁸² The Children Act protects children from 'child trafficking'; 'child labour', including domestic servitude, economic exploitation, hazardous work, slavery, debt bondage, servitude, and forced labour; and 'harmful cultural practices' including male child forced circumcision, female genital mutilation, child marriage, virginity testing, and girl child beading. According to Section 5, it applies to nationals and non-national child survivors

Section 20 states that the penalty on conviction for the offence of child abuse, contrary to the provisions of the Sexual Offences Act, is imprisonment for up to five years or a fine up to 2 million KSH, or to both. The penalty on conviction for online CSEA and CSAM offences is imprisonment for up to 10 years or to a fine up to 2 million KSH, or to both. On conviction, the penalty for committing a harmful cultural practices offence is imprisonment for a term of at least three years or to a fine of at least 200,000 KSH, or to both. A person who causes the death of a child, whether directly or indirectly, is liable to imprisonment for life.

Whilst trafficking in children and child labour are specifically outlawed in the Children Act, the legislation does not prescribe the penalty for such offences. Moreover, the Act provides for a lenient sentence of a fine of 50,000 KSH for any infringement of a child's right to be safe from sexual exploitation. Additionally, in defining a 'guardian' as one who 'need not be a Kenyan citizen or a resident of Kenya', the Act creates a loophole whereby foreigners can traffic children out of the country if they are acting as 'guardians'. The Counter Trafficking in Persons Act has amended Section 22 of the Children Act.⁸³

At the time of writing in March 2022, the Children Bill 2021 has been approved by Cabinet and is before the National Assembly.⁸⁴ This seeks to amend the Children Act 2001 to better align with the provisions of the Constitution on matters relating to child rights, and to safeguard and promote the rights and welfare of the child in accordance with international law as well as more recent treaties and conventions ratified by Kenya.⁸⁵ Once adopted, this Act will be an important instrument to ensure yet stronger protection of children from all forms of violence, abuse, exploitation and neglect. The new Act is expected to provide more explicit definitions of 'child abuse', including child sexual exploitation and abuse, online CSEA and CSAM. As such, the definitions will be in line with the international standard established by the Lanzarote Convention (see below).⁸⁶

The Sexual Offences Act, 2006 (Revised 2009)

The Sexual Offences Act of 2006 (the **SOA**) was a major step forward in efforts to comprehensively address sexual offences and protect survivors of sexual violence and reflected a significant change in the handling of sexual offences.⁸⁷ Before 2006,

sexual offences were dealt with under the Penal Code and categorised as 'offences against morality'. The SOA also provides for minimum mandatory sentences for specific sexual offences, as opposed to the Penal Code, which only provided for maximum sentences and left discretion in sentencing.⁸⁸ Whilst the SOA has, for the most part, been viewed as a progressive piece of legislation, it has also been seen as controversial and discriminatory regarding the inclusion of an explicit marital rape exemption.

The SOA is the primary piece of legislation dealing with sexual offences against children. It has extensive provisions on consent and provides a statutory definition under Section 42. It sets the minimum age for consensual sex for both males and females at 18 and prohibits sexual intercourse with a minor regardless of whether the minor consented.

The SOA criminalises offences including 'defilement' (meaning the rape of a child) (Section 8); gang rape (Section 10); indecent acts with children (Section 11); the promotion of sexual offences with a child, including the manufacturing and distributing of child sexual abuse material (Section 12); child trafficking (Section 13); SECTT (referred to as 'child sex tourism') (Section 14); 'child prostitution' (Section 15); 'child pornography' (Section 16); sexual communications with children (Section 16); trafficking for sexual exploitation (Section 18); incest (Sections 20 and 21); sexual offences by those in positions of authority and persons in positions of trust (Section 24); and forcing a person to take part in a sexual act for cultural or religious reasons (Section 29).

The case of *Masha v. R8* (2010) highlights the importance of Section 29 and the provision of consent as defined in Section 42. The appellant claimed that he had married a 13-year-old girl under his community's cultural norms and customs, which allow the marriage of underage girls. The court found this 'totally without merit', stating that cultural norms cannot be used to excuse criminal offences and that a girl of 13 years is too young to give any informed consent to sexual intercourse, much less to marriage. The court further stated that it would not allow young girls to be abused under the pretext of culture.⁸⁹

Under Section 8, the minimum sentence for conviction of child rape (defilement) is life imprisonment if the child is younger than 11, 20 years in prison if the child is between 11 and 15, and 10 years' imprisonment if the child is age 16 or 17. The

offence of attempted defilement carries a sentence of at least 10 years.

The penalty for child trafficking, SECTT (child sex tourism), 'child prostitution', sexual offences relating to persons in position of authority, and forcing a person to take part in a sexual act for cultural or religious reasons is imprisonment for 10 years or more. The penalty for promoting a sexual offence with a child by manufacturing and distributing child sexual abuse material (Section 12) is imprisonment for at least five years. The penalty for 'child pornography' is imprisonment for six years or more, or a fine of at least 500,000 KSH, or both a fine and imprisonment. If a supervision order of a sex offender is not complied with, conviction can result in imprisonment for at least three years or to a fine of at least 50,000 KSH, or both.

Nevertheless, although the law criminalises various sexual offences, enforcement has remained limited.⁹⁰

Penal Code, 1970

The Penal Code criminalises crimes of sexual exploitation and attempted sexual exploitation (Chapter XV offences against morality).⁹¹ Article 4 outlaws the deliberate infliction of 'grievous harm', which includes 'any permanent or serious injury to any external or internal organ, membrane or sense' and covers FGM. It also criminalises child stealing (Article 174), kidnapping of a minor (under 14 years for a male and under 16 years for a female) from lawful guardianship (Article 255), abduction and unlawful compulsory labour (Article 266).

The Counter-Trafficking in Persons Act, 2010

This Act has repealed sections 13 and 18 of the Sexual Offences Act.⁹² It comprehensively defines the offences of trafficking in persons and other related offences, and criminalises trafficking for child sexual exploitation, child labour, and child marriage, with prescribed and stringent penalties of 30 years' imprisonment and/or a fine of at least 30 million KSH, and upon subsequent conviction, to imprisonment for life.⁹³ A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of child trafficking commits an offence and is liable to 30 years' imprisonment and/or a fine of at least 20 million KSH, and upon subsequent conviction, to imprisonment for life. Whilst the penalties appear stringent, by allowing for a fine in

lieu of imprisonment for sex trafficking, these penalties are not commensurate with those for other serious crimes, such as rape. The Sexual Offences Act of 2006 criminalised the facilitation of child sex tourism and "child prostitution" and prescribed a punishment of at least 10 years' imprisonment and a fine of 2 million KSH (Sections 14 and 15).⁹⁴

At the time of writing, the Counter Trafficking in Persons Act, 2010 is under review to align it with the Constitution and incorporate emerging issues in Trafficking in Persons.

A notable omission from Kenyan law in this area is the criminalisation of the 'sale of children'. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography has been signed but still not ratified by Kenya. Ratification will necessitate the amendment of legislation to bring laws into line with standards set by the Optional Protocol. The Optional Protocol defines the sale of children as 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'.⁹⁵ To ensure there are no gaps in the criminalisation of trafficking, a provision on the sale of children should be included in Kenyan law.

The Computer Misuse and Cybercrimes Act, 2018

The Computer Misuse and Cybercrimes Act of 2018 was a milestone in Kenya's effort to tackle online CSEA.⁹⁶ Section 24 (referred to as 'child pornography') provides a relatively comprehensive definition of crimes of child sexual exploitation and abuse covering visual and audio material as well as digitally generated CSAM, for which the penalty is a fine up to 20 million KSH, or imprisonment for up to 25 years, or both. Section 42 explicitly criminalises the aiding and abetting of offences under the act as well as the attempt to commit these crimes, punishable by a fine up to 7 million KSH or imprisonment up to four years, or both. It provides the clear procedural rules needed to assist law enforcement officers in a criminal investigation of online CSEA cases (Part IV).

Section 57 of the Act allows for international co-operation and enables the Office of the Attorney General and Department of Justice (the 'Central Authority') to request (or receive requests for) assistance from another State in any investigation

related to a crime under the Act. Section 66 includes extra-territorial jurisdiction.

Whilst the Kenyan government has signalled the political will and commitment to tackle online CSEA crimes against children, important online CSEA-related legislation, policies and standards are not yet enacted and some forms of online CSEA are not treated as criminal offences in Kenyan law.

Child Marriage

The Marriage Act, 2014 amended and consolidated the various laws relating to marriage and divorce.⁹⁷ The Marriage Act removed all discriminatory provisions regarding different ages for boys and girls for marrying, in line with international conventions, and set the minimum age for marriage at 18 years. Under Section 87, any person who marries a person who is under the minimum age commits an offence and is liable to imprisonment for up to five years or a fine up to 1 million KSH, or to both. Under Section 91(1)(a), it is a criminal offence to celebrate or witness a marriage knowing that one of the parties is under the age of 18. A convicted person is liable to a maximum of six months imprisonment or a maximum fine of 50,000 KSH, or to both.

Under Section 11, if consent is not freely given or either party is below the minimum age for marriage, or was not present at the ceremony, the union is void. Under Section 89 (coercion or fraud) it is an offence to enter marriage without valid consent and on conviction the offending party is liable to imprisonment for up to three years or a fine of 300,000 KSH, or to both. The registration of every marriage is compulsory and a failure to register renders a marriage contract void according to Section 12. Marriage registration is, however, ineffective if the actual age of the bride and groom are unknown because they are without birth registration, which is an issue in very rural areas.

Part V of the legislation introduced a key change for customary marriages by bringing customary law into alignment with civil law and requiring that parties to all customary marriages be at least 18 years of age (Section 45). Parts VI and VII of the Act are on Hindu and Islamic marriages respectively, but the clauses do not specifically provide the minimum age for marriage, which provides a loophole. Under the Constitution, the Kadhi courts retained jurisdiction over Muslim marriage and family law when all the

parties profess the Muslim religion. The Marriage Act therefore contains a provision in Section 49 which states that any provision of the legislation which is inconsistent with Islamic law and practices will not apply to those who profess the Islamic faith. This section offers the potential for child marriage to be legally permitted, despite stated government policy to end the practice.⁹⁸

In 2015, the case of *Council of Imams and Preachers of Kenya, Malindi & 4 others v Attorney General & 5 others* tested the law.⁹⁹ When a 16-year-old girl was contracted in an Islamic marriage, the Council of Imams petitioned that early marriage was part of their constitutionally protected freedom of religion. The High Court held that the marriage was void because the petitioner was a child and under Kenyan law only persons aged 18 years and above could get married. It went on to rule that the state could not condone child marriage in the name of religion and that the law limiting early marriages was constitutional.

While high courts may rule against child marriages, they are still legal if they are officiated by a Kadhi court within the confines of Islamic law. There is a need for legal reform of Section 49(3) to set the minimum legal age for marriage at 18 and eliminate any religious exceptions that affect the best interest of the child.

Kenya therefore has relatively strong legal provisions to prohibit child marriage, but there is still the need to ensure better implementation of existing laws.¹⁰⁰ Despite attempts by the government to crack down on the practice, child marriage still thrives in parts of Kenya. This is partly due to inadequate resources and weak enforcement of existing laws, but also due to strong cultural beliefs.¹⁰¹ Religious leaders also have a strong influence.¹⁰² Cases are rarely reported to law enforcement; some communities dispute the legitimacy of national laws against child marriage.¹⁰³ The police have tended to see child marriage as in the private family domain and do not interfere.

Female Genital Mutilation

In 2010, a landmark court ruling took place based on the Children's Act of 2001.¹⁰⁴ A Narok court convicted of manslaughter and jailed for 10 years the father and circumciser of a 12-year-old Maasai girl who had bled to death after circumcision.¹⁰⁵ Kenya has since introduced principal legislation in the Prohibition of Female Genital Mutilation Act 2011 (the

FGM Act). This is one of the most comprehensive laws against FGM in Africa and clearly defines all forms of FGM.¹⁰⁶

The FGM Act criminalises the practice or the procurement of the services of someone who practices FGM, regardless of the age or status of a girl or woman. Sections 21 and 28(1) criminalise cross-border FGM. Furthermore, medicalised FGM is criminalised and punished under this legislation. The penalties for offences are imprisonment for a minimum of three years and/or a fine of at least 200,000 KSH (Section 29). If the FGM procedure results in death, the maximum sentence is life imprisonment (Section 19).

Section 24 of the FGM Act provides for the offence of failure to report commission of an offence under the Act. The Kenya Human Rights Commission has identified that this Section could potentially lead to double victimisation of survivors who fail to report that they have undergone FGM. They have recommended an amendment to ensure that evidence brought by a minor does not need to be corroborated to ensure that minors are able to have access to justice.¹⁰⁷

The implementation and enforcement of the FGM Act has been challenging, but the conviction rate has steadily increased in recent years.¹⁰⁸ Some judges are reluctant to respect the statutory minimum custodial sentence provided by the law, and sentences have been reduced or quashed on appeal in areas where judges come from practising communities.¹⁰⁹ Activists are now calling for further law reform to ensure the total prohibition of all forms of FGM and to implement the law towards zero tolerance.¹¹⁰

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA. It provides a useful measure of national legal frameworks related to CSEA. Kenya has implemented the key provisions in Articles 3, 18–24, and 26–29 of the Lanzarote Convention into Kenyan law. By way of example, the Sexual Offences Act defines a child as a person under the age of 18 years¹¹¹ and the age of consent to any form of sexual activity is 18 years.¹¹² Articles 18–24, which contain

the substantive criminal law in the Lanzarote Convention, have been implemented in Kenyan legislation in the Sexual Offences Act. In 2015, the Lanzarote Committee issued an opinion recommending that states should extend the crime of grooming for sexual purposes to include 'cases when the sexual abuse is not the result of a meeting in person but is committed online.' This is an area for Kenya to consider adopting, as well as further alignment with all articles of the Lanzarote Convention.

Age of Consent & Definition of a Child

As stated above, under the Sexual Offences Act the age of sexual consent is 18 years for males and females across the country, with no differentiation made between sexual acts. There is no provision for a close-in-age exemption for consensual sexual relationships between peers under 18.

In some instances, Kenyan law differentiates the level of sentencing for CSEA offences according to the age of the child. For example, the punishment for the offence of raping a child under the Sexual Offences Act increases in severity as the age of the minor decreases.¹¹³ The law in this instance creates a distinction in sentencing as recognition of a younger child's age and inability to consent and the affront to their right to protections.

Section 49(3) of the Marriage Act implies that marriage confers adult status, and hence the ability to consent to sex, irrespective of age, and is in direct conflict with the Children Act and the Sexual Offences Act. Under Section 42 of the Sexual Offences Act, only an adult aged 18 or over can consent. The section implies that children in child marriages might not have the capacity to make informed choices about the union. Under Section 43(4)(f), child marriage can also be viewed as an intentional and unlawful act because the child is not capable of appreciating the nature of the act of marriage.

Extraterritoriality

Kenyan domestic law contains provisions which authorise the use of extraterritorial jurisdiction in cases of CSEA, although the laws do not provide for universal extraterritorial jurisdiction. Notably, Section 41 of the Sexual Offences Act provides for the prosecution of a person who, while being a citizen of,

or permanently residing in, Kenya, commits an act outside Kenya which would constitute a sexual offence had it been committed in Kenya.¹¹⁴ The penalties for such offences committed in a third state are similar to those for CSEA offences which are committed in Kenya. It is worth noting that the investigation or prosecution of extraterritorial CSEA offences is not dependent upon a survivor first formally filing a complaint or taking any other procedural action in the third state where the offence took place.

The Counter-Trafficking in Persons Act 2010 (Section 25) confirms the extraterritorial jurisdiction of the Kenyan judiciary as noted in the Sexual Offences Act. Offences under the Counter-Trafficking in Persons Act, which are committed outside Kenya by a Kenyan citizen or a person who permanently resides in Kenya, are prosecutable in Kenya and the offender is liable on conviction to the same penalty prescribed for such offence as if committed in Kenya.¹¹⁵ The Computer Misuse and Cybercrimes Act 2018 (Section 66) also includes extra-territorial jurisdiction: an offence may be committed inside or outside Kenya.

Extradition

CSEA offences are listed as extraditable offences in the schedules to the Extradition (Contiguous and Foreign Countries) Act¹¹⁶ and the Extradition (Commonwealth Countries) Act.¹¹⁷ Such extraditable offences include assault occasioning actual bodily harm; rape; unlawful sexual intercourse with a female; indecent assault; procuring or trafficking in women or young persons for immoral purposes; stealing, abandoning, exposing or unlawfully detaining a child; organised criminal group offences; offences of torture; and other cruel, inhuman or degrading treatment or punishment, are all included as extraditable offences. However, there is no specific extraditable offence of sexual exploitation of children. There is no requirement that there be an extradition treaty with the other country concerned for a Kenyan national to be extradited.¹¹⁸

Kenyan law contains a double criminality element as a suspect can only be extradited to another country to stand trial if the crime of which they are accused is a crime in Kenya and in the third state.¹¹⁹ Additionally, the crime must be set out in the schedules of the Extradition (Contiguous and Foreign Countries) Act and the Extradition (Commonwealth

Countries) Act as an extraditable offence. These prescriptive requirements create a gap in domestic legislation which exposes children to risk: an individual who commits a CSEA offence may escape prosecution if Kenya does not recognise the offence.

Sentencing

In general, the penalty for any CSEA offence in Kenya is imprisonment. However, the length of custodial sentence will depend on the offence and under which legislation the case is brought. For example, the penalty for an offence concerning child pornography varies depending on the applicable Act. The Computer Misuse and Cybercrimes Act provides for a fine up to 20 million or to a term of imprisonment up to 25 years.¹²⁰ However, the Sexual Offences Act prescribes a sentence of at least six years or a fine of at least 500,000 KSH, or both.¹²¹ Under Kenyan law, the courts may also impose varying levels of fines for CSEA offences in addition to, or as an alternative to, a custodial sentence. Laws are gradually being reviewed and updated to ensure greater consistency in sentencing.

Outdated Terminology

Terms such as 'defilement' are referenced in Kenya's legislation and are a legacy of the colonial period. The use of such terms in law can be considered harmful because their effect is that the child is punished twice: first by being sexually abused and second by being labelled unclean.¹²² The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, developed in 2016 by a group of 18 international partners and published by ECPAT, establish best practice for terminology in legislation and policy combatting CSEA.¹²³ The guidelines exclude terms such as 'defilement', instead calling for the use of more precise terms of description which are 'considered less harmful or stigmatising to the child' and can contribute to cultural change.¹²⁴

Furthermore, the terms 'child prostitution' and 'child pornography' are used throughout Kenyan legislation, most notably the SOA. It is recommended that these terms be replaced with 'the exploitation of children in prostitution' and 'child sexual abuse material (CSAM)' respectively, as the original terms incorrectly imply consent on the part of the child.

Other

Treatment of Children of Different Genders

Article 162 of the Penal Code concerning 'unnatural offences, carnal knowledge against the order of nature' is interpreted to prohibit consensual same-sex sexual activity. It specifies a maximum penalty of 14 years' imprisonment if convicted, and seven years for 'attempting' it. There are concerns that this may affect the protection accorded to children aged 12–17 years who are sexually exploited by an offender of the same sex. These children may fear legal consequences if they report the case.¹²⁵

Gaps in Criminalisation

Whilst legislative progress has been made regarding CSEA offences, there are still gaps and inconsistencies within Kenya's legislation that need to be addressed.

Generally, Kenya has made good progress in enacting important legislation targeting child sexual abuse and exploitation, and in providing guidelines for legal enforcement. Nevertheless, the legal framework still needs to be strengthened.¹²⁶ Existing bills, laws and policies are not necessarily harmonised, and in many cases are contradictory, often resulting in procedural and substantive confusion.¹²⁷ In addition, many policies are adopted, but are not always implemented, monitored or evaluated. Gaps to be addressed include:

- Kenyan laws do not cover several offences such as grooming, live-streaming of child sexual abuse, sale of children or online sexual extortion. These are all common manifestations of online child sexual exploitation and should be addressed as a priority, particularly given the technological developments that have taken place in the last decade in Kenya.

- Inconsistencies in key pieces of legislation, such as the Marriage Act (2014) currently mean that all forms of child marriage are not criminalised.

- The criminalisation of homosexual activity may lead to children who have been exploited or abused by perpetrators of the same sex not reporting such offences to the authorities for fear of being charged with a crime themselves.

- Although the Kenyan government has made efforts to eliminate trafficking in the country, trafficking of children remains a pressing issue which requires further attention and resources.¹²⁸

- The use of outdated terminology in Kenyan legislation against CSEA offences, such as 'child prostitution', 'child pornography' and 'defilement'.

- New laws, including those domesticating international human rights treaty obligations, have not always been implemented effectively due to factors such as the lack of political will which means that insufficient resources are devoted to the establishment of the necessary administrative mechanisms.¹²⁹

- Domestic laws do not cover more recently identified CSEA offences. For example, although Section 12 of the SOA prohibits some forms of behaviour in respect of CSAM, it makes no specific reference to online grooming, live streaming of child sexual abuse, sale of children or online sexual extortion. These are common manifestations of online child sexual exploitation and should be addressed.¹³⁰

- Whilst there are laws that specifically address some CSEA offences which extend to the online environment, there is currently no dedicated piece of legislation that explicitly defines and criminalises the different forms of online child sexual exploitation.¹³¹

- There is ambiguity surrounding the interpretation of sections pertaining to the exploitation of children in prostitution, referred to as 'child prostitution' under the Sexual Offences Act. Here the provisions are drafted in a manner that causes confusion as to whether the offence of purchasing sexual services directly from children is illegal.¹³²

- In the Marriage Act there is confusion regarding the provisions prohibiting child marriage and their connection to Islamic faith exceptions.¹³³ It is unclear if child marriage is potentially allowed under certain conditions.

- The Sexual Offences Act does not provide for a close-in-age exemption (up to three years) for consensual sexual relationships between adolescents and to prevent the criminalisation of young people in willing sexual relationships.¹³⁴ The

implementation of the act has been challenging in addressing consensual teenage sexual relations and the prosecution of consensual sex between adolescents has reportedly had a disproportionate effect on young men.¹³⁵

- The Computer Misuse and Cybercrimes Act (2018) has some major loopholes which can pose challenges for prosecution. Whilst it defines and criminalises acts associated with CSAM, it does not explicitly criminalise knowingly obtaining access to CSAM or any forms of online CSEA other than conduct related to CSAM.¹³⁶ The live-streaming of child sexual abuse, sexual extortion and online grooming for sexual purposes are not explicit offences in the current legislation.¹³⁷

- Kenyan laws do not impose legal duties on internet service providers to filter, block or take down CSAM and to report companies or individuals disseminating, trading or distributing the material.¹³⁸ Whilst this would only apply to material hosted in Kenya, and relatively little material is currently hosted in Kenya, it nonetheless represents a loophole. Section 50, which refers broadly to "services offered by a service provider in Kenya", opens the door to obtaining court orders directed to non-local service providers.

- It is anticipated that the new Children's Act 2022 will address the gap in online abuse by defining and criminalising online grooming and the livestreaming of child sexual abuse, and will expressly criminalise proposing to meet a child for sexual purposes through electronic systems, networks or communication technologies. However, it has yet to be enacted.

- Kenya is evidently making efforts to reform and harmonise legislation with the Constitution, and is bringing in new legislation. The national legal framework would be further strengthened with the consideration of amendment of legislation to conform to international conventions which offer good guidance for addressing online CSEA (such as the Lanzarote Convention and the Budapest Convention), along with the upcoming Children Bill 2021.¹³⁹

Prosecution

In terms of the child protection system, the judiciary is responsible for establishing and running the Children's Courts. The key roles and functions of the judiciary in child protection include ensuring that the best interests of children are given precedence in all court proceedings and ensuring separate children's courts for all cases involving children.¹⁴⁰

The government itself has acknowledged that the greatest challenge lies in the enforcement and delayed justice for children whose rights have been abused.¹⁴¹ The Committee of the CRC expressed concern regarding the lack of access to justice for child survivors in Kenya, particularly in cases of sexual violence and harmful practices, due to social stigma, pressure from family members, low rates of investigation and prosecution, frequent delays in court proceedings, lenient sanctions imposed, the risk of re-victimisation in the justice system and the lack of legal aid.¹⁴² Insufficient resources in investigation and prosecution, coupled with strong cultural beliefs and corruption, mean that CSEA offenders can often escape prosecution.¹⁴³ As Justice Martha Koome states, 'sexual violence against children, especially girls, some even under the age of six years, remains disturbingly high, persistent and pervasive despite the stiff penalties provided by the law. There is inordinate delay in hearing these cases in courts across the country, poor investigations, inadequate training of the officers handling children's matters and lack of coordination among the child justice agencies.'¹⁴⁴

Initiating Prosecution

For the investigation process to commence, a formal complaint must be made either by a survivor or by someone else on their behalf. There is no express limitation period in Kenyan law within which a complaint must be made.

There are also instances where the police come across CSEA offences being committed and actively pursue and prosecute the suspects. Kenya became the first African country to join INTERPOL's International Child Sexual Exploitation database in 2019, which enables Kenyan police to receive notifications from their international counterparts of CSEA offences and to act upon the information.¹⁴⁵

Prosecution Process

The Constitution introduced a Supreme Court which is the highest court of the land, followed by the Court of Appeal.¹⁴⁶ The High Court is the third highest court and handles the most serious cases under civil and criminal law and constitutional matters, as well as appeals from the lower courts. At the bottom of the court structure are the subordinate courts, including the Magistrate and Khadi courts, which hear less serious cases.¹⁴⁷

The Kadhi (Islamic) courts administer Sharia law. Article 170 (5) of the Constitution limits their jurisdiction to 'the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi courts'. The Status Report on Children in the Justice System in Kenya (2019) reports there is uncertainty as to the jurisdiction of the Kadhi Courts to handle children's matters, although the bulk of the cases handled by the Kadhi Court in Nairobi involve children related to maintenance and custody. The Kadhi courts therefore appear to deal extensively with the welfare of children regarding those appearing before them in divorce matters and custody issues.¹⁴⁸

The Children's Courts were established under the Children Act. These special courts hear cases involving children in contact and in conflict with the law, other than charges of murder or cases where a child is charged together with adults.¹⁴⁹ This aligns with the provisions of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. There are six dedicated Children's Courts in Kenya, two are gazetted, namely the Milimani and Tononoka Children's Courts in Nairobi and Mombasa respectively, while the remaining four are not yet gazetted. Where dedicated children's courts do not exist, normal magistrates' courts can be converted to hear children's matters. Makadara Court (in Nairobi) and Nakuru Law Court provide child-friendly environments with designated court rooms for children.¹⁵⁰

The introduction of a Supreme Court has made it easier for citizens to take rights claims to court and has the potential to improve prospects for children and women's access to justice, and their legal standing to claim rights. It also enables increased

levels of legal mobilisation and public interest litigation on rights, depending on capabilities among civil society organisations to act as a watchdog on issues.

The procedure to prosecute persons accused of crimes is outlined in the Criminal Procedure Code.

CSEA crimes, as with all other crimes in Kenya, are supposed to be reported to the police for investigations and evidence gathering to be done. Once this process is completed, the police usually present the results of their investigations together with their recommendations to the ODPP (Office of the Director of Public Prosecutions) for prosecution.

The typical trial process is as follows:

- The accused person is presented in court and informed of the charges.

- The accused person enters a plea.

- If a guilty plea is entered, the court will usually set a date for the hearing of survivor statements, mitigating factors and sentencing. It should be noted that the hearing may span several non-consecutive days over a period of weeks, months or possibly years.

- If a not guilty plea is entered, the prosecution will then present its evidence and witnesses to the court.

- The accused is also given an opportunity to cross-examine the witnesses and question the evidence. The accused may make an application requesting for bail at this point. Bail is a constitutional right unless compelling reasons are provided by the ODPP to warrant denial of the same.

- The court will then make a determination as to whether the accused has a question to answer.

- If the accused is found to have a question to answer, then they will be able to present their evidence and witnesses. The prosecution will also have a chance to cross-examine the witnesses and question the evidence.

- Closing statements are then given and the court considers the matter.

- A judgement is given. If a conviction is entered, then the court will set a date for hearing survivor statements, mitigating factors and sentencing.

Investigation & Evidence

Presumption Survivor is a Child

There is no express provision in Kenyan law that a purported survivor is presumed to be a child. Section 143 of the Children's Act provides that the court will make the necessary inquiries as to the age of the survivor. This will include taking evidence, including medical evidence. In such cases, a certificate purporting to be signed by a medical practitioner as to the age of a child will be evidence thereof and will also be accepted by the court without proof of signature, except where the court directs otherwise. Reports that are prepared by probation officers or a children's officer may also be considered when determining the age of a child.

Under the Sexual Offences Act, it is a valid defence available to someone accused of the rape of a child, if the accused can prove that the child deceived them into believing that the child was over the age of 18 at the time of the offence and that the accused reasonably believed that the child was over the age of 18.¹⁵¹ In such a situation, the court would regard all circumstances of the event, including any steps taken by the accused to ascertain the child's age.

Procedure for the Child to Give Evidence

Under Kenyan law, when a child gives evidence the court must order a *voir dire* for the proper admittance of the child's evidence. A *voir dire* is conducted to ascertain whether a child understands the nature of the oath they are giving and their duty to speak the truth.

Where a child does not understand the nature of the oath, they are not necessarily disqualified from giving evidence. The importance of this procedure of *voir dire* and the need to record the details of the investigation is highlighted by the case of *Yusuf Sabwani Opicho v Republic* where the court held that "the court may still receive the evidence if it is satisfied, upon investigation, that the young person is possessed of sufficient intelligence and understands the duty of speaking the truth. This investigation must be done and when done, it must appear on

record."¹⁵² In this instance, the investigation details were not recorded and on appeal the original 20 year conviction was overturned, resulting in a retrial ordered by the court.¹⁵³

An instance where a proper *voir dire* examination took place and was recorded fully was in the case of *Ezekiel Oramat Sonkoy v Republic*.¹⁵⁴ Here, the appellant tried to have the validity of the child's evidence questioned.¹⁵⁵ The child's evidence was corroborated by the evidence of other witnesses and a proper *voir dire* examination was stated to have taken place. As a result, the court did not overturn the original decision.

Corroboration

Uncorroborated evidence is permissible under Kenyan law, provided that the court complies with the Evidence Act by giving reasons why it is satisfied that the witness is telling the truth.

DNA

Under Section 36 of the Sexual Offences Act, the Court has the power to order DNA tests to gather evidence and to ascertain whether the accused committed a sexual offence. Under Section 122 A-D of the Penal Code, a police inspector has the authority to order a person suspected of having committed a serious offence to provide a DNA sample. However, the lack of forensic evidence, the improper handling of evidence, and problems in the chain of custody of evidence are all issues that pose challenges to prosecuting sexual violence.¹⁵⁶

There has been an increased demand for DNA testing. To address a backlog of casework, a second public laboratory has been commissioned at the Kenya Medical Research Institute with the aim of supplementing the Government Chemists' efforts. Kenya is also training its next generation of forensic DNA analysts, including officers from the Directorate of Criminal Investigations, to contribute towards reducing the backlogs in the forensic biology laboratories in Kenya and presentation of quality forensic DNA evidence in courts.¹⁵⁷

A 2018 policy on the management of sexual violence, which was intended to provide guidelines and educate about best practice, emphasises the importance of physical forensic evidence, but does

not highlight the importance of other forms of evidence gathering, such as forensic interviews.¹⁵⁸ This suggests a significant reliance on forensic evidence in Kenya's criminal justice system, which may hamper efforts to convict CSEA offenders considering the identified issues and limitations above.

Defences

There are no close-in-age defences for young people.¹⁵⁹ This is particularly problematic as the Sexual Offences Act provides for an age of consent of 18, and the lack of close-in-age defences may lead to children being criminalised for consensual sexual activity with children.

Unwillingness to Proceed with 'Formal' Trials

A variety of informal justice forums persist despite the presence of the state judicial system, such as village elders, chiefs and other community justice structures, and apply popular localised norms. These structures often constitute the only accessible and relevant justice system for people in rural areas, where most women and children live.¹⁶⁰ People often prefer to use traditional dispute-resolution mechanisms, including *maslaha* in Muslim communities, to address sexual offences, with village elders assessing financial compensation for the survivors or their families.¹⁶¹ Such out-of-court settlements are undesirable, however, as the offender is not held accountable before the law. Following the adoption of the Constitution in 2010, there have been moves to harmonise the legal system, but its pluralistic base remains.

Survivors are sometimes unwilling to report CSEA offences to the police or pursue prosecution. It is common for instances of CSEA not to be officially reported or prosecuted. This is due to a myriad of socio-economic factors including poverty and cultural beliefs, as well as underfunding across governmental bodies, specialised units and the judiciary.¹⁶²

The credibility of the judiciary in Kenya has also been reduced due to recent high profile corruption scandals which have eroded public trust and confidence. Chief Justice Koome has identified corruption as 'a national embarrassment' demanding attention.¹⁶³ According to the 2019 Kenya Bribery Index, the Judiciary was ranked as the most bribery-prone public institution, followed closely by the

police.¹⁶⁴ Many Kenyans believe that corruption influences the outcome of cases and that courts will not resolve their grievances fairly. Despite a far-reaching and ambitious reform agenda of institution building and capacity enhancement, access to justice remains a challenging experience for the average citizen, particularly for the most vulnerable groups including women and children.¹⁶⁵

A culture of silence leads to survivors being unwilling to share their experiences and cases going unreported,¹⁶⁶ which obstructs justice. The cultural and social tolerance of corruption which occurs in all walks of life is a further obstruction.

To avoid prosecution, CSEA offenders often convince a survivor's family not to press charges after paying some form of compensation to the child's family, or by way of bribe to the police unit undertaking the investigation.¹⁶⁷ In addition, survivors of CSEA offences in Kenya are often pressured by family members not to pursue prosecution due to social stigma.¹⁶⁸

In particular, combatting the growth in child sexual exploitation in tourism has proven difficult due to its clandestine nature and under-reporting. Reportedly, parents do not report cases of sexual exploitation of children, and prosecutions are few due to complicity within the community, which means that no one reports or is prepared to testify.¹⁶⁹ This social acceptance means people do not see it as a crime, and nor do the girls being exploited see themselves as 'victims'. Law enforcement has been reluctant to investigate, and lengthy judicial proceedings inhibit effective prosecution. The importance of tourism for Kenya's economy has made officials reluctant to address the SECTT phenomenon.¹⁷⁰

Gaps in Prosecution

Kenya has seen significant improvements regarding the prosecution of CSEA offences over the last decade. A substantial improvement in ensuring access to justice for survivors and improving the judicial process has been the introduction of qualified lawyers prosecuting offences, as opposed to the police, and utilising magistrates who are specially trained to handle children's matters.¹⁷¹ This has contributed to an increase in convictions of CSEA offences in the country.

Despite this progress, gaps remain that require addressing, including:

- The amount of time that it takes for a case to move through the judicial process from commencement to conclusion. In the court system, the number of cases that are filed outweigh vastly the resources that the judiciary has to resolve them. This lack of resources has created a large backlog of cases waiting to be heard and resolved.
- Various institutions, such as the police and the judiciary, are underfunded and overwhelmed by the volume of cases they have to handle with their limited capacity. This underfunding precludes the justice system from taking a proactive approach to preventing CSEA from occurring, and it is consequently managing instances reactively.
- The limited use and protection of evidence. Further, the investigating officers often lack the necessary skills, infrastructure and resources to help them undertake investigations successfully.
- Discrepancies in the law on how CSEA offences are prosecuted, in particular regarding juvenile offenders. For example, if the offence of rape of a child is committed by a person under the age of 18, the court is empowered to subjectively determine the offender's conviction under the Borstal Institutions Act (2012).¹⁷² In determining a sentence, the court will give regard to the child's character, previous conduct, the circumstances of the offence, and whether he/she would benefit from a period of time in a borstal institution or incarceration.¹⁷³ The Kenyan judiciary is provided a wide scope to determine the appropriate sentence for a juvenile offender, which may result in inconsistent sentencing of CSEA offences.

Protection

Protection of Survivors During Proceedings

Various provisions in both the Children's Act and the Counter-Trafficking in Persons Act are concerned with the protection of survivors during proceedings. The Children's Act directs that in any proceedings where a child is concerned, irrespective of the legislation the case is brought under, the child's name, identity, home address or last place of residence or school address must not be published

or revealed in any manner.¹⁷⁴ The particulars of the child's parents or relatives and any photograph, depiction or caricature of the child are also prohibited from being published or revealed, whether in any publication or report or otherwise. Any person who contravenes this prohibition commits an offence under the Children's Act and is liable to a fine or a term of imprisonment.¹⁷⁵

The Children's Act also states that a Children's Court is to sit in a separate room, building or at a different time than a standard court, and that no person will be at the proceedings except for the necessary members and officers of the court, the parties to the case and their advocates and other persons directly involved in the case.¹⁷⁶ Persons who may attend proceedings include parents or guardians of any concerned child, *bona fide* registered representatives of newspapers or news agencies, and such other persons as the court may specially authorise to be present. Further, in any proceedings concerning an offence against or by a child, where a child is called as a witness the court may direct that any or all persons (who are not members or offices of the court or parties to the case or their advocates), be excluded from the court, in order to make the process as child-friendly as possible.¹⁷⁷

Although such child-sensitive justice measures are positive steps in protecting child survivors, the court procedure should go further and allow children to testify via video link or behind a screen so that they do not have to face the accused when giving evidence.¹⁷⁸ They should also be provided with separate waiting areas to the accused.¹⁷⁹

Section 77 of the Children's Act provides that where a child is brought before a court in proceedings under the Children's Act or any other written law, the court may, where the child is unrepresented, order that the child be granted legal representation, which shall be paid out of monies provided by Parliament. Section 79 also states that where that child is not represented by an advocate, the court may appoint a guardian *ad litem* for the purposes of the proceedings in question and to safeguard the interests of the child.

Under the Counter-Trafficking in Persons Act, law enforcement officers, investigators and the court are required to preserve the right to privacy of the survivor. Where the court considers it is in the parties' best interests, it may order that the trial be held in-camera.¹⁸⁰ The Counter-Trafficking in

Persons Act also establishes a National Assistance Trust Fund for Victims of Trafficking in persons.¹⁸¹ The funds are used to assist survivors and it is funded from monies appropriated by Parliament, confiscated proceeds of crime, donations and income generated by the board of trustees of the fund.

Protection of Children in General

Part X (10) of the Children's Act covers children in need of care and protection. Section 119 identifies instances when a child may need care and protection, and Section 120 details the proceedings including taking a child to a place of safety. Part 2 of the Protection Against Domestic Violence Act 2015 (the **PADVA**) deals with the duties of the police in relation to domestic violence and protection orders, including on behalf of children. However, women's rights organisations note there are wide gaps between the PADVA and implementation, which has been weak.¹⁸²

Alongside the introduction of new laws, Kenya has made significant progress in putting in place a responsive child protection system. The Child Protection Framework defines the roles and functions of the various stakeholders and aims to facilitate effective coordination of the actors in service provision.¹⁸³ Under the Children's Act 2001, the Department of Children Services (DCS) bears responsibility for safeguarding and protecting the rights and welfare of children and overseeing child protection in Kenya. The protection of children's rights is coordinated by the National Council for Children Services (the **NCCS**), a semi-autonomous governmental body established under section 30 of the Children's Act 2001. The NCCS's objective is to exercise general supervision and control over the planning, financing and organisation of activities relating to children's rights. It is also tasked with advising the government on all matters relating to children. For a child protection system to be effective and functional, it also requires an effective case management approach and guidelines for child protection case management and referral have been developed by partners to improve the quality of service for children.¹⁸⁴

Kenya has steadily developed a range of national policies relevant to protecting children from sexual exploitation and abuse, including: the National Plan against Sexual Exploitation of Children in Kenya (2018–2022), the National Prevention and Response

Plan on Violence Against Children in Kenya (2019–2023),¹⁸⁵ the National Plan of Action for Children in Kenya (2015–2022), the National Children Policy (2010) and the National Policy for the Eradication of Female Genital Mutilation (2019). Recently, Kenya has worked with the UN Women's Gender Equality Forum to formulate a national response plan on ending gender-based violence and harmful practices by 2026.¹⁸⁶

The government has established new institutions and created and strengthened structures to implement the laws and policies to combat forms of abuse and exploitation. Kenya has established Children's courts and has also created specialised child protection units. The Anti-Human Trafficking and Child Protection Unit (AHTCPU) was established in Nairobi in 2018 with overseas' donor support. The first of its kind in Africa, the Unit has investigative capability and provides guidance to police officers across the country on cases involving children, liaising with the Ministry of Labour and Social Protection's Department of Children Services to identify and rescue abused children.¹⁸⁷ A second unit was opened in Mombasa in 2020 to deal specifically with the threat of child exploitation, abuse and trafficking taking place on the Kenyan coast, and includes Kenya's first mobile laboratory to enable police to conduct survivor interviews and examinations.¹⁸⁸ A third is planned for Kisumu.¹⁸⁹

The Anti-Female Genital Mutilation and Child Marriage Prosecution Unit was established in 2014 as a special division within the Office of the Director of Public Prosecutions (ODPP) in order to fast track prosecutions.¹⁹⁰ This has resulted in greater numbers of cases in court with the intention that they would act as a deterrent and increase awareness that the law is being enforced.¹⁹¹ Recognising that criminalisation needs to be accompanied with relevant public education and sensitisation programmes to avoid the practice being carried out in secrecy, the Anti-FGM Board has increasingly taken a more holistic approach with its programmes, engaging all members of communities, including men and boys and traditional and religious leaders.¹⁹²

Similarly, non-governmental organisations run a number of campaigns raising awareness about child welfare and the issues, such as CSEA, that they face.¹⁹³ They also provide support services across Kenya,¹⁹⁴ and provide a number of helplines and training for personnel working with children.

Anecdotal evidence suggests that it is accepted that these organisations have more capacity and better funding than the NCCS.

The NCCS has implemented Childline Kenya, which operates a national 24/7 toll free Child Helpline 116 number that anyone may call or text to report child abuse.¹⁹⁵ This service provides children in need of care and protection access to essential services and resources. This has become an increasingly prominent resource for children in Kenya, particularly during the Covid-19 pandemic, and provides immediate preventative or responsive services as well as child protection messages.¹⁹⁶

Where CSEA offences have been committed, the Children's Act grants the Children's Court wide-ranging powers to make any orders it may deem fit for the protection of children, including:

- Access orders, which allow the child to visit, stay with or be accessible to the person named in the order.
- Residence orders, which allow a child to reside with the person named in the order.
- Exclusion orders, which require a person who has used or threatened to use violence against a child, whether or not that person resides with the child, to depart from the home in which the child is residing or to prevent the person from entering the home or a specified area.
- Child assessment orders, which require a child to be investigated or evaluated by a person appointed by the court, for the purpose of assisting the court in determining any matter concerning the welfare and upbringing of the child.
- Family assistance orders, which require a person appointed by the court to provide such advice, counselling and guidance to a child, his/her parents, custodian, guardians, relatives, etc as the court may specify.

— Wardship orders, which require a child to be placed under the protection and custody of the court.

— Production orders, which require any person who is harbouring, concealing or otherwise unlawfully detaining a child, or who intends to remove a child

from Kenya or the local limits of the jurisdiction of the court, to disclose any information regarding the whereabouts of the child and to produce the child before the court, or preventing the person from removing the child from the jurisdiction of the court.

When making orders, the Children's Court must consider several factors, including the feelings and wishes of the child concerned with reference to the child's age and understanding; the child's physical, emotional and educational needs, and in particular where the child has a disability, the ability of any person or institution to provide any special care or medical attention that may be required for the child; the likely effect on the child of any change in circumstances; the child's age, sex, religious persuasion and cultural background; any harm the child may have suffered, or is at risk of suffering; the ability of the parent, or any other person regarding whom the court considers the question to be relevant, to provide for and care for the child; and the customs and practices of the community to which the child belongs.¹⁹⁷ At all times, the best interests of the child should prevail.

Despite many positive initiatives and legal safeguards being introduced to protect children, many fundamental issues remain. Following the devolution of the legislative and executive arms of government to the 47 counties in Kenya, certain counties have struggled with insufficient resources to implement systems to protect children.¹⁹⁸ Child protection services are further inhibited by limited infrastructure and insufficient numbers of social workers with the requisite knowledge and training to adequately manage and assist child survivors of CSEA.

Counselling

Under the Counter-Trafficking in Persons Act, there are services such as psychological support and care offered to adult and child survivors of CSEA offences, and an Advisory Committee has been established to help implement rehabilitative programmes for trafficked persons.¹⁹⁹ District Probation Offices are active in several areas of Kenya and are responsible for rehabilitating child marriage survivors.²⁰⁰ Most recently, the ILO Committee (2020) called for the government to increase efforts to remove and rehabilitate children from commercial sexual exploitation and other forms of child labour.²⁰¹

The Children's Act also grants the Children's Court the power to make any orders it deems fit to support the physical and mental wellbeing of a child.²⁰² Such orders include child assessment orders, whereby (as stated above) a child is evaluated by a person appointed by the court to determine any matter regarding their welfare and upbringing, and family assistance orders, where an appointed person can provide advice, counselling and guidance to a child and their parents, guardians, custodians, and relatives. The Children's Court may also, where satisfied it is in the best interests of the child, commit such child to a rehabilitation school suitable to their needs.

Protection of Trafficked Children

An Advisory Committee was established under section 19 of the Counter-Trafficking in Persons Act to advise the Minister of Internal Security on inter-agency activities aimed at combating trafficking and the implementation of preventative, protective and rehabilitative programmes for trafficked persons. Section 15 also enables the Minister of Internal Security and the Advisory Committee to provide services for survivors of trafficking in persons and children accompanying those survivors. Such services include return transportation to and from Kenya; resettlement; reintegration; shelter and other basic needs; psychological support; medical assistance; legal assistance; and any other necessary assistance that a survivor may require.

Various issues have been identified with the effective implementation and enforcement of the provisions of the C-TIP Act. For the last five consecutive years to 2021, Kenya has remained in Tier 2 of the United States' Department of State Trafficking in Persons (TIP) report: although the Government of Kenya has made efforts to address the issue, it still does not fully meet the minimum standards for the elimination of trafficking. Concern has been expressed at the low level of investigations and prosecutions against persons who engage in the trafficking of children under the C-TIP Act.²⁰³ The US TIP Report 2021 noted that trafficking cases were often tried as immigration or labour law violations rather than crimes under the anti-trafficking law. This has resulted in suspected traffickers receiving more lenient sentences.²⁰⁴ The Report also highlighted concerns about 'pervasive official complicity in trafficking crimes', which hindered both law enforcement efforts and survivor identification and

noted that the government did not report any law enforcement action against allegedly complicit officials.²⁰⁵ It further highlighted that police officers reportedly continued to accept bribes to warn traffickers of impending operations and investigations, particularly along the coast, and officials reported perpetrators sometimes escaped conviction by bribing magistrates and court officials or intimidating or paying witnesses to make false statements.²⁰⁶ A further issue is that the Counter Trafficking in Persons Secretariat has not had sufficient staffing or funding, hindering overall progress on anti-trafficking efforts.²⁰⁷

Protection of Children in Disaster Settings

Kenya is prone to natural disasters, particularly droughts, floods and other emergencies. During 2019–2020, East Africa's worst desert locust swarm for 70 years increased levels of poverty and food insecurity.²⁰⁸ Approximately 70 per cent of Kenyan families are 'chronically vulnerable'.²⁰⁹ Climate-related shocks and humanitarian situations have become more intense and frequent and, as the Covid-19 pandemic has shown, children affected by emergencies are vulnerable to sexual violence during and after the onset of crisis.

Currently, the Constitution is the primary legal reference point for disaster management. Kenya does not have any specific legislation in place that caters for national disaster management and response, and there is need for a comprehensive disaster management law to develop critical areas that have not yet been regulated and harmonise existing regulations in various legislations.²¹⁰ A Disaster Risk Management Bill 2021 has been prepared for introduction to the National Assembly to provide a legal framework for the coordination of disaster risk management activities.

A National Disaster Risk Management Policy was approved in 2018, following the establishment of a National Disaster Management Unit (NDMU) in 2013. The NDMU has developed standard operating procedures to be used in disaster situations, and these contain some provisions to protect children regarding matters such as hygiene, nutrition, disease prevention and vaccination, provision of shelter, education, and family reunion.

Although these are not specifically CSEA-related, insofar as children require protection in a disaster

situation, the government, with the support of non-governmental organisations, does usually seek to cater for children's needs. The National Prevention and Response Plan on Violence Against Children 2019–2023 includes consideration of children and adolescents affected by humanitarian situations.²¹¹ Operational Guidelines for Child Protection Practitioners in Emergencies have been developed but not yet disseminated.²¹²

Separately, the Children's Act states that the Government is responsible for providing protection, rehabilitation, recovery and reintegration into normal social life for any child who is a survivor of armed conflict or natural disaster.²¹³ The Children's Court is required to consider various factors when making any order including the child's age, sex, and any disabilities that the child may have. At all times, the Children's Court is to ensure that the best interests of the child prevail.

Other

Collection and Dissemination of Data on Child Protection

In 2017, Kenya was one of the first African countries to launch a dedicated Child Protection Information Management System (CPIMS) that collects and manages information on child protection related issues, including statistics on child exploitation.²¹⁴ The publication of the Kenya Child Protection Report 2016–2019²¹⁵ marked a significant milestone towards evidence-based child protection programming and the CPIMS was instrumental in the collection of data for the report.

Prevention

A significant part of prevention efforts active in Kenya is Nyumba Kumi. Nyumba Kumi is a nationwide government crime prevention and reduction initiative 'to anchor community policing at the household level'²¹⁶ and develop local solutions to safety and security concerns. As a form of neighbourhood watch, it encourages citizens to be vigilant, share information and report instances of crime. Whilst implementation of the programme has had mixed success, and there are accountability concerns, some CSOs have recognised the role Nyumba Kumi has to play in child safety and protection in neighbourhoods.

Campaigners believe that such initiatives could be key to curbing harmful practices, especially in remote communities where the law is unknown, or people are committing child marriage and FGM in secret. In 2018, as a result of a tip-off through the neighbourhood watch initiative, a 12-year-old Kenyan girl from a remote village near the southwestern border with Tanzania was rescued. She had been forced by her parents to marry a 35-year-old man and have intercourse. Her parents were arrested and charged with submitting a child to a sexual act, child marriage and child rape.²¹⁷

Register of Offenders

In 2012 Kenya launched a Register of Convicted Sexual Offenders under Section 39 of the Sexual Offences Act.²¹⁸ This database, created by the judiciary and maintained by the Registrar of the High Court, holds the records of all convicted sexual offenders, including their names, identification card numbers, the crime committed and the survivor's age. Such a system is key to tracking CSEA offenders and ensuring such offences are not repeated. However, this is still currently a manual registry, and an electronic version has yet to be established at the time of writing in March 2022.²¹⁹

The Attorney General issued subsidiary legislation under Section 36 of the SOA 2008 to create regulations for the Dangerous Offenders DNA Data Bank, but this is yet to be implemented.²²⁰ There are no provisions on the prohibition of persons convicted of sexual exploitation of children to leave the country.²²¹

Kenyan law has adopted measures to exclude convicted CSEA offenders from activities involving children. Under the Sexual Offences Act, any person who has been convicted of a sexual offence and who fails to disclose such a conviction when applying for employment which places him/her in a position of authority or care of children or any other vulnerable person, or when offering or agreeing to take care of or supervise children or any other vulnerable person, is guilty of an offence.²²² An individual convicted of this offence is liable upon conviction to imprisonment for a term of at least three years or to a fine of at least KES 50,000 (approx. USD 500), or both.

Another preventative measure under Section 39 of the Sexual Offences Act is that if a CSEA offender has been declared by the court to be a 'dangerous

sexual offender', then the court is mandated to order (as part of the sentence) that when such an offender is released after serving part of the sentence, the prisons' department must ensure that the offender is placed under long-term supervision for the remainder of the sentence. The court may also order that such offender is required to refrain from visiting a specified location, refrain from seeking employment of a specified nature, and subject themselves to a specified form of mentoring.

Child Online Safety & Distribution of CSEA Content Online

Better measures to protect children need to be considered and advanced to mitigate the risk among children to online child sexual exploitation. Whilst the Computer Misuse and Cybercrimes Act and the Sexual Offences Act address CSEA offences and extend to the online environment, there is no law that explicitly defines and criminalises the different forms of online child sexual exploitation.

The National Plan of Action Against Sexual Exploitation of Children in Kenya 2018–2022 includes an objective related to the prevention of online CSEA, and the National Information, Communications and Technology Policy (2019) sets out the activities to be undertaken by the government on child online protection. However, neither policy has been disseminated publicly to relevant stakeholders. Reportedly, the government will launch two policies exclusively concerned with online child protection, namely the National Plan of Action on Online Child Sexual Exploitation and Abuse, based on the WeProtect Model National Response, and the National Strategy on Child Online Protection (embodying the ITU Guidelines on Child Online Protection).²²³

Online forms of sexual exploitation offer significant challenges for Kenyan law enforcement agencies in detecting and prosecuting offenders. The law enforcement, justice and social support systems have inadequate awareness, capacity and resources to prevent and respond to cases of OCSEA.²²⁴ Police and prosecutors have difficulty knowing how to recognise, investigate and prosecute OCSEA cases, reflecting both gaps in legislation and a lack of access to training on these issues.

Public awareness of the potential risks that children face when they engage in online activity is low in

Kenya; parents and teachers are not equipped to provide guidance and appropriate supervision to ensure children's safety online and most have a low understanding of OCSEA as a crime and how to report it.²²⁵

Most incidents go undisclosed and unreported, most commonly due to fears of stigmatisation.²²⁶

The Kenyan Government has mandated that all Internet Service Providers (ISPs) must ensure that their subscribers are registered using their official national identification cards and passports. Non-compliance by the ISPs in ensuring the registration of users can be met by fines. This universal registration of online users has equipped law enforcement agencies with another tool to track and trace CSEA offenders. However, there are reported cases of subscribers registering with ISPs using fake documents; additional measures should be applied to prevent offenders from avoiding accountability for illicit actions.

The Government has established a Cyber Crime Unit and a Child Protection Unit in its Serious Crime Unit under the Directorate of Criminal Investigations.²²⁷ Both of these units help to ensure the safety of children online by investigating and gathering evidence on online CSEA offences.

Recently, Kenya launched a portal through which internet users can safely and anonymously report criminal images and videos of children suffering sexual abuse.²²⁸ Submitted images and videos are assessed by trained analysts from the UK-based Internet Watch Foundation (IWF) and if they are found to contain child sexual abuse, they are blocked and removed from the internet.

Awareness & Education

Kenya has a vibrant civil society sector, a relatively independent media and effective watchdog agencies such as the KNCHR (Kenya National Commission for Human Rights) to help enhance the child rights' discourse in Kenya, using the Constitution and its Bill of Rights as a key point of reference. Most NGOs (non-governmental organisations) working on human rights in Kenya are aware of international and regional human rights instruments and state reporting obligations, and regularly prepare shadow reports which they present to the relevant committees alongside those of the government. They also play

an important role in mobilising to help the development of new laws: the enactment of the Counter-Trafficking in Persons Act would not have been possible without the input of CSOs that became directly involved in the drafting of the bill.²²⁹ They are also influential in spearheading the promulgation of new laws domesticating treaty obligations,²³⁰ such as the Children's Act and the Sexual Offences Act. They regularly undertake advocacy, public education, policy review and litigation. The Federation of Women's Lawyers Kenya (FIDA) has been involved in public interest litigation, most recently to protect the gains of the Anti-FGM legislation.²³¹

Civil society organisations also play a critical role in responding to CSEA. They refer cases to the police and the courts, and cooperate with the Department of Children's Services in the provision of services like shelter, counselling and legal aid, as well as awareness-raising activities and training the child protection workforce. The non-governmental organisation Childline Kenya operates a free helpline to report child abuse and child protection issues, in collaboration with the Department of Children's Services.

The government has also scaled up awareness creation efforts. Regarding the sexual exploitation of children in travel and tourism (SECTT), the Ministry of Tourism has committed to promoting responsible tourism and the tourism sector has taken some steps to protect children. Hotels have signed a Code of Conduct for the Protection of Children from Sexual Exploitation.²³² There have been some successful awareness campaigns, training and law enforcement efforts in the coastal region and in hotels and resorts.

Recommendations

Kenya's experience shows that although laws can change national narratives, legislation is not enough. A protective environment for children is influenced by underlying socio-economic and socio-cultural issues of poverty, culture and social norms that need to be addressed alongside legal reforms.²³³

Legal

Existing gaps in Kenyan legislation regarding CSEA offences need to be addressed to ensure all forms of CSEA offences are clearly criminalised. Amendment of legislation will require the engagement of the

Office of the Attorney General, the Kenya Law Reform Commission and the National Council for the Administration of Justice.

— When making amendments to legislation, consider conforming to international conventions that offer good guidance for addressing CSEA. The Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and Convention on Cybercrime (Budapest Convention) provide useful measures of national legal frameworks related to CSEA. They are open to accession by states that are not members of the Council of Europe.

— Prioritise ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and amend legislation to bring it fully into line with the standards set by the Protocol. Criminalise the sale of children by introducing explicit legislation.

— Enact and enforce the Children Bill 2021, ensuring OCSEA is properly defined and criminalised in law, along with the timely development of Rules and Regulations.

— Review the Sexual Offences Act 2006 to address the discrimination of minors based on gender.

— Enact a defence for children or young persons engaged in consensual sexual activity to prevent the further criminalisation of children.

— Review the Counter Trafficking in Persons Act to align it with the Constitution and accommodate emerging issues. Amend the law to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking offenses.

— Amend the Extradition Act to abolish the requirement of dual criminality in instances of CSEA committed in a third state. Review and update the schedules of the Extradition (Contiguous and Foreign Countries) Act and the Extradition (Commonwealth Countries) Act regarding extraditable offences. These prescriptive requirements create a gap in domestic legislation which exposes children to risk—an individual who commits a CSEA offence may escape prosecution if Kenya does not recognise the offence.

— Replace outdated terminology with preferred terms, notably 'child pornography' with child sexual abuse material (CSAM) and 'child prostitution' with exploitation of children in prostitution.

— Decriminalise homosexual activity to ensure that children who are abused or exploited by an offender of the same sex are not afraid to come forward.

— Amend the Prohibition of Female Genital Mutilation Act to address the medicalisation of FGM. Consider amending Section 24 to ensure that evidence brought by a minor does not need to be corroborated to ensure that minors are able to have access to justice.

— Harmonise the laws which govern marriage so that there are no religious exceptions to 18 years as the minimum age of marriage. Section 49(3) of the Marriage Act should be made subject to Section 4, which sets the minimum age of marriage at 18.

— Amend or enact new legislation to cover online child sexual exploitation and abuse (OCSEA) offences that are currently omitted, and, as recommended by the Lanzarote Committee, extend the crime of online grooming for sexual purposes to situations where the sexual abuse is not the result of a meeting in person but is committed online, e.g. when children are manipulated to produce CSAM and share it with the offender.

— Amend legislation to explicitly criminalise the live-streaming of child sexual abuse, the sale of children and sexual extortion committed in the online environment.

— Introduce legislation to ensure social media platforms and other internet services actively contribute to the safety of children on their platforms, through data retention, removal of access to CSAM, the detection and reporting of incidents, and promptly comply with law enforcement warranted requests for information.²³⁴

— Accede to the Convention on Cyber Security and Personal Data Protection adopted by the African Union in 2014 (the Convention specifically includes CSAM).

— Introduce the Disaster Risk Management Bill 2021 to the National Assembly to provide a legal

framework for the coordination of disaster risk management activities, including protection of children.

— Develop legislative, policy, and administrative measures to devise a functioning adoption system whereby the government can monitor inter-country adoption and ensure the protection of children from any form of abuse and neglect post-adoption.²³⁵

— Increase the human and financial resource allocation to implement laws and coordinate activities that respond to CSEA by approaching the National Treasury for sufficient budget allocation. Increase the human and financial resources available to law enforcement and other agencies to monitor and oversee implementation of laws related to child protection.

Prosecution

— The Kenyan government should increase the funding dedicated to the investigation and prosecution of CSEA offences. The current system is unable to effectively operate because the core components of the justice system do not have the resources necessary to meet their legislatively prescribed objectives.

— Laws should be drafted which explicitly define the sentencing powers of the courts for cases involving juvenile CSEA offenders. The current systems offer the court a wide scope, which has the potential to result in inconsistent sentencing that may range from too lenient to too severe.

— Increase the capacity of the Directorate of Criminal Investigations to identify and investigate medical personnel, e.g., doctors, clinical officers and nurses, who perform female genital mutilation on children.

Protection

— The connections between child exploitation and trafficking, child marriages and child labour should be made more explicit and strategic action planned around them.

— Implement the National Plan of Action Against Sexual Exploitation of Children in Kenya, 2018–2022, ensuring the policy is effectively disseminated to

relevant implementing agencies and a sufficient budget is allocated.

— Develop a National Child Protection and Safeguarding Policy.

— Develop the National Plan of Action on Child Online Protection.

— Implement the National Information, Communications and Technology Policy (2019).

— Disseminate the Child Protection in Emergencies: Operational Guideline for Child Protection Practitioners in Kenya to stakeholders to ensure prevention and response to violence against children in humanitarian situations.

— Strengthen the links between humanitarian and development child protection programming with a focus on both prevention of and response to violence against children, including gender-based violence.²³⁶

— Review the National Children Policy 2010.

— Strengthen the capacities of criminal justice actors to offer quality, comprehensive child-friendly protection and response services to child survivors of sexual violence.

— Social and care systems should work alongside the protective services to ensure the protection of child survivors of CSEA.

Prevention

— Raise public awareness of laws and policies that protect children from violence.

— Increase public/parental knowledge about the issue of sexual exploitation and abuse of children—including the role of technology—through effective, widespread public awareness programmes.

— The Kenyan government should seek to create educational services tailored to the needs of rural areas and counties. Traditional and religious practices should be considered when seeking to educate community members on the impact of CSEA offences, with specific attention given to child marriage and FGM.

— Provide continuous development and training to all stakeholders in the Criminal Justice Sector, including the police, judiciary, child counsellors to enable them to keep abreast of developments. As the internet continues to expand and evolve, CSEA offenders are finding unique ways to target children.

— Establish a central online accessible repository of laws and policies that address child protection issues and violence against children in Kenya.

Cultural/Education

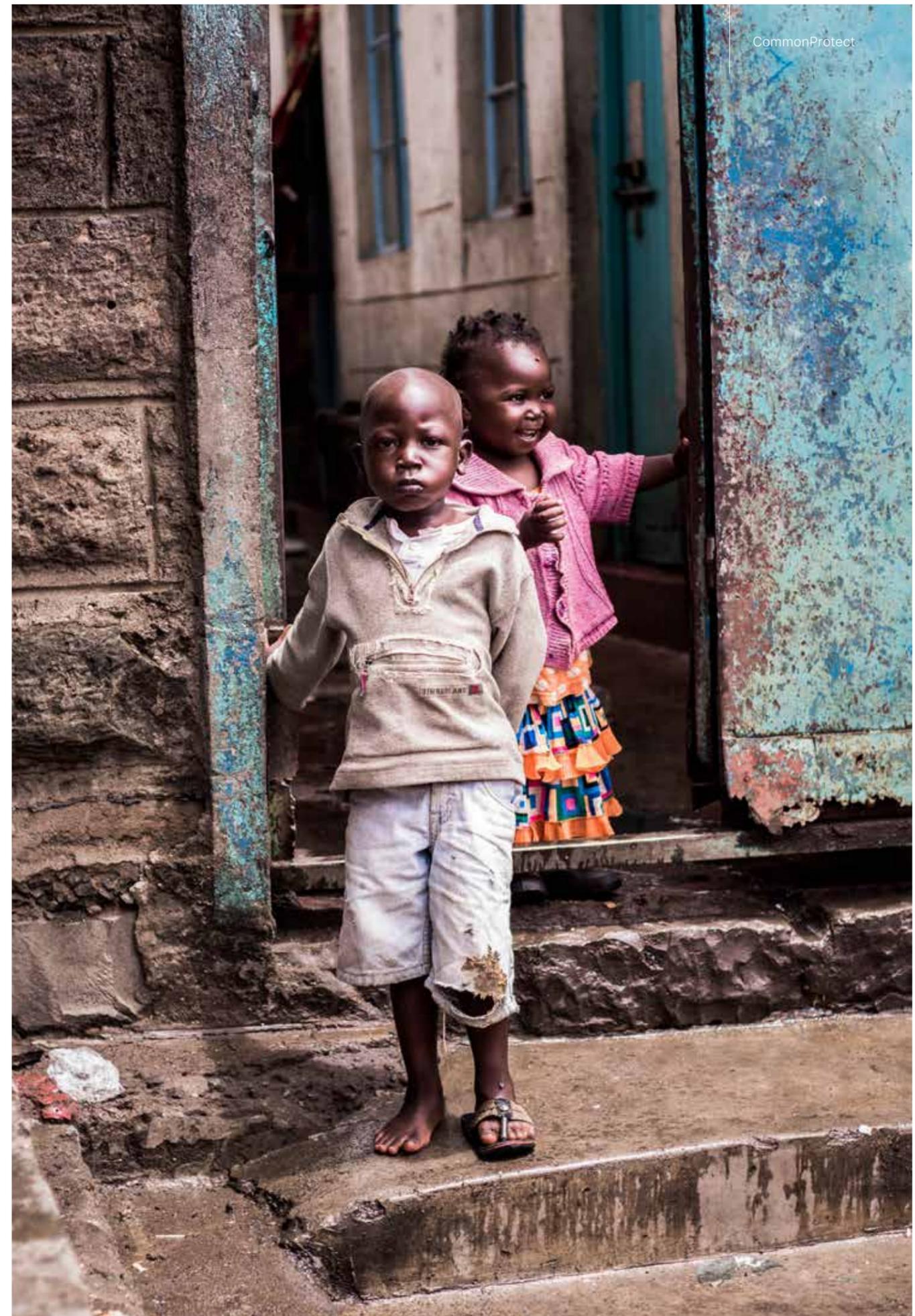
— Community leaders and the police should work together to promote and encourage CSEA survivors to report offences. A combined and culturally-relevant

approach to prosecuting offenders will aid in tackling the social stigma around CSEA and encourage survivors to come forward.

— Communities should be educated about CSEA offences, the harm they cause, the importance of protecting children from CSEA and prosecuting CSEA perpetrators in order to tackle social stigma around CSEA and encourage survivors to come forward.

— Develop county-specific costed action plans to end FGM in line with the Prohibition of FGM Act.

— Develop programmes to target the eradication of harmful cultural practices that affect boys.



SPOTLIGHT

Eradicating Modern Slavery: The nexus between SDG Target 8.7 and child protection

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Modern slavery is a global crisis.

It is defined as situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, or abuse of power. Modern slavery includes a range of practices, such as human trafficking, forced labour, debt bondage, domestic servitude, forced marriage, and the sale and exploitation of children.

Quantifying and understanding a complex issue such as modern slavery is the first step towards developing tailored and evidence-based policies to address it. In our report, *Eradicating Modern Slavery*,²¹⁷ the Commonwealth Human Rights Initiative (CHRI)²¹⁸ and Walk Free²¹⁹ assessed the progress made by Commonwealth governments on achieving United

Nations Sustainable Development Goal (SDG) Target 8.7, which calls on States to “take immediate and effective measures to eradicate forced labour, modern slavery and human trafficking.” The realisation of SDG Target 8.7 means the eradication of the commercial sexual exploitation of children, children subjected to forced marriage, child labour, and the recruitment and use of children in armed conflict.

The Commonwealth represents over 2.4 billion people. It is estimated that one in every 150 people in the Commonwealth is living in conditions of modern slavery.²²⁰ Globally, of the 40.3 million people estimated to be living in modern slavery in 2016, one in every four were children.²²¹ Tackling modern slavery must therefore involve strong child protection mechanisms in all Commonwealth countries.

Through an analysis of 54 Commonwealth states using 116 indicators, *Eradicating Modern Slavery* presents the case for Commonwealth governments to increase commitments to address child exploitation.²²² Importantly, we found gaps in three areas of action: supporting child survivors, protecting children in criminal justice systems, and addressing risk factors for modern slavery. This article outlines the main findings of this report as it pertains to the rights of children and makes recommendations to eradicate the exploitation of children in the Commonwealth in order to achieve SDG Target 8.7.

It is estimated that one in every 150 people in the Commonwealth is living in conditions of modern slavery.

Support for child survivors

Commonwealth countries should do more to support child survivors of modern slavery by providing services specifically tailored to children. Child-friendly services are critical to support survivors in rebuilding their lives. Of the 45 Commonwealth countries that provide survivor support services, 15 fail to provide specialised services for children, such as tailored support or separate shelters.²²³ This is a particular problem in the Pacific, where only two of 11 countries (Australia and Fii) have specialised services for child survivors. Child-friendly services are urgently needed in Pacific Island states, where poverty and abuse of cultural practices, such as informal adoption, render children especially vulnerable to commercial sexual exploitation, especially in geographically remote sectors such as logging, mining, and fishing.²²⁴ NGOs in the UK have also highlighted gaps in support for child trafficking survivors within local authority care systems, putting them at risk of re-exploitation.²²⁵

The COVID-19 pandemic has and will continue to hinder the provision of support services for children. Lockdown measures have created significant obstacles to identifying new survivors, leading to their increased isolation and vulnerability to exploitation.

Protection of children in the criminal justice system

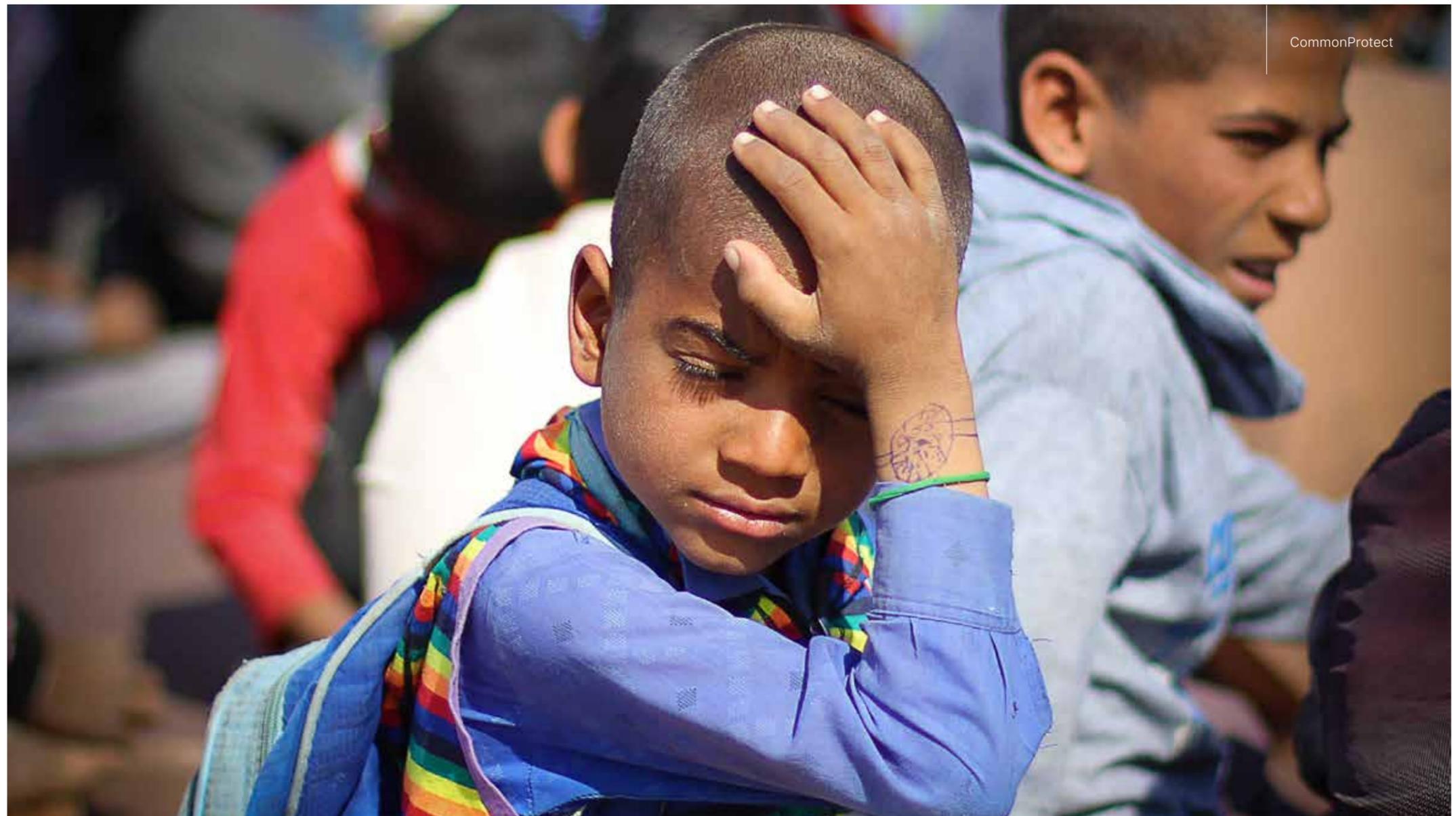
The Commonwealth is failing to protect children in law by failing to criminalise the exploitation of children and to tailor court processes to the needs of children.

The commercial sexual exploitation of children, or ‘child prostitution’, is not criminalised in 43% of Commonwealth countries, and 30% of Commonwealth countries have not criminalised child sexual abuse materials, or ‘child pornography’.²²⁶ Criminalising commercial child sexual exploitation and implementing this legislation is more critical in the wake of the COVID-19 pandemic, which has seen an increase in online child sexual exploitation.²²⁷ Criminal groups have adapted to the pandemic by increasing the distribution of illicit materials and transactions online,²²⁸ making it harder for law enforcement to locate both victims and perpetrators.²²⁹

Access to justice for children is limited across the Commonwealth. Thirty-seven percent of Commonwealth countries do not have legislation which provides children with access to special services during trial, such as the use of screens or video testimonies, or the provision of one support person during the court process. Specialised “child-friendly” courts have been trialled in some Indian states for child-trafficking cases. Such initiatives can help to increase conviction rates and improve survivors’ experience of the legal process by minimising re-traumatisation.²³⁰

Conflict also drives modern slavery, as reflected in the use of child soldiers by armed groups. For example, children are kidnapped and recruited by armed militants in Nigeria, including Boko Haram.²³¹ Boko Haram-affiliated groups have been associated with kidnapping and recruiting child soldiers in Cameroon where, instead of receiving support, reports reveal that child soldiers are detained by national security forces when found.²³²

Only 11% of Commonwealth countries have domestically criminalised the use of children in armed conflict by both state and non-state actors. There are concerns that COVID-19 will increase the use of children in armed conflict



as poverty and the lack of opportunities bolster recruitment, and the withdrawal of aid services limits the protection of children in conflict areas.²³³

Addressing risk factors for children

Finally, the Commonwealth must take steps to address the underlying risk factors associated with the exploitation of children. Key to this is addressing gaps in the provision of primary school education, particularly for girls, children with disabilities, and children from ethnic minorities. The provision of education and community empowerment programmes reduces child-labour and child-marriage risks, and is essential in reducing the exploitation of women, girls, and other vulnerable groups.²³⁴

Thirty-nine percent of Commonwealth states do not have universal access to public primary education and nearly half of Commonwealth countries have

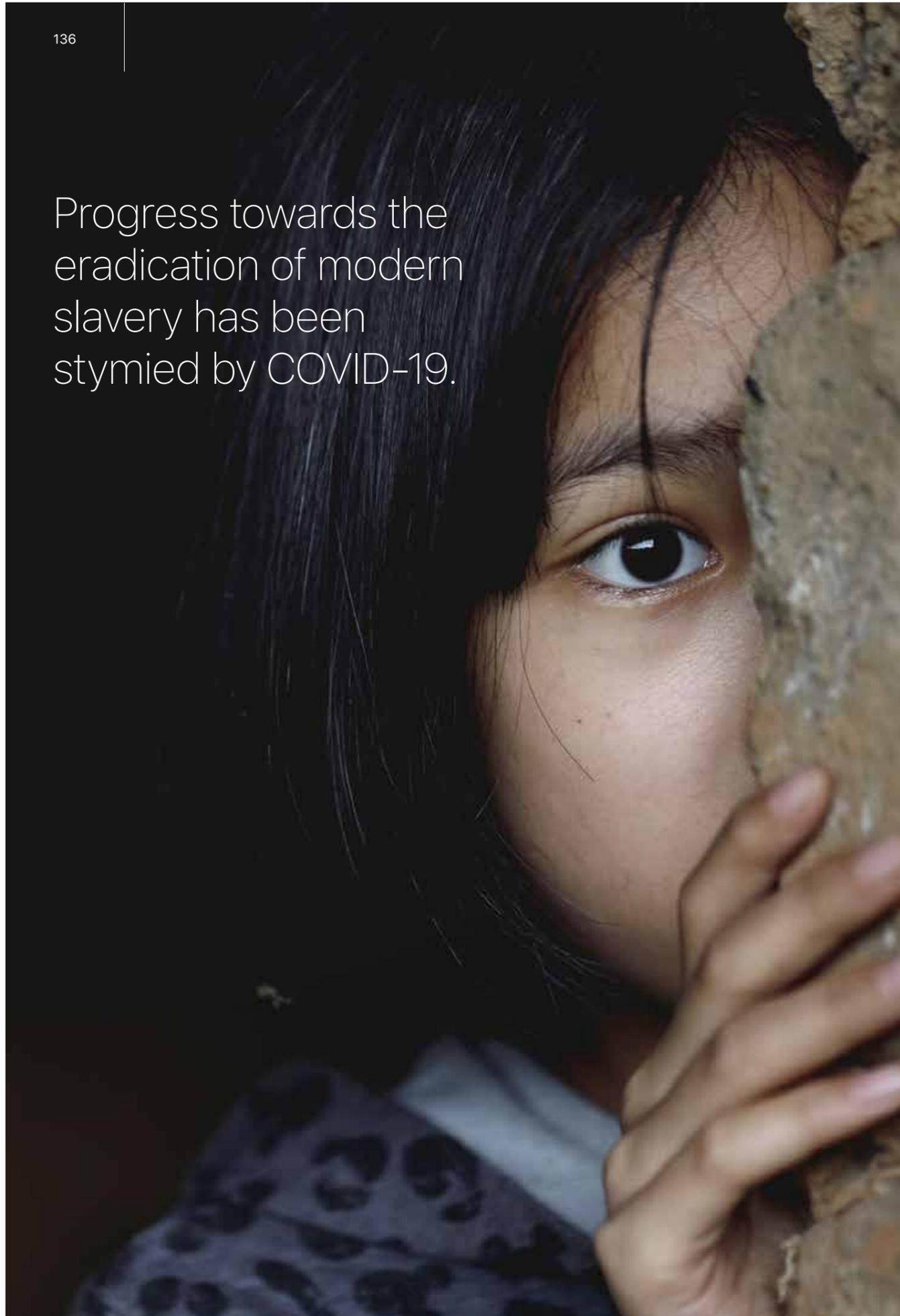
lower primary school enrolment rates for specific groups, particularly girls and minorities. In Africa, universal access to public primary education exists in less than half of the Commonwealth countries. Many of these countries have lower primary school enrolment rates for these specific groups.²³⁵ Similar patterns can be seen in Grenada, Saint Kitts and Nevis, and Saint Lucia in the Caribbean. Without the safety net and the social protection of school, children become vulnerable to exploitation.

Despite the lack of a guaranteed education, there are several positive community empowerment initiatives in place across the Commonwealth that aim to minimise the impact of risk factors related to the exploitation of children. For example, in the Gambia, the NGO Tostan supports the empowerment of women and adolescent girls through education on human rights, health, and democracy to bring about social change.²³⁶

Commonwealth governments have funded similar initiatives; e.g. Australia has supported development programmes across the Pacific to tackle women’s empowerment.²³⁷ Programmes like these help to address harmful cultural belief systems and attitudes towards girls which places them at risk of the worst forms of child labour and child marriage.

...the Commonwealth must take steps to address the underlying risk factors associated with the exploitation of children.

Progress towards the eradication of modern slavery has been stymied by COVID-19.



Gaps in information

Despite these findings, gaps exist in information that prevent an adequate assessment of progress and holding States accountable to their commitments. Several important indicators were left unevaluated as data for them were not available in at least 50% of Commonwealth countries. Prevalence data disaggregating national estimates of modern slavery by children and type of exploitation is currently unavailable at the national level.²³⁸ This means that the indicators that measured the number of victims of child prostitution and child pornography, and those involved in armed conflict and forced labour, were impossible to assess. Other indicators where there were limited publicly-available data included the provision of judicial training on child-friendly interview techniques, and the disaggregation of identified modern slavery victims by age. States should strive to implement transparent and comprehensive data collection as it pertains to modern slavery and the rights of children.

Recent challenges and the way forward

Beyond the SDGs, Commonwealth States have made important political commitments to the eradication of modern slavery. At the 2018 Commonwealth Heads of Government Meeting, States committed to achieve SDG Target 8.7 and “agreed to take action to end child sexual exploitation online”.²³⁹

In the face of the current crises, sustained action is needed for Commonwealth States to meet their obligations under the SDGs and international conventions and instruments. Progress towards the eradication of modern slavery has been stymied by COVID-19,²⁴⁰ while climate change is increasingly driving patterns of exploitation. As families lose their homes, businesses, job security, and are cut off from access to education and healthcare due to climate-related disasters and environmental degradation, they are more likely to be driven into exploitative situations that often endanger children.²⁴¹

In light of these significant challenges in child protection in the Commonwealth, CHRI and Walk Free recommend that Commonwealth States:

1. Criminalise child sexual abuse materials, the commercial sexual exploitation of children, and the use of children in armed conflict and forced marriage.
2. Incorporate child-friendly services in victim and survivor support legislation.
3. Conduct regular training for the judiciary and other officers of the criminal justice system, to ensure child survivors of modern slavery are supported and child-friendly processes are used in courts.
4. Ratify international human rights instruments, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)*; *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)*; and *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)*.
5. Ensure universal access to public primary school education.
6. Collect and publicise data on modern slavery prevalence and trends, disaggregated by gender, age and sector.
7. Fund and facilitate research on modern slavery to inform evidence-based State interventions that aim to address children in modern slavery.

Rwanda

Rwanda is making significant efforts to tackle CSEA. In 2018, substantial reforms were made to Rwanda's domestic legislation, including the enactment of a new penal code, Law N°68/2018 of 30/08/2018 Determining Offences and Their Penalties in General (the Penal Code), and Law N°71/2018 of 31/08/2018 Relating to the Protection of the Child (the Child Protection Law)

Rwanda has also signed up to numerous international conventions, which has enabled its domestic laws to be adapted in line with international law and best practice. Rwanda ratified the UN Convention on the Rights of the Child in 1991,¹ the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the **Optional Protocol**) in 2002,² and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2003.³ Rwanda is also a party to regional conventions concerning child protection, including the African Charter on the Rights and Welfare of the Child,⁴ the African Union Convention on Cyber Security and Personal Data Protection 2014 (**Malabo Convention**),⁵ and the International Conference of the Great Lakes Region (**ICGLR**) Protocol on the Prevention and Suppression of Sexual Violence against Women and Children.⁶ Additionally, to address the sexual exploitation and abuse of children online, Rwanda is a member of the WeProtect Global Alliance.⁷

However, the question remains whether the enactment of this (and other) legislation, and accession to international conventions, is protecting children's rights in practice. The Rwandan government does not have adequate infrastructure or resources in place to enforce the legislation fully or to raise awareness of CSEA and associated punishments.⁸ Certain social factors also negatively impact the enforcement of laws and prevention of CSEA. In particular, a significant proportion of CSEA offences go unpunished as survivors (or their families) do not report them. This reluctance to report CSEA offences is often a result of the perpetrator being known to the survivor's family, who may subsequently decide to resolve the matter outside the formal criminal justice system.⁹

In 2010, Rwanda was thought to be making progress towards gender equality, as 'women occup[ied] half the seats in the National Assembly and the government [had] made a clear commitment to end gender-based violence.'¹⁰ The government

committed, in its seven year programme from 2010–2017, to continuing to 'invest efforts in campaigns to fight violence against children and women... so as to eradicate the culture of covering up those crimes'¹¹ with 'identified activities to achieve this goal include[ing]... prosecution of sexual and gender based violence cases.'¹² However, CSEA is still unfortunately widespread in the country.

CSEA Profile

There are limited statistics on violence against children in Rwanda.¹³ Many CSEA offences are not reported, particularly when they are resolved outside the criminal justice system, and are therefore not included in official statistics.

Nevertheless, the 'Rwanda Violence against Children and Youth Survey' (the **Violence Against Children Survey**), released in 2018, recorded that 24 per cent of females and 10 per cent of males between the ages of 18 and 24 had experienced sexual abuse before the age of 18.¹⁴ Importantly, these figures only reflect children who have told someone about the abuse. The Violence Against Children Survey may therefore not accurately reflect the true scale of abuse against children in Rwanda, as 'only around 60 per cent of girls in Rwanda who are survivors of violence tell someone about it, and the rate is even lower for boys.'¹⁵

The Violence Against Children Survey reported that the most common locations for the first incidence of sexual abuse for girls were the road and street (36 per cent), in their homes (28 per cent) and at school (10 per cent).¹⁶ For boys, their homes and the perpetrator's home were the most common (24 per cent).¹⁷ Most offences were reported as occurring in the evening (69 per cent for girls, 55 per cent for boys), however offences were reported at all times of day. These figures indicate that children in Rwanda are not necessarily safe in any place or at any time.

Cases of 'child defilement' (sexual abuse) received by the National Public Prosecution Authority (**NPPA**) office have been steadily increasing year-on-year:

— In the 2016/2017 fiscal year, there were 2,086 cases, of which 61 per cent made it to court. Of those cases that made it to court, 82 per cent resulted in a conviction;

— In the 2017/2018 fiscal year, there were 2,996 cases, of which 63 per cent made it to court. Of those cases that made it to court, 79 per cent resulted in a conviction; and

— In the 2018/2019 fiscal year, there were 3,363 cases, of which 66 per cent made it to court. Of those cases that made it to court, 73 per cent resulted in a conviction.¹⁸

Cases of teenage (between the ages of 11 to 18 years) pregnancy in Rwanda have risen dramatically since 2017: from 17,337 cases to 23,628 in 2019.¹⁹ Research conducted by the Collectif des Ligues et Associations de Défense des Droits de l'Homme au Rwanda (**CLADHO**)²⁰ and Haguruka²¹ has highlighted the causes and consequences of increased rates of unwanted teenage pregnancies.²²

Socio-economic factors related to poverty, HIV/AIDS, and gender inequality also have a direct correlation with sexual exploitation and abuse.²³ Furthermore, the Genocide against the Tutsi in 1994 has had a lasting impact on the family dynamic and the position of children within the state. Family-level problems, such as the absence of an adult caregiver, orphaned or abandoned children and child-headed households are thought to be particular drivers of sexual exploitation, as 'many children reportedly engage in transactional sex to secure basic needs.'²⁴

According to experts, 'in the years since [the genocide], development efforts have been hampered by the convergence of poverty, infectious disease, and continued ethnic tension which have left many children in Rwanda in situations that may compromise their basic security, health and wellbeing.'²⁵ Additionally, development efforts are slow as Rwanda still struggles with the trauma of having a generation of 'children born of rape,' and the associated rejection that those children experienced by society.²⁶

The Genocide against the Tutsi resulted in the country having the highest number of orphans in the world.²⁷ Some NGOs have highlighted that children in institutional care may be more at risk of sexual abuse (although there is a lack of concrete data) and that many survivors of sexual abuse within their family or the community can end up in institutional care.²⁸

Beliefs regarding gender roles in sexual practices contribute to the prevalence of CSEA offences in Rwanda.²⁹ Gender inequality may also contribute towards the low levels of female reporting of CSEA offences, as social expectations dictate the level of household participation and responsibility on girls and the lack of economic opportunities limit girls' ability to have their basic material needs met. Generally, children aged 13 to 17 believe that men should decide when to have sex, men need more sex than women, and that women should tolerate violence in the interest of maintaining a marriage. Of great concern is the belief amongst this cohort that women who carry sexual protection 'have sex with a lot of men'.³⁰

Moreover, there is a general acceptance amongst this age group that violence, including sexual violence, is acceptable and something to be tolerated: children are therefore inhibited from reporting CSEA offences 'because they do not think what they experience is wrong.'³¹ The acceptance of abuse amongst children suggests a need for increased education across society of the short and long-term physical and psychological harm caused to CSEA survivors.

The wider culture of silence and stigma surrounding CSEA offences is also prevalent in refugee camp communities. The prevalence of sexual abuse and unplanned pregnancies are reported as being high in refugee camps: 96 per cent of children surveyed listed adolescent pregnancy as one of the most pressing problems facing young people.³² Many young girls believe that sex before marriage is a sin, and therefore believe that if they are raped, it is better not to report it. In addition, due to a lack of humanitarian aid in refugee camps providing hygienic and sanitary products, girls have reported engaging in transactional sexual activity to afford these basic necessities.³³ Moreover, there is a general consensus among child refugees in Rwanda that if a male gifts a female money or material items, there is an expectation that the male will be paid through

sexual acts.³⁴ Girls who wanted to be counselled on sexually transmitted diseases and pregnancy prevention were concerned about being labelled a prostitute by community members.³⁵

Trafficking is rife in Rwanda. Traffickers target vulnerable populations such as youth experiencing homelessness, orphaned children, children with disabilities, young women and girls, unemployed adults, and internally displaced persons. Young girls are enticed into domestic servitude and then forced into prostitution.³⁶ Traffickers exploit both domestic and foreign child survivors in Rwanda, and Rwandan children are exploited by traffickers abroad. Children between the ages of 13 and 18 are exploited for commercial sex in hotels, sometimes with hotel owners' cooperation.³⁷ Traffickers subject Rwandan children to sex trafficking in China, India, Kenya, Kuwait, Saudi Arabia, Uganda, Zambia, and parts of East Asia.

The 2021 United States Department of State Trafficking in Persons Report (the **TIP Report**) found that domestic trafficking increased during the reporting year, possibly due to the pandemic and its effects on the economy. In addition, traffickers were reported as being able to move survivors more easily across Rwanda's neighbouring borders due to a trilateral agreement among the Rwandan government and the governments of Kenya and Uganda, which allows foreign nationals to cross borders without a passport (using national identification).³⁸ This follows on from the new migration pattern that emerged in 2019, where traffickers transit survivors through each of these countries on their way to Ethiopia and Kenya before travelling to the Middle East.

Rwanda has also taken important steps to combat child marriage, which is one of the main pathways to CSEA. Estimates show that 1 per cent of girls in Rwanda were married before the age of 15, while 8 per cent were married before the age of 18.³⁹ Child marriage is more prevalent among poorer families in rural areas.⁴⁰ The comparably lower rates of child marriage in Rwanda may be due to Article 171 of Law N°42/1988 of 27/10/1988 (the **Civil Code**) which sets the minimum age of marriage for both men and women at 21 years. Article 168 of Law N°32/2016 of 28/08/2016 Governing Persons and Family (the **Family Law**) provides that the minimum legal age for marriage is 21 years.⁴¹ Further, if the offence of 'child defilement' is followed by 'cohabitation as husband

and wife', the penalty for such crime on conviction is life imprisonment.

According to the NGO Girls not Brides, the country has been vocal on the international stage against the issue, sponsoring resolutions against child marriage in the UN General Assembly, and hosting the working session behind the Commonwealth Kigali Declaration, which lays out how governments should respond to and eliminate child marriage.⁴² As a result of Rwanda's efforts to combat child marriage, the United Nations Population Fund reported that child marriage decreased by 10 per cent between 2000 and 2011.⁴³

Criminalisation/Legislation

Classification of Sexual Offences with Children

The Constitution of the Republic of Rwanda of 2003 Revised in 2015 (the **Constitution**) is the supreme law in Rwanda. In Article 19 of the Constitution, the state, together with the family and other Rwandans, is entrusted with providing children with 'specific mechanisms of protection ... depending on his or her age and living conditions, as provided for by national and international law.' The state is also obliged to put in place 'appropriate legislation and bodies for the protection of the family, particularly the child and mother, in order to ensure that the family flourishes.'⁴⁴

There is no comprehensive legislation governing CSEA in Rwanda; rather, provisions criminalising sexual offences against children are contained in various domestic laws.

The Penal Code criminalises child sexual abuse (referred to as 'child defilement') in Article 133. 'Child defilement' is defined broadly to include:

- insertion of a sexual organ into the sexual organ, anus or mouth of the child;
- insertion of any organ of the human body into a sexual organ or anus of a child; and
- performing any other act on the body of a child for the purpose of bodily pleasure.

The offence is punishable on conviction by imprisonment of from 20 years to 25 years. If the

offence is committed against a child under the age of 14 or if it has resulted in an incurable illness or disability for the child, the perpetrator may receive a sentence of life imprisonment. If the perpetrator is in the military, they will also be stripped of their military ranks if convicted.⁴⁵

Consent is not a defence to 'child defilement', other than the close-in-age defence if children between the ages of 14 and 18 engage in consensual sexual activity. However, if a child between the ages of 14 and 18 sexually assaults a child under 14 years, they will be punished in accordance with Article 54 of the Penal Code (which deals with children in conflict with the law).

The abduction or unlawful detainment (or causing these) of a person 'by violence, deception or threats' is criminalised by Article 151 of the Penal Code. If the survivor is a child, the penalty is extended to a term of imprisonment between seven and ten years.

Female genital mutilation is not prevalent in Rwanda,⁴⁶ but the offence is covered by Article 114 of the Penal Code (Sexual torture) which criminalises causing damage to the genital organs of another person. Upon conviction, the offender is liable to a term of life imprisonment.

Rwanda has not acceded to the Council of Europe Convention on Cybercrime (the **Budapest Convention**), but it has implemented the provisions of Article 9 (Offences related to 'child pornography') into the Child Protection Law and Law N°60/2018 of 22/8/2018 on Prevention and Punishment of Cyber Crimes (the **Cybercrimes Law**).

Offences relating to child sexual exploitation in the Child Protection Law are as follows:

- Article 33 criminalises showing a child 'pornographic images or sounds'. This offence is punishable by imprisonment of between five to seven years with a fine of between 3 million and 5 million RWF. Showing pornography to a child is a form of sexual grooming.

- Article 34 criminalises recording a child's 'pornographic picture or voice'. This includes recording 'by any means if such picture or voice is of a pornographic nature'. The offence is punishable by

imprisonment for between five to seven years and a fine of between 7 million and 10 million RWF.

- The display, sale, renting, dissemination or distribution of 'pornographic images, objects, movies, slides and other pornographic materials involving children' is punishable on conviction by imprisonment for between five to seven years and a fine of between 15 million and 20 million RWF.⁴⁷

The Cybercrimes Law criminalises:

- proposing, grooming or soliciting, through a computer or a computer system or any network, to meet a child for the purpose of engaging in sexual activities with the child;⁴⁸ and

- publishing, transmitting or causing the publication of 'indecent information' to a child using a computer or a computer system.⁴⁹

These offences are punishable on conviction by imprisonment of between three and five years and a fine of between 1 million and 3 million RWF.

If a person publishes, makes available or facilitates access to 'child pornography' through a computer or computer system, they are liable on conviction to imprisonment for a term of between five and seven years and a fine of between 1 million and 3 million RWF.⁵⁰ 'Computer' is defined broadly in the Cybercrimes Law to include 'devices with data processing capabilities such as mobile phones, smart phones, computer networks and other devices connected to the internet'.

In addition, 'economical exploitation of a child' is 'prohibited and punishable by Law' under Article 51 of the Law N°54/2011 OF 14/12/2011 relating to the Rights and the Protection of the Child (the **Child Rights Act**).⁵¹ This prohibits 'requiring him/her to accomplish a work that is likely to put him/her at risk or to compromise her or her education or to harm his or her health or his/ her physical, mental, spiritual, moral or social development'. These forms of work include prostitution, child trafficking and 'pornography business'.

As highlighted by the Human Dignity Trust, whilst legislation criminalising CSEA offences in Rwanda is wide-reaching, it is not comprehensive.⁵² For example, Rwandan law does not currently criminalise

sexual grooming, sexual communication with a child, or sexual activity in front of a child, other than showing them pornographic images or videos.

Lanzarote Convention

While Rwanda has adopted some of the CSEA offences within the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**), certain offences were not considered by legislators. These include:

- Article 20, which criminalises possession of 'child pornography' and knowingly obtaining access to it through ICT; and

- Article 21, which criminalises recruiting or causing a child to participate in pornographic performances; coercing a child to participate in pornographic performances or profiting from or otherwise exploiting a child for such purposes; and knowingly attending pornographic performances where such performances involve the participation of children.

Age of Consent & Definition of a Child

According to the Family Law, the age of consent and of majority in Rwanda is 18 years.⁵³ All other domestic legislation governing CSEA confirms that a child is defined as 'a person under the age of 18'.⁵⁴

Article 12 of Law N°51/2018 of 13/08/2018 relating to the Prevention, Suppression and Punishment of Trafficking in Persons and Exploitation of Others (the **TIP Law**) contains a presumption that the survivor is a child (and so treated as a child pending verification of their age) in circumstances where the survivor's age is uncertain and there are reasons to believe that they may be a child.⁵⁵ The same provision is not in any other legislation governing CSEA offences.

Trafficking

Rwanda ratified the Palermo Protocol on 26 September 2003 in accordance with which it enacted the TIP Law on 24 September 2018.

The TIP Law defines child trafficking as 'any act by a person who recruits, transports, transfers, harbours or receives a child for the purpose of exploitation', and in line with international standards, it does not

require fraud, deception, threat, force or coercion as an element of the offence.

Sexual exploitation is defined in the TIP Law as 'the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials.' The following acts constitute sexual exploitation:

- encouraging, inciting, misleading, manipulating or forcing a person to have sexual relations, or using any other means to lure them into sexual relations;

- paying for sexual intercourse on their own or on behalf of another person (i.e. procuring sex from children);

- knowingly hosting another person for the purpose of sexual exploitation;

- announcing, by whatever means, that they facilitate sexual relations;

- knowingly helping, assisting or protecting a person engaged in sexual exploitation;

- running houses of sexual exploitation, investing in such houses or knowingly managing property derived from such houses; and

- knowingly providing any place for rent for sexual exploitation.⁵⁶

If these acts are committed against a child, the TIP Law provides for more stringent punishment on conviction: life imprisonment and a fine of between 10 million RWF and 15 million RWF. In addition, any building or place used for sexual exploitation may be closed or seized by the competent authority.⁵⁷

The definition of 'exploitation' in the TIP Law also covers:

- 'forced or coerced labour, slavery and or any other practices similar to slavery intended to be performed in Rwanda or abroad'—this would include, as per the definition of 'practices similar to slavery', 'debt bondage, serfdom, forced or servile marriage, forced pregnancy or forced surrogacy.' If the offence of 'forced labour, slavery or other related services' is

committed against a child, the perpetrator is liable on conviction to imprisonment of between 10 to 15 years and a fine of between 10 to 15 million RWF;⁵⁸

— ‘offering adoption, fostering or guardianship of a child for the purposes of slavery, begging or other forms of exploitation’ and the broader ‘offering of a child for adoption, fostering or guardianship for the purposes of making a profit’ (i.e. without the purpose of exploitation). The offence in Article 23 of adopting, fostering, or acting as the guardian of a child or offering a child to another person for exploitation is punishable by life imprisonment and a fine of between 10 to 15 million RWF;

— ‘use or offering of a child for illicit activities’ (illicit activities is not defined in the legislation); and

— ‘other forms of exploitation provided for by law’.

Article 5 of the TIP Law mandates any person who has information about the survivor, commission of or intention to commit the offence of trafficking to report this to ‘to the body in charge of criminal investigation or any other competent authority for appropriate action.’

If committed against a child, the offences of trafficking in persons (Article 18) and promoting and facilitating trafficking (Article 19) are punishable by life imprisonment and a fine of between 15 million and 20 million RWF.⁵⁹ There is a contradiction in the TIP Law in terms of penalties: Article 20 provides that the offence of forced labour in Article 22 is punishable by life imprisonment, but Article 22 itself states that if committed against a child, the offence carries a penalty of imprisonment between 10 to 15 years and a fine of between 10 to 15 million RWF.

The TIP report views the penalties in the TIP Law as sufficiently stringent.

Article 17 of the TIP Law protects trafficking survivors from detainment, charging and prosecution for illegal entry into or residence in Rwanda or involvement in any unlawful activity that was a direct consequence of being trafficked.

Extraterritoriality

CSEA offences committed in third state jurisdictions are subject to prosecution in Rwanda in certain

circumstances. Article 157 of Law N°027/2019 of 19/09/2019 Relating to Criminal Procedure (the **Criminal Procedure Law**) provides that Rwandan courts can try any person (Rwandan or foreigner, including an NGO or legal entity) that commits a crime in or outside Rwanda if it is an international crime or transnational crime. A transnational crime is one in which one of the elements was committed outside Rwanda.⁶⁰

Article 159 of the Criminal Procedure Law provides that an offence committed by a Rwandan national (i.e. Rwandan citizen) or foreigner outside of Rwanda can only be prosecuted in Rwandan courts if committed against a Rwandan national at the time of the commission of the offence.

The following legislation provides for extraterritorial application:

— The Penal Code provides in Article 11 that an offence must be punishable by Rwandan law if committed by a Rwandan citizen (i.e. Rwandan national). There is therefore a double criminality requirement. In terms of Article 12, an offence committed by a Rwandan citizen or foreigner against a Rwandan citizen outside Rwanda may be prosecuted as if the offence was committed in Rwanda.

— Article 2 of the TIP Law provides that trafficking offences committed outside Rwanda by Rwandan nationals or permanent residents and by any person against a Rwandan national can be prosecuted in Rwanda.

— The Child Protection Law applies to Rwandan children and foreign children staying in Rwanda.⁶¹

— Article 2 of the Cybercrime Law provides for universal jurisdiction for cybercrimes (including ‘child pornography’ and online grooming), provided that ‘such offences have produced effect in Rwanda’.

The law encourages cooperation with foreign state agencies where obtaining evidence from abroad is required for the prosecution of a domestic CSEA case.⁶² If assistance is required for an investigation, a Rwandan prosecutor in charge of a case file may request a prosecutor or investigator from another jurisdiction to perform any acts on their behalf that they consider necessary to ascertain the truth,

provided that such assistance is restricted to acts related to the alleged offence.⁶³ Prosecutors at the intermediate and primary levels may also be granted extraterritorial powers to conduct investigations by the Prosecutor General.

Extradition

Rwandan nationals cannot be extradited to a foreign state.⁶⁴

Law N°69/2013 of 02/09/2013 on Extradition (the **Extradition Law**) lists the types of offences for which extradition can be requested, being international crimes, trans-boundary crimes, felonies and the crime of genocide.⁶⁵ Rwandan criminal law categorises offences as either felonies, misdemeanours or petty offences. Most CSEA offences are felonies, in that they carry a principal penalty of a term of imprisonment between five years to life.⁶⁶ Misdemeanours are those offences principally punishable by a term of imprisonment between six months and five years.⁶⁷ The offences of online grooming and sharing ‘indecent information’ with a child in the Cybercrimes Act are only misdemeanours, so are not extraditable offences.

Foreign offenders present in Rwanda can be extradited to a requesting state and Rwanda can request extradition of foreign offenders who committed crimes against Rwandans via diplomatic channels, provided that the CSEA offence is a felony and certain documents are submitted with the request. Grounds for rejection of an extradition request from a third state are set out in Article 16 of the Extradition Law and include:

— the request was made for the purpose of prosecuting an individual on discriminatory grounds;

— the request does not guarantee providing humane treatment; and

— the act giving rise to the request is not considered a crime under Rwandan and foreign legislation.⁶⁸

For a perpetrator to be extradited from a third state to be prosecuted in Rwanda, an extradition treaty must normally be in place. However, this is not a prerequisite to extradition, as the two countries can reach an agreement on extradition.⁶⁹

Statutes of Limitation

The statute of limitations for a survivor or a person reporting on the survivor’s behalf to report felonies (which includes most CSEA offences) is ten years.⁷⁰

However, there is no statute of limitation for the crime of genocide, war crimes and crimes against humanity.⁷¹

Outdated Terminology

The term ‘child defilement’ is used in the Penal Code and ‘child pornography’ is referenced once in the Cybercrimes Act. It is widely accepted that these terms are outdated⁷² as they are thought to legitimise CSEA by implying that the child is complicit in the sexual abuse or exploitation. The term ‘defilement’ has connotations of female virginity.

ECPAT’s Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse exclude ‘defilement’, instead calling for the use of terms that are ‘considered less harmful or stigmatising to the child’, such as child sexual abuse.⁷³

The heading of the relevant section on sexual offences in the Penal Code is also outdated, as it includes the term ‘offences against morality’.

Other

Juvenile Offenders

A child under the age of 14 cannot be held criminally liable as, under Article 149 of the Criminal Procedure Law, they are ‘not prosecuted’. If a child is over the age of 14, they are subject to prosecution but cannot be detained in the same detention facility as major suspects.

Article 54 of the Penal Code deals with the punishment of persons who have committed offences between the ages of 14 and 18 years. If the relevant offence carries a sentence of life imprisonment, the child offender is liable on conviction to imprisonment for between ten years and 15 years. If the offence carries a fixed term imprisonment or a fine, the penalty imposed on the child cannot exceed half the relevant penalty.

Under the Criminal Procedure Law, child offenders are tried by the specialised chamber for minors,⁷⁴ which is obliged to take measures to protect, assist, supervise and educate children if it considers it appropriate.⁷⁵

In addition, children and women have special cells reserved for them in prisons.⁷⁶

Sentencing

Sentences imposed for sexual offences range in severity and generally increase if committed against children. For example, the offence of sexual exploitation against a child under the TIP Law, as stated above, carries a penalty of up to life imprisonment and a fine of between 10 million and 15 million RWF.

Penalties are generally considered to be sufficiently stringent to act as a deterrent for CSEA offenders, save for those related to ‘child pornography’ and online grooming.

Gaps in Criminalisation

Despite Rwanda being a party to the CRC, it has been argued that ‘Rwanda has still yet to fully harmonise its domestic laws with the articles of the UN Convention on the Rights of the Child. Despite the Conducive policy framework, there is still a great deal that needs to be done to prevent the abuse of children—physical, sexual and emotional.’⁷⁷

While Rwanda has made significant efforts to improve its CSEA legislation, there are still considerable gaps that remain, including:

- The offences of sexual grooming, sexual communication with a child, and sexual activity in front of a child are not criminalised under domestic law.
- The offence of knowingly attending pornographic performances involving the participation of children, in accordance with Article 21 in the Lanzarote Convention, is not criminalised under domestic law.
- Rwanda’s legislation does not provide a specific definition of child sexual abuse material (CSAM) or ‘child pornography’. Further, the offences of possession of and procuring CSAM for oneself or for

another through a computer (or indeed by any other means) are not criminalised, as required by Article 9 of the Budapest Convention.

- Due to a lack of definition, it is unclear whether ‘child pornography’ refers to material that depicts not only children, or also includes persons appearing to be children or realistic images representing children engaged in sexually explicit conduct.

- While the Cybercrimes Act criminalises online grooming, this is only if there is intent to meet a child for sexual activity. Online grooming is also not defined.⁷⁸

- The penalties relating to online CSEA are insufficiently stringent to act as a deterrent to potential offenders.

- There is a ten-year limit to reporting CSEA offences, which is inadequate given that many survivors may only be able or willing to report the crime at a much later stage.

- There is no overarching common law presumption that a survivor is a child, nor is the presumption contained in any other legislation governing CSEA offences (other than the TIP Act). This is a significant gap in the law, particularly considering difficulties in registering children at birth, and therefore in the ability to prove their age.

- The Penal Code has a double criminality requirement if the offender is a Rwandan citizen.

- While all domestic legislation has extraterritorial application, this does not extend to offences committed against children who are resident in Rwanda or foreign children, under the Criminal Procedure Law; against foreign children by Rwandan nationals, under the Penal Code; by Rwandan residents, under the Penal Code; and against children resident in Rwanda where the offence is committed in a foreign country, under the TIP Law.

- There is a double criminality requirement for extradition, i.e. the offence must be an offence in Rwanda. Given that not all CSEA offences are criminalised in Rwanda, this may lead to offenders avoiding prosecution.

- The terminology used to define child sexual abuse is outdated as it implies the survivor’s consent in a non-consensual act and is therefore inconsistent with the severity of CSEA offences.⁷⁹ Moralistic phraseology is also employed, e.g. ‘offences against morality’.

- Legislation does not contain express statements that corroboration of witness testimony is not required, and evidence of prior sexual conduct is inadmissible and irrelevant.

- Rwanda has not ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, nor the UNWTO Framework Convention on Tourism Ethics.

Prosecution

Initiating Prosecution

To initiate prosecution for a CSEA offence, the survivor, anyone else on the survivor’s behalf, or an investigator on their own motion, must file a complaint.⁸⁰ This can be done either orally or in writing.⁸¹

Prosecution commences once an investigation commences. Investigations are conducted by the public prosecutor with assistance from the body in charge of investigations, the Rwanda Investigation Bureau (the **RIB**). The investigation procedure is set out in Article 17 of the Criminal Procedure Law.

Survivors or their families can choose to report an offence through a community outlet, rather than through the formal criminal justice system. In these instances, cases can be reported to the village leaders or elders who, due to their knowledge of individuals in the community, may seek reconciliation and reparation through alternative justice mechanisms.⁸² Community leaders can also play a crucial role in gathering information on allegations of CSEA offences, and so should report such information to law enforcement.

If someone has information about an offence that is about to be committed or has been committed and fails to immediately inform the relevant authorities when they are able to do so, while this information could help prevent the offence or limit its effects, they commit the offence of non-disclosure of a felony.⁸³ If

the felony is against a child, the penalties are doubled. The Cybercrimes Law also imposes an obligation on ICT service providers to report offences.⁸⁴

The National Commission for Children (the **NCC**) has put in place a toll-free number that survivors, their guardians or any other person can call to report CSEA.⁸⁵ On receiving a call, the NCC determines how best to approach the situation, taking into account the nature of the crime, the survivor’s age and the relationship between the alleged perpetrator and the survivor.

In those cases that are reported early and in which direct evidence is obtained, law enforcement services are better able to bring the perpetrator to justice.⁸⁶ However, serious procedural, cultural and social obstacles remain to reporting and prosecuting CSEA.⁸⁷ Further, even though cases of teenage pregnancy have increased dramatically since 2017, the RIB only filed court cases for 4,265 suspected child abusers.⁸⁸

Prosecution Process

In the case of *Prosecutor v. Mpakaniye Théoneste*,⁸⁹ a CSEA offender was successfully prosecuted. The court took into account numerous factors when deciding to convict the accused, who was known to the child’s mother, of ‘child defilement’. This included the survivor’s birth certificate, which noted the survivor’s age as six years. The survivor immediately told her mother, who alerted the authorities quickly. It was clear from the survivor’s medical report that sexual acts had been committed and an additional witness helped convict the accused. Early reporting (thereby allowing medical evidence to be collected and noted in the medical report), the appropriate use of evidence, and a lack of a credible defence by the accused, resulted in the accused being sentenced to 20 years’ imprisonment. The complainant requested a life sentence, but the court found that the fact that the accused had no prior convictions was a mitigating factor.

Investigation & Evidence

Presumption survivor is a child

The only provisions in domestic legislation that provide for a presumption as to a child's age are contained in the TIP Law, as set out above.

Procedure for Witness Testimony

If a witness is unable to appear in person before a prosecutor for legitimate reasons, interrogation can take place where the witness is located.⁹⁰

If the suspect may exert pressure on witnesses and survivors, the court can order that the suspect be provisionally detained if detainment is the only means of preventing this.⁹¹

During a preliminary hearing (which is held in camera), the court will consider matters related to the security of the witnesses and whether any witnesses require protection and if so, what security strategies should be put in place.⁹²

An entire hearing and the hearing of a witness testimony can be via electronic means.⁹³

Corroboration

A child under the age of 14 can testify in court as an adult without taking an oath. This means that the court cannot solely rely on their testimony,⁹⁴ so their testimony must be supported by corroborating evidence. If there is no other evidence in the case (including physical evidence and witness testimony), there may be insufficient cause for the court to convict the offender.

There is no express statement in Rwanda's legislation that corroboration is not required for a child over the age of 14 testifying.

DNA

Where the survivor delays reporting an offence (which is more often than not the case), DNA and other evidence is more likely to be destroyed, resulting in a conviction being less achievable.

Many investigations and prosecutions are impeded by a lack of testimonial and medico-legal evidence.⁹⁵ Some survivors hesitate to report the offence and give evidence, as they 'mistakenly believe they have the burden to provide eyewitness testimony or physical proof of the attack.'⁹⁶

Legislation does not require the use of DNA evidence in CSEA cases; it is 'impliedly admissible ... depending on the evidentiary obligations.'⁹⁷ DNA evidence provides objective and scientific proof of what happened at a crime scene, and as such CSEA survivors stand to benefit considerably from the widespread adoption of DNA evidence in CSEA cases. DNA evidence should only be a requirement for conviction if survivors report offences immediately after they occur, to ensure preservation of the evidence.

In addition, adequate resources need to be dedicated to: creating 'procedural safeguards for collection and use of DNA samples' and 'guidelines of strict respect of the chain of custody of DNA samples'; ensuring that subjects who have DNA collected have their privacy protected; informing subjects of their rights against self-incrimination; and ensuring that informed consent is obtained before samples are taken.⁹⁸

Rwanda has recognised the crucial role that DNA evidence can play in criminal cases, and as such has committed to investing in its forensic capabilities. In mid-2018, an autonomous national forensic laboratory, the Rwanda Forensic Laboratory (RFL), was launched. By March 2019, it had carried out 3,030 tests related to violence.⁹⁹ In November 2019, the Supreme Court used DNA results from the RFL to grant a man paternity to his father, who was killed in the 1994 Genocide against the Tutsi, in one of the first cases in which DNA tests conducted in Rwanda were used by a court.¹⁰⁰

DNA evidence is also increasingly being used to investigate CSEA cases, including in cases where girls who become pregnant hide the identity of the offender. For example, in cases of 'defilement', DNA tests are normally undertaken to identify the father of the baby. Tragically, it has been reported that fathers are killing the babies born of rape before undergoing the test, for fear of DNA evidence leading to their conviction.¹⁰¹

Defences

As noted above, the only defence specific to CSEA offences is the close-in-age defence in relation to 'child defilement'.

Unwillingness to Proceed with 'Formal' Trial

It has been noted that in some instances, survivors and their families may be unwilling or reluctant to pursue justice through the criminal justice system.¹⁰² In some cases, particularly where the perpetrator is known to the survivor's family, parents or guardians do not report offences to the authorities and instead seek to pursue an amicable settlement with the perpetrator directly.¹⁰³ Sexual violence is most commonly committed by adults in the survivor's community,¹⁰⁴ meaning that the perpetrator is known in the majority of cases.

The Rwandan Ministry of Health has noted that 'the barriers to seeking support in relation to CSEA offences fall into three general categories':

- individual-level barriers, including the survivor feeling embarrassed for themselves or their family, afraid of getting into trouble if the offence were to be reported, or that the offence was their fault;
- relationship-level barriers, including the survivor being reliant on the perpetrator who is in a position of power, feelings of abandonment, or feeling too threatened to report the crime; and
- structural-level barriers, including the inability to afford services, lack of transportation to access support services or a systemic lack of services in an accessible area.¹⁰⁵

Most survivors (90 per cent of females and more than 85 per cent of males) indicate that individual-level barriers were the main reason for not seeking support after sexual abuse.¹⁰⁶ This indicates a need for a change in the perceptions and attitudes relating to CSEA.

Gaps in Prosecution

Although Rwanda has made great efforts to improve the legislative regime relating to the prosecution of CSEA offences, there nevertheless remain gaps in

prosecution and inadequate enforcement of existing laws and conventions.

According to the Senate report presented by Senator Adrie Umuhire, 'delays or failures in the prosecution of suspected CSEA perpetrators arise from a collective silence about CSEA, survivors and their families resolving matters outside court by way of settlement, and insufficient evidence collected by the prosecution to convict perpetrators.'¹⁰⁷

Further gaps in prosecution include:

- A general unwillingness of survivors or families to report and proceed with prosecution.
- A lack of monitoring and follow-up systems in place at all levels to ensure that survivors who do report abuse are supported throughout their legal journey.
- Effective monitoring systems would enable the social sector to maintain data on the prevalence of CSEA offences and would highlight gaps in the protective system.
- A lack of funding allocated in the national budget for education and resources on child specific issues, which has resulted in frontline workers, including social workers, psychologists, healthcare workers and the police service, being ill-equipped to prevent and respond to instances of CSEA.¹⁰⁸ There is a need to establish standard operating procedures on case management, evidence collection and survivor support to ensure that violence against children centres are operational and effective in supporting the survivor through prosecution.
- Rwanda does not have a witness protection law or support programme. There are also no laws protecting people from criminal liability who denounce or report CSEA offences and in so doing, implicate themselves.

— The Inspector General of the NPPA, Jules Marius Ntete, has said that there is a 'need for more investment in crime scene management, which is still a daunting challenge for investigators'. He also acknowledged 'that the solution to the problem does not lie in prosecution alone but rather also through preventive measures.'¹⁰⁹

Protection

In 2003, the government acknowledged key challenges in protecting CSEA survivors and ensuring crimes are prosecuted in its National Policy for Orphans and Other Vulnerable Children. These include a lack of access to education, health and rehabilitation services and appropriate shelter for vulnerable children; arguably this has been mitigated somewhat by the establishment of Isange One Stop Centres. The geographical outreach of many programmes does not cover remote areas; children, families, communities and professionals do not know about existing support services, and children do not trust official structures and institutions.¹¹⁰

Furthermore, the government reported that the overall barriers that it and other stakeholders face in eliminating CSEA in Rwanda include a lack of family support and family life; the burden of early responsibility and the ensuing loss of childhood (including education and play); exposure to sexual abuse and exploitation in communities and the home; cultural taboos regarding sexuality; high population growth and increasing numbers of vulnerable children due to HIV/AIDS and abandonment; marginalisation and stigmatisation; continuing risk of war in neighbouring countries (including the DRC), resulting in increasing numbers of refugees and children exposed to CSEA; and family conflicts resulting from war and genocide.¹¹¹

Since the release of the National Policy, Rwanda has taken steps to better protect children from exploitation and abuse, as well as other forms of violence, and address these challenges. However, as evidenced throughout this section, there is still progress to be made in several areas to ensure children are comprehensively protected and survivors are supported.

Protection of Survivors During Proceedings

During an urgent interrogation by an investigator or prosecutor, a child who is interrogated has the right not to be confronted by the offender.¹¹²

Chapter 3 of the Child Protection Law contains provisions relating to children under prosecution, which include provisions providing that:

— any criminal proceedings concerning a child must ‘care for his/her welfare’. The court’s decision must always take into consideration the child’s ‘personality’. When determining the sentence, the judge ‘must indicate the behaviour and antecedents that marked the child’s personality which justify the sentence given’. If the child’s personality is not mentioned, the case is open for review;¹¹³

— a child can only be on remand if the charges are punishable with a term of imprisonment of more than five years and in such cases, the period of remand cannot exceed 15 days (and cannot be extended by the court). If the judge determines that this period needs to be extended for reasons presented by the prosecutor, then the child must be monitored strictly in their place of residence;¹¹⁴

— the investigator is empowered to suggest a compromise between a child, their parent or guardian and the survivor (subject to approval of the prosecutor in certain instances);¹¹⁵ and

— if a child offender does not have a legal guardian, the Rwandan government is obliged to provide legal assistance to the child.¹¹⁶

Article 26 of the Child Protection Law, which relates to the protection of privacy of a child under prosecution or survivor, states that “the identity of a child under prosecution or survivor should, in any case, be disclosed to the public or to the media.” This should be rectified in the English drafting, as presumably the legislator’s intention was for a child’s identity not to be disclosed to the public or media. Indeed, the French translation of the law states that the identity of a child must in no circumstances be disclosed.

Cases involving child offenders or survivors must be ‘tried in camera by a relevant court’.¹¹⁷ The child’s identity must be protected from being disclosed to the public or media.

According to the Government of Rwanda, ‘child survivors and witnesses of crimes are provided protection through a special unit protecting survivors and witnesses within the NPPA’.¹¹⁸

Trafficking survivors have the right to have their identity protected during court proceedings. If the

survivor requests it or if the judge deems it necessary in the interests of justice, the judge can order that:

— the court proceedings take place in camera;

— evidence is heard via video link or other adequate electronic communication technology;

— the survivor can use a pseudonym; and

— the survivor does not need to testify as their statement made during pre-trial proceedings can be admitted as evidence.¹¹⁹

If there is an appeal and the offence is ‘violence against a minor’, then the accused cannot be released pending the outcome of an appeal.¹²⁰

Protection of Children in General

A report by UNICEF published in 2018 found that although great efforts have been made in improving Child Protection, “the prioritisation of children’s rights is not always adequate, and delays and gaps in the judicial system lead to low rates of prosecution for cases of abuse, exploitation and neglect.”¹²¹

The protection of children is entrusted to the state in accordance with Articles 18 and 19 of the Constitution.

Article 44 of the Child Protection Law provides for protection measures for children’s health. This includes a prohibition on children entering nightclubs and other places at which alcohol or drugs are consumed, even if the child is accompanied. If this provision is contravened, the penalties will be as provided in the Penal Code.

The NCC, which operates as a sub-unit of the Ministry of Gender and Family Promotion, was created to ensure that children’s rights are met through the provision of basic needs and services for all children in the country. It is a dedicated body, which has now institutionalised child protection.

A ‘free at the point of service’ initiative was launched by the Rwandan National Police (RNP) in 2009, called the ‘Isange One Stop Centre’. The centre was created for the specific purpose of providing comprehensive, multi-sectoral and multidisciplinary assistance to survivors of gender-based violence and

child abuse at no charge. The centre was also established to support the Criminal Investigation Department (now the RIB) in obtaining physical evidence admissible in courts.¹²² UNICEF has worked with the Rwandan government to establish 44 One Stop Centres across the country.¹²³ The One Stop Centres can be accessed by direct communication or by calling a toll-free number, as advertised on the RNP website.¹²⁴

All services offered by the One Stop Centres can be accessed at one place: medical, psychosocial and police, with referrals for legal support and to the judiciary. This assists in reducing the distance survivors must travel to access services, may avoid the risk of tainted evidence being obtained, ensures the safety and security of survivors and enhances coordination between various actors.

According to the RNP, the One Stop Centres suffer from various constraints, including the low capacity of centres due to high caseloads.¹²⁵ The RNP aims to adopt a code of conduct that requires survivors to consent to taking evidence and explains that survivors are free to choose whether to report crimes.

Fortunately, various enabling factors do exist, including strong leadership and political will; a strong policy, legal and institutional framework; a regard for initiatives and reform led by individuals and community; and coordination between agencies. Various early detection and prevention structures exist such as the Community Policing Committees, GBV Committees, and ‘*akagoroba k’ababyeyi*’ (meaning ‘mother’s evening’, an initiative organised by the Ministry of Gender and Family Promotion, in which women and girls discuss and solve the challenges they face in their communities).

One Stop Centres are reported as having the following impacts:

— there is increased collaboration between service providers;

— there are a reduced number of interviews, which lowers the risk of tainted evidence and repeated survivor traumatisation;

— the reporting rate of GBV and child abuse has increased by more than 50 per cent with there being an average daily case load of between three to ten

cases effectively treated free of charge; and over 8,000 cases have been registered since inception; and

- the centres serve the function of a national and regional learning centre.¹²⁶

The centres have led to valuable lessons being learned by stakeholders, including the RNP, highlighting the importance of a multidisciplinary and multi-sectoral approach for providing comprehensive services, and of community empowerment in crime detection, prevention and reporting.

To strengthen the protection of children throughout the country, the Rwandan government has adopted various national child protection instruments, including the National Children Protection Policy, Integrated Child Rights Policy, Rwanda Early Childhood Development Policy, and National Policy for Child Labour.

Furthermore, the Rwandan government works together with several non-governmental organisations (NGOs) who share the common goal of child protection, including UNICEF/Rwanda, Save the Children Rwanda and Haguruka. These NGOs provide legal aid and psycho-social counselling to survivors, provide training and teaching to communities and work alongside partners and stakeholders to raise awareness on violence and abuse against children in Rwanda. For example, the Ministry of Gender and Family Promotion through the NCC, in collaboration with UNICEF, established the national communal child protection initiative called Friends of the Family (Inshuti z'Umuryango).¹²⁷ The Friends of the Family are community-based child and family protection volunteers nominated by residents in local communities. The programme aims to have two Friends in every Rwandan village, one male and one female, who often work as a pair in visiting households to identify any child protection concerns and child rights violations. Where required, the Friends refer cases to social services or law enforcement, including District Child Protection and Welfare Services, RIB, RNP, health authorities, Isange One Stop Centres and local authorities.

Volunteers are provided pre-service and in-service training by the NCC and UNICEF, including an effective way to reduce barriers to communication with different groups. The NCC has also introduced the USSD and SMS reporting system for the Friends,

where they can directly and simultaneously report to various institutions including the NCC and Districts through their mobile phones. There are now 29,674 Friends of the Family volunteers.¹²⁸ Anecdotal evidence suggests that grassroots involvement is key in tackling CSEA in Rwanda.

Despite all of the above measures and initiatives, Save the Children Rwanda notes that 'the structures meant for the protection of children still lack capacity and are under-resourced,' showing that these protections do not go far enough in practice.¹²⁹

Protection of Trafficked Children

Provisions relating to the protection of trafficking survivors are in Section 2 of the TIP Law. Survivors must be protected and assisted without discrimination.¹³⁰ The Ministry of Justice must take 'all appropriate measures to ensure that the victim [has] access to adequate protection if their safety is at risk'.¹³¹

The TIP Law offers protections to survivors of human trafficking and exploitation, including children. It prescribes that the Ministry must take all appropriate measures to ensure that the survivor and their accompanying dependents have access to adequate protection if their safety is at risk.¹³²

Article 12 covers special assistance to be afforded to child survivors, which includes:

- assistance provided by 'specially trained professionals and in accordance with the children's special needs';
- provision of a legal guardian if the survivor is unaccompanied; and
- ensuring that the child's identity or nationality is established and making every effort to locate the child's family if it is in the child's best interests.

Foreign survivors will not be removed from Rwanda until the identification process has been completed. They are permitted to remain for a minimum of six months or, if longer, until legal proceedings are concluded.¹³³

Survivors can also be repatriated to their country of origin and Rwandan citizens and residents will be

returned to Rwanda 'without unreasonable delay and with due regard for his/her rights and safety, privacy, dignity and health', as facilitated by the competent authority, with transportation and repatriation costs to be paid by the government.¹³⁴

The Rwandan government does not have a survivor-witness support programme and does not maintain any shelters for male trafficking survivors.¹³⁵ The TIP Report also found that the government failed to adequately screen and refer survivors identified as trafficking survivors among those detained in district transit centres. However, Rwanda's efforts to protect survivors are demonstrated by the fact that more survivors were identified and referred for care in the reporting year.¹³⁶ It also increased national awareness and prevention campaigns and created a government-managed network of government and NGO long-term care shelters.

The RIB operates a 15-officer anti-trafficking unit in its criminal investigations division.¹³⁷ The RNP directorate responsible for anti-GBV efforts oversees law enforcement. In the TIP Report reporting year, three officers were stationed in each of Rwanda's 78 police stations and served as points of contact for trafficking survivors.

According to the TIP Report, the Rwandan government increased sex trafficking investigations and prosecutions in the reporting year.¹³⁸ However, compared to the previous reporting year, the government investigated fewer trafficking cases and prosecuted and convicted fewer traffickers.

The TIP Report found the following inadequacies in Rwanda's efforts to prevent and protect against trafficking in the reporting year: insufficient resources and inadequate operating procedures; no centralised data system, which hinders law enforcement efforts to investigate, prosecute and convict offenders; the government focused on transnational trafficking and traffickers crossing borders, but it neglected identification and investigation of domestic trafficking; and the government did report sharing information with other governments, but it found it difficult to obtain evidence for both domestic and transnational investigations and prosecutions.

Counselling

In its National Policy for Orphans and Other Vulnerable Children (2003), the government

identified several challenges to ensuring that children have access to adequate counselling services.¹³⁹ These include:

- a lack of affordable psycho-social support and counselling services (which has likely been improved to some extent through the rollout of Isange One Stop Centres);
- the geographical outreach of many programmes not covering remote areas;
- children, families, communities and professionals not knowing about existing support services; and
- children not trusting official structures and institutions.

In the context of online child protection, the Rwandan government has recommended that organisations training mental health, psychology and social work practitioners who work with vulnerable children have a basic understanding of child online protection issues. One Stop Centre capabilities should be strengthened to provide adequate support to survivors. Counsellors should be trained on child online protection policies and should conduct both child and family counselling to prevent child survivors from being ostracised by their families and so being further victimised.¹⁴⁰

In its 2016 report, the National Commission on Human Rights found several gaps still present in the support provided to survivors of child sexual abuse, referred to as 'defilement'. As identified, inadequacies included 'legal assistance, security, medical care, counselling and other facilities'.¹⁴¹

Protection of Children in Disaster Settings

Chapter VI of the Child Rights Law deals with 'protection of children in emergency, children in situation of exploitation, orphans and vulnerable children'.¹⁴² This includes refugee children and children with physical and mental disabilities.

Article 50 of the Child Rights Law prioritises protection and rescue of children in a disaster or armed conflict. If a child is affected by a disaster or armed conflict, the Rwandan government is obliged to 'within its means, ensure and facilitate [their] physical and psychological recovery and social

reintegration.¹⁴³ It is unknown whether the government complied with these obligations during the COVID-19 pandemic.

In some refugee camps, the government has established child protection committees in collaboration with NGOs and the UN Refugee Agency.¹⁴⁴ However, adolescents have reported a general unwillingness and distrust of reporting CSEA violations through these committees; fears stem from the perception of corruption, indifference and a lack of justice.¹⁴⁵

Other

Registration of Births and Adoption

In 2016, 17,500 children were born from teenage pregnancies, most of whom were not registered.¹⁴⁶ A non-registered child is essentially a non-existent child in the state's eyes. In addition, girls do not receive an identity card before the age of 16, meaning that most teenage mothers do not have the ability to register their own child. The lack of reporting of births results in insufficient reliable data on subsequent abuse of these unregistered children.¹⁴⁷ Further, a failure to register a birth and lack of a birth certificate means that child survivors will not be able to prove conclusively that they are under the age of 18.

Following the passing of the Family Law, a birth can be registered by only one parent.¹⁴⁸ This means that the husband no longer needs to be present during the registration of the birth. This will hopefully allow for improved registration of babies born following child sexual abuse. The period in which registrations of birth can take place was also extended from 15 days to 30 days under Article 100 of the Family Law. In 2014, the government introduced e-registration at birth at health facilities, which was intended to be rolled out in all public health facilities. The Rwandan government predicted that the system would aid data collection and the production of statistics gathered from health facilities.

Prevention

Register of Offenders

On 19 June 2020, the government announced its intention to establish a national registry of sexual offenders.¹⁴⁹ The sex offenders registry has been

published by the NPAA and is available through their website.¹⁵⁰

Rwanda does not currently prohibit convicted CSEA offenders from having contact with children. However, Article 3 of the Child Protection Law requires childcare organisations to fulfil conditions that protect child welfare. This includes promoting children's physical and mental wellbeing, guaranteeing adequate development opportunities and ensuring that there are an adequate number of qualified workers.

Child Online Safety

The Rwandan government is seeking to raise awareness on the importance of child online safety. In July 2020, following the onset of the COVID-19 pandemic, the Ministry of ICT and Innovation, as part of the UK Commonwealth Cybersecurity programme, launched the 'Get Safe Online Campaign', a campaign promoting the importance of online safety.¹⁵¹ The campaign intends to raise awareness of online risks and safety measures, while also encouraging parents to ensure that their children remain vigilant when studying online.¹⁵² It will include a website in English and the local language, Kinyarwanda, with comprehensive information, 'locally driven awareness and promotional campaigns' and capacity building for Rwandans so that they can deliver workshops to their communities.

The Ministry of ICT and Innovation put in place the Rwanda Child Online Protection Policy (2019)¹⁵³ (the **COP Policy**), the aim of which is to ensure that Rwandan children are empowered to access the digital environment creatively, knowledgeably and safely.¹⁵⁴ One of the intended measures in the COP Policy is to 'strengthen criminal investigation, prosecution and sentencing for online child sexual abuse.' The government wants to tackle this issue by training criminal justice agencies in child online protection issues, in addition to reviewing and strengthening the abilities of Rwanda's 24/7 Computer Emergency and Security Incident Response Team (the **Rw-CSIRT**), and the Police Cybercrime and Investigation Centre 'to detect, prevent and respond to cyber security threats.'¹⁵⁵ The role of stakeholders (including ICT companies, government, public agencies, civil society and communities, telecommunications companies, parents, teachers and children) partnering to address

the global challenge of child online safety is acknowledged as being key.¹⁵⁶

The COP Policy comes at a crucial time in Rwanda. The country is focusing on ensuring access to the internet and digital technology for its entire population, and this goal is clearly being met: when the COP Policy was developed, approximately 53 per cent of Rwandans were already online, representing an increase of over 25 per cent over previous years.¹⁵⁷ The rapid expansion of digital access comes with its own unique challenges and four types of risks (content, contact, conduct and contract).¹⁵⁸

Despite efforts to address child online safety, the government of Rwanda has not yet become a signatory to the Council of Europe Convention on Cybercrime (the **Budapest Convention**) as a non-member of the Council of Europe party,¹⁵⁹ nor is Rwanda a pathfinding country for the Global Partnership to End Violence Against Children.¹⁶⁰

Distribution of CSEA Content Online

The Rw-CSIRT, Digital Forensic Laboratory, toll-free hotlines through the RNP and NCC, Community Policing Programmes and multiple international cooperation initiatives, with Interpol and other law enforcement agencies, aim to tackle online CSEA. Rwanda is also committed to forging partnerships with the ICT industry.¹⁶¹

The COP Policy aims to promote safety-by-design, corporate responsibility and cultural awareness of child online protection.¹⁶² It intends to do this by:

- introducing corporate responsibility standards, which will require corporates that want to extend their online services into Rwanda to demonstrate the procedures and considerations undertaken to ensure child online safety;
- implementing safety rights by design, with standards and codes of practice which aim to prevent children from seeing harmful or inappropriate content and protect children's online privacy;
- applying an age-rating classification;
- putting in place a flagging system, so that harmful content can be identified and reported, together with

a free public hotline to report and access specialist support and advice;

- providing mechanisms to enable harmful content to be taken down;
- instituting an internet surveillance system that will detect harmful content with any content depicting violent, nude and abusive images targeting children being collected, analysed and stored for future investigations; and
- building a database of digital child abuse images and cases, which will function as a tool to monitor internet activity and link cases to identify survivors and criminals using image hash values. The software's intelligence capabilities will determine the level of harmfulness of a picture for use during prosecution and sentencing.

Awareness & Education

There is a general lack of awareness on where CSEA survivors can access help and services. Of reported females who had experienced sexual abuse before the age of 18 in the Violence Against Children Survey, only 35 per cent knew of a place to seek help.¹⁶³

In October 2020, the government launched the National Campaign on Ending Child Sexual Abuse, a year-long campaign which has the slogan 'My voice, my rights against sexual abuse'.¹⁶⁴ The campaign will try to raise awareness in communities on preventing and responding to child sexual abuse. Other targeted actions that will take place in parallel with the campaign include the launch of the national sex offenders registry, research on the root causes of child sexual abuse cases and 'mapping all victims of child sexual abuse as part of providing them with holistic support'.

At the launch, the Minister of Gender and Family Promotion, Professor Jeanette Bayisenge, urged people to work together to address child sexual abuse, stating, 'it should be everyone's responsibility; us policy makers, Development partners, Civil Society, FBOs, parents and the community at large; we should all be concerned on this matter that has enormous effects on our children.'¹⁶⁵

Before these recent initiatives, the Rwandan government, through the then Ministry of Local Government, Information and Social Affairs had already committed itself to developing CSEA prevention mechanisms through the 2003 National Policy for Orphans and Vulnerable Children.¹⁶⁶ This policy's aims included:

- ensuring that laws protecting children (and in particular, orphans and other vulnerable children) from CSEA are enforced;
- providing support services for CSEA survivors through the sensitisation of actors (the public sector, private sector, NGOs, communities and children in these communities);
- conducting a country wide and in-depth study on CSEA, which was undertaken in the Violence Against Children Survey;
- providing medical, social and legal assistance to affected children; and
- establishing prevention and adequate reporting mechanisms.¹⁶⁷

The Rwandan Government does not appear to have provided an update on the efficacy of this policy since its release in 2003.

The TIP Report has reported that the Rwanda government has, despite limited resources, taken considerable actions to improve trafficking awareness and education, including providing additional training as part of the professional development curricula and standard training for immigration officers, police, labour inspectors, judges, and social workers.¹⁶⁸

Recently, the Ministry of Gender and Family Promotion, the National Commission of Children and World Vision Rwanda have joined to roll out the new advocacy campaign called It Takes Every Rwandan to End Child Exploitation.¹⁶⁹ It aims to contribute to the increased protection of children from child labour and sexual exploitation by 2022.¹⁷⁰

Recommendations

There are several steps that the government of Rwanda should take as a matter of priority to help combat CSEA offences in Rwanda.

Legal

- Articles 20 and 21 of the Lanzarote Convention should be fully incorporated into domestic law.
- Outdated terminology relating to sexual offences, such as 'child defilement' and 'child pornography' should be removed and replaced with survivor-centric, accurate and descriptive language that better reflects the seriousness of the offences.
- The government should adopt an updated national anti-trafficking action plan that takes into account regional complexities.¹⁷¹
- Legislation dealing with online CSEA should be amended in line with international standards and best practice, to:
 - define child sexual abuse material and in this definition, refer to material that depicts not only children, but also persons appearing to be children or realistic images representing children engaged in sexually explicit conduct;
 - criminalise the possession and procuring of CASM;
 - define online grooming and criminalise it even if there is no intent to meet; and
 - provide more stringent penalties and enhance sentencing where necessary.
- Data protection regulations should be introduced, with children's data being afforded a special category status.¹⁷²
- The drafting of Article 26 of the Child Protection Law should be rectified so that it is clear that a child's identity must not be disclosed to the public or media.
- In circumstances where the survivor's age is uncertain and there are reasons to believe that the survivor may be a child, a presumption that a survivor

is a child (and so treated as a child pending verification of their age) should be incorporated into all relevant legislation.

- Double criminality requirements in the Penal Code and Extradition Law should be removed.
- Extraterritorial application should be extended to include offences committed:
 - against children resident in Rwanda or foreign children, under the Criminal Procedure Law;
 - against foreign children by Rwanda nationals, under the Penal Code;
 - by Rwandan residents, under the Penal Code; and
 - against children resident in Rwanda where the offence is committed in a foreign country, under the TIP Law.
- The protection against extradition extended to Rwandan nationals should be abolished.
- Legislation should expressly provide that corroboration of witness testimony is not required and that evidence of prior sexual conduct is inadmissible and irrelevant.
- Rwanda should ratify:
 - the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure;
 - the UNWTO Framework Convention on Tourism Ethics; and
 - child online protection related international treaties and protocols.

Prosecution

- The government should work with local leaders and other bodies to encourage children, their families and community members to report CSEA offences. An emphasis should be placed on the importance of reporting to ensure perpetrators are ultimately brought to justice.

— Effective investigations and prosecutions should be increased.

— The government should seek to enforce existing laws. For example, in 2019, Rwanda did not convict any individuals for the crime of human trafficking despite the presence of forced labour and sex trafficking in the country.

— Health and social workers should be educated on how to treat CSEA survivors in a survivor-centric manner. They should be trained on how:

- to collect evidence to ensure that it can be used in prosecution and in a manner that will respect the wishes of the survivor;
- to preserve evidence; and
- best to support the survivor through to trial.

— CSEA survivors (including teen mothers) should be provided with access to free legal services.

— Zero-tolerance policies for child marriage and teenage pregnancy should be adopted and relevant legal protections enforced.

— The government should undertake anonymous surveys, carry out active enquiries directly in communities of concern and complete more police investigations to ensure it gathers more accurate statistical information on the state of CSEA in Rwanda.

— A survivor-witness support programme should be put in place and those working with survivors and witnesses (including police and legal professionals) should be provided with additional training on how to do so.¹⁷³

— Sex trafficking investigations and prosecutions should be increased, while ensuring that due process and human rights are respected throughout the process.¹⁷⁴

— The specific protections afforded to trafficking survivors during criminal proceedings under the TIP Law should be extended to all CSEA survivors.

— The capacity and skills of law enforcement agencies dealing with online CSEA should be strengthened, which includes:

- training first responders up to judges on identifying offending behaviour and providing survivors with support; and
- enhancing the existing capabilities of Rw-CSIRT and the Police Cybercrime and Investigation Centre to detect, prevent and respond to threats, thereby strengthening criminal investigation, prosecution and sentencing for online CSEA.¹⁷⁵

Protection

— More attention should be directed towards protecting all vulnerable children, not only refugees and children seeking refugee status.

— Additional protective measures, including clear, effective and survivor-focused reporting mechanisms, should be put in place for children to report CSEA offences directly to institutions and individuals that they trust.

— The government should seek to amend the criminal justice system, and introduce initiatives, to prevent families from settling disputes outside of the formal criminal justice system.

— Training and additional economic resources should be provided on an ongoing basis to law enforcement officials, legal professionals, labour inspectors, and social workers on recognising and preventing CSEA offences and on how to support survivors and their families through trauma.

— The government should seek to dedicate additional resources to One Stop Centres. The government should also look to extend the network of centres so that no child is unable to access support services due to living too far away.

— Trafficking survivor and shelter services should be expanded, with shelter services extended to include male survivors.¹⁷⁶

Prevention

— The government and other bodies should provide monetary support to meet the basic needs of vulnerable children to reduce their likelihood of becoming sexually exploited.

— The government should focus on systematic screening and identification of child trafficking survivors, especially among vulnerable populations such as refugees.¹⁷⁷

— A centralised database of trafficking crimes representing all types of trafficking should be implemented, and law enforcement and immigration officials should be trained how to use it.¹⁷⁸

— A national trafficking referral mechanism should be finalised and implemented, with officials trained how to use it.¹⁷⁹

— Legislation should prohibit convicted CSEA offenders from having contact with children. Background checks on potential employees who want to be involved in childcare, teaching or any other form of work involving close contact with children should be required by legislation.

— A national steering committee and stakeholder group of experts should be established for tackling online CSEA, together with establishing a coordinated multi-stakeholder framework to tackle online CSEA that will:

- establish methods of notice and takedown of illegal CSAM, including establishment of protocols and legislation so that local internet service providers can block access to hosts who fail to take down notified content; and
- establish an offender risk management process, by training law enforcement and legal practitioners to recognise and investigate problematic behaviours.¹⁸⁰

— The government should continue global cooperation and sharing of best practice, and should formalise collaborations for joint public-private partnership investments in cybersecurity, child online protection capacity building, innovation, law enforcement, the justice system and education.¹⁸¹

Cultural/Education

— The government should work together with community leaders and local police forces to educate influential village leaders on CSEA offences (including on how to support survivors), in order for information on CSEA to be disseminated through trusted community members who are best placed to change perceptions in their communities.

— Education should be provided to communities on sexual and reproductive health rights, sexually transmitted diseases (including HIV/AIDS), teenage pregnancy, how to recognise situations in which children might be exploited, and what to do in those situations. Schools should implement training for children on gender equality and sexual education, including on the principles and importance of consent and safe sexual activity.

— A national campaign should be led by the government in cooperation with relevant NGOs to educate the public on CSEA, in order to end the culture of silence and end stigmatisation of CSEA survivors.

— Improve access to medical care and birth registration systems for teenage mothers.

— Communities should be educated on using correct terminology and recognising teen mothers impregnated by older men as CSEA survivors, to avoid these children being made to feel responsible for what has happened to them.

— The government and stakeholders should increase child online safety education and public awareness, including:

- establishing “COP Leads” (champions to operate clubs in schools and inculcate a culture of safety), who will be trained on reporting and will assist to facilitate intervention plans;
 - promoting edutainment on digital skills;
 - incorporating child online protection into digital literacy in school curricula, to ensure that children are aware of the risks and benefits of using technology and understand protective and preventative measures;
 - training teachers and those involved in professional development;
 - developing a public awareness program with simplified information on the relevant Ministry’s website, with targeted messages and materials for vulnerable children; and
 - embedding child online safety into informal education, including community groups, early childhood centres, youth clubs, families, churches and digital platforms.¹⁸²
- Research and development should be undertaken on child online safety to provide an understanding of children’s online experience in Rwanda, by:
- translating research evidence into the development of products and services that incorporate safety-by-design and enable the evaluation of child online protection practice; and
 - empowering a centre of research excellence at a chosen higher learning institution.

The Seychelles

The Seychelles' criminal justice system has consistently displayed a willingness to prosecute cases involving CSEA, including by researching the nature and extent of such abuse happening in the country, understanding the root causes, training the judiciary and law-enforcement, and organising education campaigns in all primary schools in the country.¹ In 2015, a police child protection team was established with the intention of fast tracking child abuse cases.² Recent cases have shown, however, that there are gaps in the law that need addressing. Additionally, specific sensitisation training on CSEA offences is required for the police department, social services, and the judiciary to ensure seamless implementation of the law and conviction of the perpetrators of CSEA.

In the latest US State Department Trafficking in Persons Report, increasing efforts were noted by the Seychelles to combat the trafficking of children.³ However, this is a recent development as it has been reported in past reporting periods that the Seychelles has not demonstrated consistent efforts to combat the trafficking of children and that the Seychelles' response to trafficking is lacking.⁴

Limitations in addressing CSEA stem principally from the internal justice and judicial system. The implementation of the new Domestic Violence Act may address some of these issues, however there is legislation that has already been implemented in the Seychelles leading to only slightly increased convictions.⁵ It would take a change of heart, mind and attitude of people in the relevant authorities with the powers under legislation to be fully committed to enforce the existing laws. Anecdotal evidence suggests that the issue that stifles the prosecution of CSEA in the Seychelles is not so much a matter of deficiencies in the current domestic laws (although they do also exist), but rather the capability of the responsible local actors to implement the same which is at fault. A change in the perception of CSEA offences is also needed, to encourage survivors to come forward, to disclose instances of abuse, and to aid in the conviction of offenders.

CSEA Profile

Cases of CSEA which have reached the courts in the Seychelles in recent years, as well as a recent judgment in *R v ML and Ors*,⁶ have highlighted the dangers posed by social media platforms, which enable sexual predators to target and groom children.⁷ Offenders are able to elicit illicit images of

a child by first befriending them on Facebook, and subsequently blackmailing the survivors into sexual conduct with the offender with threats of sharing their illicit images. The cases have also shown that a culture of victim shaming, with little attention given to understanding the survivors and how they were manipulated, leads to children giving in to their abuser's blackmail for fear of illicit photos or the suffered abuse being made public.

Seychellois children have also been found to be survivors of sex trafficking in the Seychelles, particularly on the main island of Mahé. Incidents of abuse have been committed by human traffickers as well by peers, family members and pimps who exploit children in bars, guest houses, hotels, brothels, private homes, and on the street.⁸

The Seychelles is a very small jurisdiction (as a group of small islands) with a population of only 90,000. Due to the small size of the population, anecdotal evidence suggests that there is a fear of social stigma and backlash connected with CSEA which prevents cases from being brought forward by survivors, who are reluctant to prosecute abusers. Cases are often unreported as instances of CSEA are socially and culturally considered to bring shame on the family.⁹ This fear of bringing shame on the family often results in cases of CSEA being "swept under the carpet" by the survivor's family.

Where CSEA cases are reported to the police, few make their way through to formal prosecution by the Attorney General's Office. Of those that do, very few progress through the full legal process to achieve a conviction and an officially published legal report.¹⁰

The prevalence of child marriage in the Seychelles is unknown as no statistics are currently available.¹¹

In Article 40 of the Civil Status Act, the legal age for marriage for females is 15, while for males it is 18. This has been criticised as discriminatory.¹² Whilst Articles 46 and 47 provide that marriages of children must not take place without the consent of a parent, guardian or judge, the age of marriage for girls is still very low. In its 2012 review, the UN Committee of the Convention on the Rights of the Child expressed concern that the Seychelles had not amended its legislation to prohibit all children under the age of 18 from entering into marriage.¹³

Recent Developments

Before delving into the criminalisation, prosecution and prevention of CSEA in the Seychelles, it is worth considering recent developments in this area which will significantly impact how CSEA offences are processed domestically.

*R v ML and Ors*¹⁴

In April 2020, the Supreme Court sentenced three accused men to 25, 12 and eight years' imprisonment on 26 sexual offences charges committed against children. The first accused used a fake identity on Facebook to lure and groom young girls by promising modelling jobs and opportunities to earn money. He asked for photographs, either in connection with an alleged modelling opportunity or in exchange for money. Once the accused convinced the children to send him nude photographs of themselves, the accused would ask the survivors for sexual favours. When the children refused to carry out the sexual acts with the accused and others (being the other accused individuals), they were threatened with having their explicit images and identities exposed. The accused filmed some of these encounters.

During the investigations, the police discovered the pattern by which the first accused operated and found evidence of 75 individuals being contacted, some as young as 10 years old. The trial focused on the abuse of five survivors, of which four were minors as young as 13 years old. Furthermore, the police had found ample evidence, such as video recordings and photographs, in the possession of the accused.

In sentencing, the Supreme Court evaluated the contribution to the crime of each accused and attributed to each a sentence of varying severity: the principal accused was sentenced to 25 years in prison, listed on the Sexual Offenders Register (which ensures that all his interactions with children will be closely monitored), and was prohibited from using social media of any kind. The second accused, who was a police officer, was sentenced to 12 years' imprisonment on one count of sexual assault. In the case of the second accused, the abuse of a position of power as an individual entrusted by the state to ensure the safety of children was taken into account in his sentencing, which resulted in a more severe sentence. The final accused individual was sentenced to eight years' imprisonment on one count of sexual assault. When deciding the level of sentencing for the third accused, the court took into account that the accused was 18 years old at the time of the offence and that he was a first-time offender, with these facts reducing his sentence.

Additionally, the collective guilty plea of all three accused individuals was taken into account in the sentencing process, enabling the survivors to achieve justice without having to relive the trauma of their abuses by testifying in court.

Child Law Reform Committee

The aforementioned case prompted the creation of a high-level national committee, the Seychelles Child Law Reform Committee (the **CLRC**), by former President Danny Faure.¹⁵ The role of the CLRC is to review the existing legal framework applicable to children and make recommendations for legal reform to ensure the protection of children in line with the Seychelles' constitutional and international legal obligations and best practice. The recommendations are to be contained in a National Plan on Child Protection (the **National Plan**). The CLRC consists of members of the government (the Designated Minister for Home Affairs and Local Government, the Minister of Family Affairs, Minister for Education and Human Resource Development, the Principal Secretary for Social Affairs, the Secretary for Health, and the Deputy Cabinet Secretary for Policy Affairs) as well as members of the justice system (the Attorney General, the Former-Chief Justice (current Appeal Court Judge) and the Commissioner of Police), and the Chairperson of the National Commission for Child Protection.¹⁶

The CLRC's first meeting with former President Danny Faure was held in May 2020, at which the work of different groups providing child protection services was evaluated to assess the successes and shortcomings with the aim to address the gaps that currently exist in the law and services around CSEA in the Seychelles.¹⁷ The National Plan is intended to encapsulate all recommendations, among which will feature the creation of a national body that will oversee the work of all the sectors involved in dealing with children. The National Committee for Child Protection (the NCCP), a sub-high level committee which is currently overseeing all sectors involved in dealing with children, has been seen to be lacking in powers in its current form and will in future be turned into an authorised body with certain powers to delegate.¹⁸

The CLRC's second meeting with former President Danny Faure was held in August 2020. A major point of discussion at this meeting was the development of the National Plan, with all the recommendations due for implementation, including the timeframe and financial considerations. A part of these discussions was the recommendation to create a 'one-stop' child-friendly facility for child protection services. The CLRC is working with all stakeholders to address gaps in the laws, structure, rules and services relating to child protection.¹⁹

Following the general election in October 2020, in which the opposition leader won for the first time since 1977, the new President, Wavel Ramkalawan, gave the Chairman of the CLRC, Chief Justice Mathilda Twomey (the **Chairman**), the remit to continue with their work.²⁰

The Chairman announced that following the initial review, several themes and issues were identified which necessitated a further review of specific laws, including the Penal Code, the Children's Act, the Evidence Act, the Criminal Procedure Code and corresponding regulations and policies.²¹ The CLRC began the review by looking at the Seychelles Penal Code, which provides for sexual offences involving children. The CLRC acknowledged positive amendments to the Penal Code but noted that certain provisions remain inconsistent with the Seychelles' international obligations and do not give full effect to the protections contained in the Constitution.²² Furthermore, the Penal Code only has a limited number of offences that are relevant to children; it does not cover new forms of sexual

assault and harmful conduct facilitated by technology and in some instances risks criminalising the conduct of child survivors.²³

Having reviewed the Penal Code, the CLRC agreed that to properly evaluate the adequacy of laws dealing with CSEA, the broader sexual offences regime that is applicable to all sexual offences (including against adults), and the corresponding laws of evidence and criminal procedure, must be reviewed.²⁴ Through its review, the CLRC concluded that any sexual offence which can be committed against an adult can also be committed against a child, and that a robust sexual offences legal framework is essential in addition to child specific sexual offences. Consequently, the CLRC agreed that it would propose a stand-alone dedicated sexual offences law and would develop a draft framework to this effect.²⁵ The piece of legislation will include a range of provisions including, but not limited to, offences involving sexual grooming, the use of intimate images and sexual communication with children through social media and other platforms, as well as harassment offences such as cat calling and blackmail.²⁶ It is understood that the Committee will also recommend a range of procedural laws which aim to safeguard children in the criminal justice system, and impose obligations on the police, prosecutors, social services and judges when investigating and adjudicating on CSEA offences.²⁷

The CLRC aims to share its recommendations and the draft legal framework with the President and further recommend that extensive public consultation be conducted, including a dedicated Children's Conference, to ensure the voices of children are heard and inform any new laws intended to enhance their protection.²⁸

Criminalisation/Legislation

As noted above, the legal framework around CSEA offences is currently being reviewed by the CLRC, with the outcome expected in 2021. This section provides an overview of the criminalisation of CSEA offences in the Seychelles as it currently stands.

Classification of Sexual Offences with Children

There are separate classifications of sexual offences against children in the Seychelles.

Section 135 of the Penal Code states that a person who commits an act of indecency towards another person who is under 15 years old is guilty of an offence and liable to imprisonment for 20 years. However, a person is not guilty of an offence under this section if at the time of the offence the survivor was 14 years old or older and the accused had reasonable grounds to believe that the survivor was over 15 years old.

A person is also not guilty if the survivor is the spouse of the accused, which can include children. The permitted legal age for marriage in the country is 18 for both sexes, however girls over 15 years old are able to get married with their parents' written consent.²⁹

The law does not currently criminalise acting with intent to sexually abuse or exploit a child, or grooming a child as a precursor to sexual activity.

Section 136 of the Penal Code criminalises sexual interference with a dependant. A person who interferes sexually with another person aged from 15 to 17 years (the 'victim') who is dependent on the first-mentioned person but is not their spouse, or is closely related by blood to them, is guilty of an offence and is liable to imprisonment for 20 years.

Section 152 of the Penal Code criminalises the 'Display of or traffic in indecent material', which can be interpreted as the production and distribution of child sexual abuse images and materials. Those found guilty of this offence are liable to imprisonment for five years. However, there is no law which explicitly addresses the making, sharing or viewing of indecent images and videos of children.

Lanzarote Convention

The Seychelles Penal Code mostly includes the offences prescribed in The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**). For example, a child is defined as a person under 18 years of age. Under the Seychelles Penal Code, however, for the purposes of child sexual offences, a child is defined as a person under 15 years of age, while children between 15 and 18 are considered dependants.

Articles 18 to 24 are covered under the Penal Code, while Articles 26 to 29 are currently not clearly provided for.

Age of Consent & Definition of a Child

The age of consent in the Seychelles is 15. The age of consent is standardised across the country and does not differ between sexual acts. Therefore, a person under 15 cannot give consent to have sexual intercourse.

The difference between the age of consent and the age of majority (18) in the Seychelles has been cited as complicating measures to address child sexual exploitation and the prosecution of offenders, namely by the UN Special Rapporteur on Trafficking in Persons, Joy Ngozi Ezeilo.³⁰

Trafficking

Section 4 of the Prohibition of Trafficking in Persons Act (2014) criminalises the trafficking of children. A person who recruits, harbours, transfers, receives a child, knowingly or recklessly disregarding that the person is a child, for the purposes of exploitation (e.g. sexual exploitation, forced labour of services, subjecting a person to practices similar to slavery, forced marriage), commits the offence of trafficking and is liable to up to 25 years' imprisonment or a fine up to SCR 800,000.

Whilst adopting or fostering a child with the intention of exploitation him or her is an offence under the Prohibition of Trafficking in Persons Act (2014), there are no specific laws regarding grooming a child as a precursor to sexual activity.

Extraterritoriality

The application of Seychelles' criminal laws is primarily territorial. It does not limit prosecution based on the nationality or resident status of the survivor or perpetrator, if the act is carried out in the territory of the Seychelles.

Section 7 of the Penal Code provides that a person can be prosecuted in the Seychelles if they commit any act partly in the Seychelles and partly elsewhere that constitutes an offence in the Seychelles. However, the legal framework falls short of providing a comprehensive framework for extraterritorial

prosecution of CSEA in the Seychelles and should be improved.

Extradition

The Seychelles considers CSEA offences such as assault occasioning actual bodily harm, rape, unlawful sexual intercourse, indecent assault, procuring or trafficking in persons for immoral purposes, and stealing, abandoning or exposing or unlawfully detaining a child, to be extraditable offences outright, due to their inclusion in the first schedule to the Extradition Act, which lists extraditable offences. A suspect can also be extradited for offences established under international conventions or agreements to which the requesting country or state and the Seychelles are parties.

Extradition to Commonwealth countries can be granted by the Seychelles without bilateral agreements. For non-Commonwealth countries, the Extradition Act requires that there be a bilateral agreement. The only non-Commonwealth country currently covered by the Extradition Act is Belgium.

A suspect can be extradited to another country to stand trial for breaking the CSEA laws of that country only if a similar law exists in the extraditing country (double criminality). Extraditable offences must also be punishable with at least 12 months' imprisonment.

The double criminality rule hinders the prosecution of sexual offences as the age of consent in the Seychelles is lower than that recommended by international conventions. Since 15 is the age of consent to sexual activity in the Seychelles, the perpetrator will not have technically committed an offence even if the perpetrator's home country provides for a higher age of consent.

Other

Juvenile Offenders

The minimum age of criminal responsibility in the Seychelles is 12, with children between the age of seven and 12 able to be held responsible if they demonstrate the capacity to understand that they have committed a criminal act.³¹

Treatment of Children of Different Genders

The law currently discriminates against male survivors of CSEA. For example, if an individual engages in CSEA and there is doubt concerning the child's age, the Penal Code provides for the presumption of knowledge of age for offences against a woman or girl only.

Further, under Section 150 of the Penal Code, it is immaterial in the case of any CSEA offence committed against a woman or girl under a specified age that the accused person did not know that the woman or girl was under that age, or believed she was not under that age. This does not apply to male survivors.

Protection of Survivors or Others who Report CSEA Offences from Personal Liability

There is no specific provision granting amnesty to survivors or others who, by virtue of reporting CSEA offences, could be exposed to personal liability for an illegal act. For example, there is no specific provision contained in the law for non-liability/non-prosecution for prostitution by survivors of trafficking. However, regarding immigration, section 17 of the Prohibition in Trafficking of Persons Act, states: "A survivor of trafficking shall not be detained, charged or prosecuted for illegal entry into the Seychelles."

In addition, the new Domestic Violence Act 2020 (Section 6) expressly states that any person who has reason to believe that an act of domestic violence has been or is being committed may report it to the police and no liability, civil or criminal, will be incurred by any person for giving such information to the police in good faith. CSEA offences are covered by the Domestic Violence Act, where acts of domestic violence, as defined in section 3 of the Act, are committed against children.

Gaps in Criminalisation

It is clear therefore that there are certain gaps which the Seychelles should address to better criminalise CSEA offences. This includes:

— Article 26, Corporate liability; 27, Sanctions and measures; 28, Aggravating circumstances; and 29. Previous convictions in the Lanzarote Convention are not presently reflected in the Seychelles legislation addressing CSEA.

— The age of consent and definition of a child (for the purposes of child sexual offences) is currently 15 years. This does not comply with the international standard of 18.

— The difference between the age of consent and the age of majority (15) can complicate measures to address CSEA.

— Current legislation allows for a girl under the age of 18 to marry if her parents give their consent.

— An offender cannot currently be prosecuted for the sexual abuse or exploitation of a child if they are married to that child.

— The approach to sexual offences against children differs according to the sex of the survivor, with male survivors not afforded the same protections as female survivors.

— Acting with intent to abuse a child or grooming a child as a precursor to sexual activity is not currently criminalised.

— New forms of sexual assault and harmful conduct facilitated by technology, including online child sexual exploitation, the distribution of CSEA materials and facilitation of online abuse, are not currently criminalised.

— Extraterritorial jurisdiction over CSEA offences committed outside the Seychelles by citizens or residents is not currently provided for in existing legislation.

— In order for extradition to take place, currently the offence must be recognised both in the Seychelles and in the perpetrators' country of origin, and the offence must be punishable by at least 12 months in prison. This may serve to undermine efforts to prosecute CSEA offenders who act overseas.

— Those who report CSEA offences, including children themselves, are not currently protected from prosecution if they themselves have committed an illegal act, apart from in domestic violence and immigration contexts. This could result in fewer people coming forward to report suspected cases of CSEA out of fear of punishment for an unrelated crime they have committed.

Prosecution

CSEA cases (as all criminal cases) are prosecuted by public prosecutors based in the Attorney General's Office, who are subject to the expressed directions of the Attorney General.

Initiating Prosecution

There is no requirement on the survivor to first formally file a complaint or take any other procedural action in order to initiate prosecution. A CSEA offence can be brought directly to the attention of the police department by the survivor, a parent or any other third party. As mentioned above, the new Domestic Violence Act enables any person who has reason to believe that an act of domestic violence has been or is being committed to report it to the police. An act of domestic violence may include CSEA when committed against a child. There is no express time limit in the law within which this must be done. There are also no restrictions on parents and legal guardians reporting CSEA offences on behalf of children.

It has been reported that authorities in the Seychelles do not prioritise domestic violence cases, under which CSEA offences can fall, and police lack comprehensive training in handling sexual assault cases.³²

Investigation & Evidence

The process through which the survivor of a crime identifies the accused during investigation proceedings has been cited as flawed by Former-Chief Justice Mathilda Twomey, among other critics.³³ Presently, an identity parade is set up, but the survivor has to stand in front of the line-up and touch the perpetrator in order to indicate that they are the one who has harmed them. This process can have clear traumatic consequences for the survivor, and may even lead to them not wanting to pursue the investigation and prosecution.³⁴

In certain cases, the police department is unable to complete comprehensive and targeted acquisitions of evidence which may be relied on by the courts. Anecdotal evidence suggests that this is due to a lack of smooth collaboration between the various departments involved in obtaining evidence and due to the police departments being under-resourced and

under-skilled. A 2021 study concerning the use of forensic science in the Seychelles found that there is need for reform of this form of evidence collection in the police service, and that an independent technical advisory committee should be launched to provide oversight and facilitate the development of forensic activities.³⁵ This issue has also been highlighted by the former-Designated Minister for Internal Affairs, who proposed the establishment of a "one-stop-shop" for survivors of CSEA and the investigation of their cases.³⁶

Unwillingness to Proceed with a 'Formal' Trial

Most reported domestic violence cases are withdrawn due to the impact of societal stigma or reluctance to enter into a lengthy court case.³⁷ The former National Council for Children (the **NCC**) spokesperson Jean-Claude Matombe has reported that most often children do not report the abuse in the first place because of fear, shame or pressure from their family.³⁸

Gaps in Prosecution

There are certain gaps and factors that impact the prosecution of CSEA in the Seychelles. These include:

— A lack of prioritisation to investigate and prosecute cases of domestic abuse, which CSEA can fall under.

— Limited resources and a lack of training of police departments regarding the handling of sexual assault cases, leaving law enforcement under-skilled.

— The inability of the police to complete comprehensive and targeted acquisitions of evidence, which may therefore undermine prosecution efforts.

— Survivors of crime are not fully protected from potential re-victimisation during the investigation process.

— Societal stigma, fear of a lengthy court case and family pressure results in survivors being less prone to pursue formal justice for the offences that have been committed against them.

— A lack of action to prosecute CSEA offences occurring from online content. Although the Penal Code does somewhat criminalise CSEA content being made or distributed online, it is not explicitly addressed and there are no known actions that the government has taken to prosecute those responsible.

Protection

Protection of Survivors During Proceedings

There are provisions in Seychelles' law which allow for the protection of survivors of CSEA during proceedings, which are detailed in the Evidence Act (2014). Special arrangements for "vulnerable witnesses", which include survivors under the age of 16 and all survivors of sexual offences, can be made so that either: a) the evidence of a witness can be given outside the courtroom and simultaneously transmitted to the courtroom by means of close circuit-television; b) the witness's view of the accused is obscured so as not to intimidate or otherwise cause distress to the witness, and allowing the witness to give evidence behind a screen, partition or one-way glass; or c) a witness can be accompanied by a relative or friend to provide emotional support to the witness.

However, the actual protection of children during trial proceedings has been called into question. Former-Chief Justice Mathilda Twomey argues that "procedures in trials of sexual assaults involving children in the Seychelles need to be addressed seriously and immediately."³⁹ In the case of the 2018 appeal in *The Republic v Graham Pothin*,⁴⁰ it was noted that the child survivor was subjected to "traumatic and disrespectful cross-examination", which led to a temporary recanting of her claim that her father had sexually assaulted her. "We need to review our child protection measures, so that we sensitise our lawyers and judges to protect children from any further victimisation in our courtrooms, and we need to treat these cases with the seriousness that they deserve," Twomey concluded.

Protection of Children in General

Generally, Social Services provides services to assist, support and protect survivors of CSEA or those likely to be targeted survivors of CSEA, including protecting abused children and those that

are at risk of harm through clear intervention plans, registering children who are at risk, and working in close collaboration with child protection partners.⁴¹

The Director of Social Services maintains the child protection register (Social Services' Internal Child Protection Register) which registers when a child has been identified as being at risk of significant harm. Once a child is on the Register, it will be assigned a social worker who will draw up a Child Protection Plan, in collaboration with professional staff, parents and the child, where appropriate.⁴² The Child Protection Plan will help address the child's needs, ensure he or she is safe and that the child and the family receive the help and support they need.⁴³ The Plan is drawn up in a case conference, which decides that there may or there is a likelihood that the child is at risk of significant harm.⁴⁴ A child is deregistered when the risk factors have been eliminated or turns 18.⁴⁵

In their 2017 report to the UNCRC, the Seychelles' government cited "significant challenges" in protecting children through their Social Services system because of a lack of human resources. They report that the pressures of the job results in "social workers often leaving their service due to burn out", resulting in a gap in service delivery.⁴⁶

Currently, the National Council for Children (the NCC) established under the NCC Act 1981⁴⁷ is a key organisation for child protection in the Seychelles. The statutory functions of NCC include advocating for the protection of children, initiating reforms in legislation, policies and practices pertaining to children, advising Government and agencies on issues relating to the welfare of children, collaborating with service providers and other organisations to further protection of children, and raising funds in the Seychelles or elsewhere to enable it to carry out the aforementioned functions. The NCC commits itself to fulfilling the terms of the United Nations' Convention on the Rights of the Child, which has been ratified by the Government of the Seychelles.

The Family Violence Act (which is due to be repealed and replaced by the new Domestic Violence Act) enables the Ministry for Social Affairs to intervene in cases of "family violence" in the home (which may include CSEA) to provide protection for a child through the application of a "protection order".

An application for a protection order can be made to the Family Tribunal (the Tribunal) in the case of a child: (i) by a parent or guardian of the child; (ii) by a person with whom the child normally or regularly resides; (iii) by the Director of Social Affairs; (iv) by the child, with the leave of the Tribunal, if the child has reached the age of 14.

It is an offence under the Family Violence Act to breach a protection order, and a person who intentionally contravenes an interim protection order or a protection order will be guilty of an offence and liable on conviction before the Family Tribunal to a fine of SCR 30,000, to imprisonment for three years, or both as the Tribunal may deem appropriate.

Under the new Domestic Violence Act 2020⁴⁸ (section 22), the Minister for Social Services has a duty to ensure that constant access to the uptake of services is provided to an aggrieved person and other persons who are affected by domestic violence, including members of their families and their dependents.

Furthermore, the Ministry responsible for Family Affairs is responsible under the new Domestic Violence Act, in consultation with the Commissioner of Police, to establish and maintain regular education and training programmes for police officers to generally acquaint them with handling matters of domestic violence.

The Ministry of Family Affairs' Gender Secretariat implemented the first shelter for survivors of gender-based violence in 2018, but reports have shown that it was rarely used due to a lack of a procedure of admission and a policy that excluded children.⁴⁹

Counselling

The Social Services Division is responsible for the counselling, support and guidance to children and their families.

Social Services also maintains a children's helpline. The helpline operates as a 24-hour telephone service that assists children and families who are in distress. Any concerned citizen may also call on behalf of a child. The caller can remain anonymous.

Protection of Children in Disaster Settings

The Seychelles has no measures applying specifically to child protection or sanction against CSEA in disaster settings or other crises. Considering the Seychelles' status as 'highly vulnerable' to natural disasters, including cyclones, floods, storm surges, landslides and tsunamis, according to the World Bank, this lack of protection is particularly concerning.⁵⁰

Other

Collection and Dissemination of Data on Child Protection

It appears that the collection and dissemination of data on the abuse and exploitation of children is somewhat lacking in the Seychelles. The UN Committee on the Rights of the Child (CRC) previously recommended that the state implemented measures to improve data collection on child protection.⁵¹ Primarily due to financial constraints, the Indian Ocean Child Rights Observatory, which was formed in 2004 to serve as a watchdog body for children's rights in the region, including the Seychelles, was impeded by a lack of funding and was disbanded.⁵²

Prevention

Register of Offenders

Under the Children (Child Protection Register) Regulations 2007, a register is maintained by the Director for Social Services and contains information on persons convicted of offences against children. However, this register is not openly published or available for viewing by the public. The Police Department has access to this and a prospective employer can request in writing for a character certificate to be obtained on the person from the Police Department, which will usually cross-check against all their databases for any registered criminal records.

The law does not provide specific provisions to exclude convicted offenders from activities involving contact with children; however, this can be done by employers by way of background police checks. For example, as a general practice, all Government and parastatal departments usually obtain a character

certificate from the police criminal records. However, there is no legal requirement to do so and not all private employers would necessarily carry out a police background check before employing an individual in connection with children's activities.

Child Online Safety & Distribution of CSEA Content Online

Anecdotal evidence reports that there has been a lack of action to intervene and prevent CSEA offences facilitated by technology occurring and online CSEA content being created. There are no known actions that the government has taken to actively prevent online or dark web CSEA content being distributed and locating or prosecuting those responsible.

Awareness & Education

The Social Services Division contributed to the prevention of CSEA by conducting preventative work regarding the abuse of children (such as awareness-raising via TV adverts and posters in common areas including schools and hospitals) and in-house training of the relevant stakeholders by the respective departments, e.g. social workers, counsellors, and police.⁵³

It has been reported that the Seychelles' government maintained increasing but overall minimal national-level prevention efforts to address trafficking.⁵⁴ The National Coordinating Committee, established to direct anti-trafficking efforts across government agencies and drive national policy, continued to meet, and the government allocated SCR 784,020 (USD 57,560) for committee operations and programming in 2019.⁵⁵ While the Coordinating Committee continued to develop the National Action Plan (the **NAP**), it has not finalised and adopted the NAP, and its efforts to drive national anti-trafficking efforts remain limited overall.⁵⁶

Recommendations

There are several steps which should be taken as a matter of priority to combat CSEA offences against children in the Seychelles.

Legal

— CLRC should publish its recommendations and the draft legal framework as a matter of priority so that they can be implemented.

— An effort should be made to harmonise laws regarding male and female CSEA offences, penalties and punishments as they currently diverge, creating gaps in the protection of survivors.

— There needs to be statutory consistency in who constitutes a “child” for the purposes of CSEA. The law presently varies in defining terminology.

— The dissemination of CSEA content online should be prosecuted to a higher and more serious standard.

— The new Domestic Violence Act (section 27) makes “domestic violence” an offence. However, the penalties do not differentiate between domestic violence offences committed against children or adults. CSEA offences are most often committed by family members, in the context of a child’s home. The lack of different treatment for child survivors makes the penalties under the new Domestic Violence Act appear less severe compared to those committed by strangers outside the home. This needs to be addressed to ensure that survivors of domestic violence continue to report offences and feel supported in seeking justice through the existing criminal justice system.

— The penalties given under the new Domestic Violence Act, where it concerns an aggrieved person who is a child, should be made more severe, especially where CSEA is involved.

— A legal requirement to check the register of sexual offenders, before hiring a person to work with children, should be imposed on employers.

Prosecution

— More financial resources must be dedicated to the investigation and prosecution of all CSEA offences.

— Existing anti-trafficking laws should be utilised, and there should be an increased effort to investigate, prosecute, and convict traffickers with

penalties commensurate to the severity of their crimes.

— The protection of survivors during investigation proceedings must be prioritised, with potential for re-victimisation minimised.

Protection

— Prioritise the creation and implementation of the National Plan prepared by the CLRC.

— Utilise the national centralised anti-trafficking data collection and reporting tool.

— Implement standard operating procedures to systematically identify survivors of all forms of trafficking, and of other CSEA offences, and refer them to appropriate care facilities and resources.

— Provide specialised training to government officials, including members of the National Coordinating Committee of Trafficking in Persons, law enforcement officials, social workers, immigration officials, and labour inspectors, on survivor identification and referral procedures, including for survivors of sex trafficking.

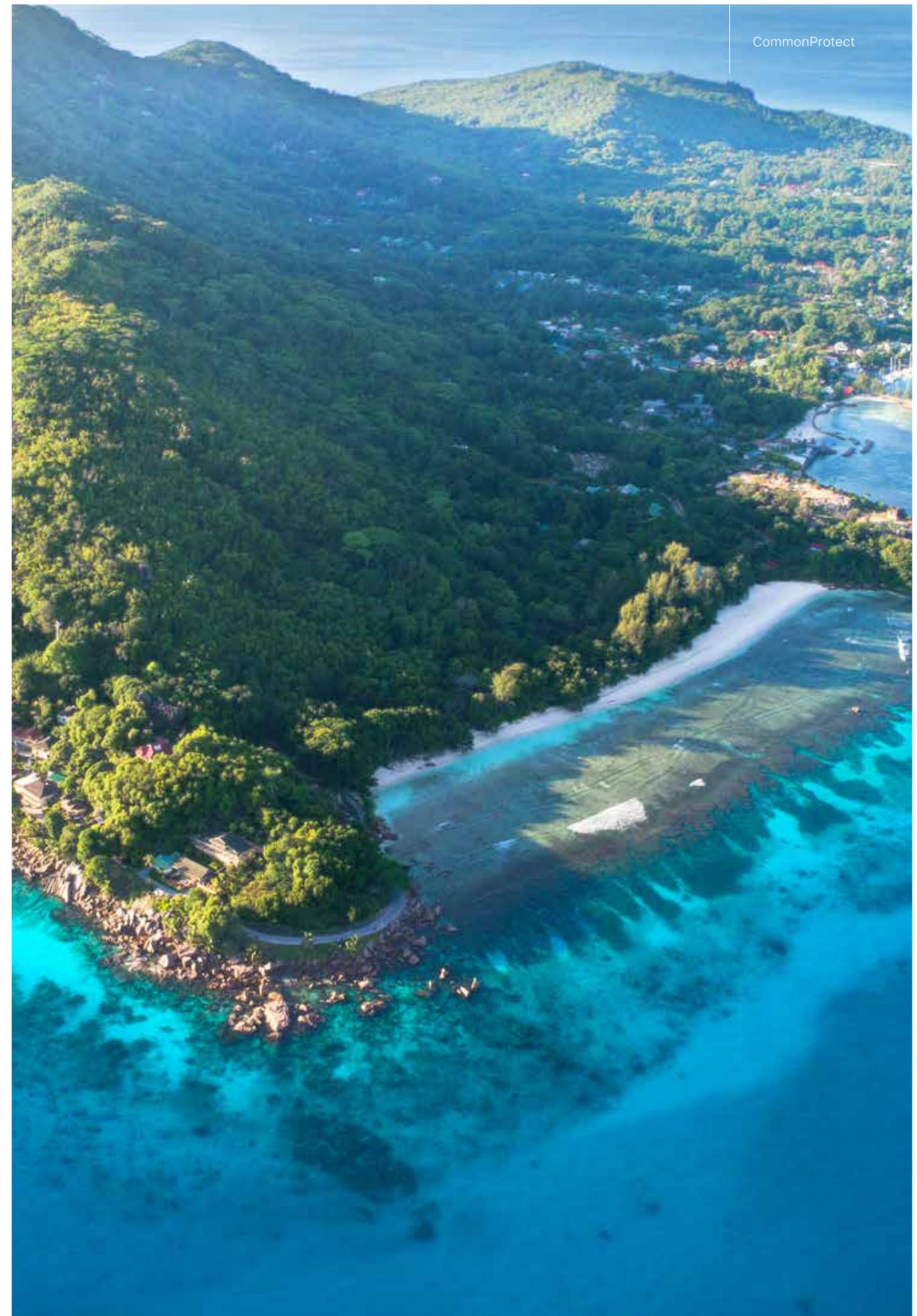
— Establish shelters throughout the country dedicated to trafficking and other survivors CSEA to receive comprehensive and specially tailored care.

— Finalise and adopt a national action plan to drive national efforts to combat all forms of trafficking.

— Improve cooperation between the police and the Social Services Division of the Ministry of Social Affairs and the Community Development and Sports Department (the department responsible for the protection of children, including survivors of CSEA, and who prepare a social services report on which courts often rely).

— The government should work on strategies which would actively help prevent online or dark web CSEA content being distributed and take greater steps to locate and prosecute those responsible for online CSEA-related offences.

— More funds should be committed to anti-trafficking efforts in the Seychelles.



SPOTLIGHT

Cross-Border Crime, Cross-Border Response: Disruptive legal responses to sexual exploitation of children in travel and tourism

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In recent decades, before the covid-19 pandemic, the world population had become increasingly mobile, with domestic and international travel becoming part of more people's lives than ever. With this came an increased vulnerability for children, being subjected to sexual exploitation in travel and tourism settings, with child sex offenders misusing the services and infrastructure of the travel industry to commit their crimes. Post-pandemic tourism has restarted and will likely use technology, along with new travel and tourism products, as it continues.

Historically, traveling child sex offenders were predominantly identified in travel and tourism settings as foreign nationals—often white western men exploiting children in the developing world. Contemporary understanding increasingly recognises domestic and regional offenders. In fact, there is no 'typical' offender when considering these settings.^{242,243} Further, tourism has seen the emergence

of informal services such as home-stays and long-term rentals, and popular trends like 'voluntourism'.²⁴⁴ The growth of such informal settings and travel products has enabled new ways for offenders to access children and made it harder to detect sexual exploitation. Preventing and responding to sexual exploitation in tourism requires policy responses and private sector engagement.

Many countries have national laws that address child sexual exploitation offences, and when these offences occur in travel and tourism settings, they can be addressed with such domestic laws. However, when child sex offenders cross international borders, legislation needs to enable cross-border responses. Along these lines, many states should be commended for introducing 'extraterritorial jurisdiction' for child sexual exploitation crimes. These provisions allow them to prosecute non-citizens for child sexual exploitation crimes committed against their children, no matter where they are. These provisions can also allow the prosecution of a state's own citizens for child sexual exploitation crimes committed abroad. States are thus effectively taking responsibility for travelling child sex offenders from their country, no matter where they offend.

Extraterritorial jurisdiction regarding sexual exploitation of children

Extraterritorial jurisdiction can apply to offences where an offender's country of origin differs from the victim's country of origin. Strong examples of such legislation also cover offences that occur in a third country that neither the offender nor victim are from. Robust legal frameworks that include extraterritoriality can deter offending, as well as reduce impunity for offenders by facilitating law enforcement and legal processes to bring them to justice for their crimes.

These mechanisms must be adopted by *all* countries consistently for greatest impact. Traveling child sex offenders are known to frequent destination countries with lenient laws. Clearly, a starting point in prevention is for destination countries to enhance their legal frameworks for addressing sexual exploitation of children. Apart from this, an extra layer of deterrence is added when states adopt effective extraterritorial measures that cover their citizens when they travel abroad. All states are responsible for ensuring that travelling child sex offenders face punishment at home, regardless of the legality of their actions in any other country. Offenders cannot take a holiday from their own legal system.²⁴⁵ Additionally, states can also introduce other measures to aid the prosecution of offenders by providing in law and implementing extradition mechanisms,²⁴⁶ which ensure the state where the offender is found is required to return them to the country where the offence was committed.

To be effective, extraterritorial jurisdiction addressing the sexual exploitation of children cannot apply what is called 'double criminality'. This principle requires that an offence must be prohibited both in the perpetrator's country of origin and in the country where the offence was committed.²⁴⁷ The requirement for double criminality can undermine the application of extraterritorial jurisdiction for prosecuting travelling child sex offenders. One way to remove the impact of double criminality is for states to consistently define child sexual exploitation.

Mechanisms for collaboration and information exchange in investigating and prosecuting travelling child sex offenders are vital.



Good practice examples

Some commendable efforts to improve legal frameworks relating to child sexual exploitation crimes include regional work by the ASEAN Inter-Parliamentary assembly and the Regional Action Group of the Americas (GARA), which endorsed the legal checklist for key interventions to protect children in travel and tourism as a mechanism to better protect children. As well as this, alignments in legislations made by those states that have ratified the Council of Europe's Lanzarote Convention have helped achieve this.²⁴⁸ The Lanzarote Convention provides concrete measures for national legal frameworks to address child sexual exploitation and is open for accession by states that are not members of the Council of Europe.

ECPAT international recommends that national legislation providing for extraterritorial jurisdiction:

- Explicitly provides for both active²⁴⁹ and passive²⁵⁰ extraterritoriality for all offences of sexual exploitation of children covered by the legislation of the concerned state;
- That extradition is possible for all child sexual exploitation offences; and
- That the principle of double criminality does not apply to child sexual exploitation offences for both extraterritoriality and extradition provisions.

Effective enforcement and implementation

Legal reform alone is insufficient to counteract the sexual exploitation of children in travel and tourism settings. Developing transnational law enforcement cooperation and the capacity of local law enforcement to understand, recognise and proactively approach these crimes is essential to ensure legislation is implemented and policed properly.

The policing of offences covered by extraterritorial jurisdiction should continue to be enhanced by the deployment of international law enforcement liaison officers. These experts are trained and aware of what offences related to child sexual exploitation are covered by their country's extraterritorial jurisdiction.²⁵¹ Where these roles exist, these liaisons work with local law enforcement in their country of deployment to identify and respond to cases that involve their citizens. They also often train and support local law enforcement teams to investigate and respond to sexual exploitation effectively, including using child-sensitive approaches.²⁵²

Mechanisms for collaboration and information exchange in investigating and prosecuting travelling child sex offenders are vital. For example, Australian border officials inform destination countries when a registered child sex offender intends to travel.²⁵³ Similarly, the US Homeland Security's 'Angel Watch Centre' provides referrals to destination countries.²⁵⁴ Interpol green notices, which provide warnings about a person's criminal activities where the person is considered to be a possible threat to public safety, could be expanded to cover all ranges of offences relating to child sexual exploitation.²⁵⁵

Conclusion

As the world becomes increasingly connected and crimes of sexual exploitation of children in travel and tourism settings evolve, legal mechanisms and responses must too. All countries must enact legislation addressing the sexual exploitation of children to end impunity of offenders and protect children. States must also extend and improve national legislation by providing for extraterritorial jurisdiction. Finally, collaborative approaches to law enforcement and information sharing will further enhance the efficacy of responses.

Offenders cannot take a holiday from their own legal system.

South Africa

Due to the legacy of violence, extreme inequality, and high levels of poverty and unemployment in South Africa,¹ many children are at risk of being subjected to child sexual exploitation and abuse (CSEA). The Out of the Shadows Index (Index), which measures how countries are responding to CSEA, ranked South Africa at 16 out of the 60 countries scored. This ranking is justified with reference to South Africa's strong legal framework, a committed technology sector and knowledgeable frontline supporters. However, the Index made it clear that children in South Africa are still at considerable risk of these forms of violence.

Despite South Africa's comprehensive legislation and policies on child protection, research conducted by the Children's Institute at the University of Cape Town (**Children's Institute**)² tracked outcomes for children via the South African Police Service (**SAPS**) and child protection or social work records and found that poor implementation, resources and training for professionals left many children without an adequate response. According to the Children's Institute, almost three quarters (74 per cent) of cases referred to social workers are not referred to the SAPS for investigation. Of the reported cases, SAPS arrested only 75 per cent of identified perpetrators and 58 per cent of those arrested were soon released and sent back to the survivor's home or community. Only 12 per cent were convicted.³

While South Africa has come a long way in preventing CSEA, as evidenced in the ratification of a number of international and regional child rights instruments, the entrenchment of children's rights in the Constitution, as well as the enactment of legislation with the objective of preventing CSEA as highlighted above, the nation has not succeeded in taking all necessary steps to eliminate it.⁴ For example, although South Africa's legislation mandates reporting CSEA offences, which increases the rates of reported cases, this is futile without providing adequate resources for the support of survivors and their families.⁵ Many of the efforts

directed against CSEA in South Africa's justice system focus on upholding existing laws and so have the effect of being reactive rather than preventative.

CSEA Profile

Insufficient reporting on CSEA in South Africa means it is hard to estimate its prevalence. An ECPAT report, which reported on responses of those working in the field expressed practitioners' frustration at their inability to secure adequate resources due to the lack of data to illustrate how widespread CSEA is:

*"We have a chicken-and-egg situation: no stats no resources, no resources no stats"*⁶

A 2016 study found that around one-third of children and adolescents in South Africa reported exposure to some form of sexual abuse, and that boys and girls are equally as vulnerable to abuse.⁷ Other statistics point to girls being more vulnerable, with UNICEF reporting that one-third of all girls report experiencing some form of violence, including 'shocking levels' of sexual violence.⁸

Factors which increase vulnerability to CSEA include the large number of children orphaned by the HIV pandemic, the sharp increase in access to technology and high levels of poverty.⁹ Child Welfare South Africa further reported an increase in so-called 'survival sex' whereby sex is exchanged for food, shelter or other basic necessities.¹⁰ This is yet another example of the clear link between poverty and its impact on the prevalence of CSEA.

The risk of CSEA may have been aggravated during the lockdowns implemented by the South African government during the Covid-19 pandemic.¹¹ Within the first week of lockdown alone, SAPS reported receiving 2,300 calls for help related to gender-based violence, with only 148 suspects being charged.¹² In

the three months between April and June 2021, SAPS recorded 10,006 rape cases, which was a 72.4 per cent increase compared to the previous reporting period.¹³ Further, the South African government reported a 47.1 per cent increase in sexual offences in 2021 compared to 2020.

The South African Minister of Police argues that such alarming crime statistics and comparisons must be understood in context.¹⁴ The South African government's response to Covid-19 in 2020 kept almost everyone indoors and most businesses closed, including taverns, liquor outlets, night clubs, sporting activities and places of entertainment, which are generally attributors to crime.¹⁵ It is therefore not possible accurately to compare the same period in 2021 to 2020, due to the skewed and abnormal crime trends caused by the different levels of lockdown. The alarming 72.4 per cent increase in reported rape cases drops to a 2.8 per cent increase if comparison is made to the "normal" period before lockdown. The 47.1 per cent increase in reported sexual offences also drops to a five per cent increase when compared to the 2019 statistics.¹⁶

An analysis of the July/September 2021 crime statistics does not paint a reassuring picture,¹⁷ with 9,556 people reporting rape between July and September 2021.¹⁸ This is an increase of 634 cases, amounting to a 7.1 per cent rise compared to the previous reporting period.

Online sexual exploitation is also a growing problem in South Africa as more and more young people gain access to technology.¹⁹ A small-scale study conducted in 2016 found that 30 per cent of children interviewed between the ages of 9 and 17 reported having received sexual messages on the internet.²⁰ A UNICEF-commissioned report from 2021 found that a staggering 95 per cent of children have access to the internet in South Africa, and that 70 per cent of these children do so without parental consent.²¹ They estimated that one-third of children are at risk of online violence, exploitation and abuse.²²

According to the 2021 United States Department of State Trafficking in Persons Report (**TIP Report**), South African trafficking rings recruit girls as young as 10 years old into sex trafficking.²³ It was reported by one NGO that children forced into commercial sex or labour by their families increased in 2020, presumably as a result of the Covid-19 pandemic.

There is a vicious cycle of violence and abuse in South Africa. According to the Sonke CHANGE trial study conducted in 2016 among 2,600 men in the

informal settlement of Diepsloot, northern Johannesburg, 85 per cent of the men surveyed who had raped or beaten a woman had been physically or sexually abused as children.²⁴ Childhood trauma and abuse is therefore closely associated with survivors becoming perpetrators. The researchers were quoted as saying "Children exposed to this violence in the home and community are far more likely to themselves become involved in violence later in life—boys as perpetrators and girls as victims—and are at increased risk of experiencing a host of other social problems, including psychological distress, alcohol abuse, poor school performance and increased involvement in crime, including interpersonal violence."

Patriarchal worldviews are still held by the majority of men in South Africa. The Sonke CHANGE trial study found that the biggest contributor to men's violence against women and girls in Diepsloot was "inequitable and harmful gender norms that grant men a sense of permission to use violence against women". One out of three men surveyed believe that "wives should not be able to refuse sex, more than half expect their partner to agree to sex when the man wants it and most believe they have the right to control the clothes a woman wears, the friends she sees or where she goes". These gender norms are passed down through the generations and lead to young boys holding the same views and perpetrating violence on girls.

There is also an apparent belief in South Africa that having sex with a virgin will cure HIV/AIDs. This garnered a lot of media attention in the early 2000's when a series of incidents of sexual violence against children were reported and linked to this belief.²⁵ A considerable drop in the age of rape 'victims' was reported at this time, thought to be in relation to this myth, and the consequences for such young children were catastrophic: aside from the trauma of the abuse, they were also very likely to become HIV positive themselves.²⁶ There is less data related to this phenomenon in recent times, although an article from 2013 did report the case of a two-year old girl being raped in the belief that it would cure the rapist of HIV.²⁷

South Africa, together with 11 other African members of the Commonwealth, is a member of the Southern African Development Community-Parliamentary Forum (**SADC-PF**). On 3 June 2016, the SADC-PF adopted a Model Law on Child Marriage,²⁸ which is intended to bring member states' laws on marriage into line with their international human rights

commitments. According to a report on child marriage published by the Commonwealth Lawyers Association in 2018, six per cent of South African girls were married by the age of 18 and one per cent by the age of 15.²⁹ Despite legislation to address child marriage, inconsistencies and loopholes exist which allow both formal and customary marriages to take place.³⁰

The TIP Report highlights the traditional cultural practice of *ukuthwala*, which still goes on in remote villages, and involves the forced marriage of young girls, leaving them vulnerable to sexual abuse. *Ukuthwala* entails older men abducting young girls in order to compel them into marriage. The girls' families often consent to this practice.³¹ The government reports that *ukuthwala* "increasingly involves the kidnapping, rape and forced marriage of minor girls as young as 12 by grown men old enough to be their grandfathers". Perpetrators defend the practice by claiming it is a cultural tradition.

Since 2008, several court cases have considered customary law and its limits, as well as the abduction and forced marriage of young girls in two provinces of South Africa, the Eastern Cape and Kwa-Zulu Natal.³² In 2014, Nvumeleni Jezile was convicted for carrying out the practice of *ukuthwala* on a 14-year-old survivor, and sentenced to 22 years in prison for (amongst other offences) trafficking and rape – he was the first to be convicted. In Jezile's appeal to the High Court, he argued that 'consent' as contemplated by *ukuthwala* is to be determined in accordance with tradition and custom, which are recognised by the Constitution. He also argued that an integral part of *ukuthwala* entails that the bride is coerced into marriage and will also invariably pretend to object, since it is expected that she do so to maintain her modesty. The High Court found that the facts of the case amounted to an aberrant form of *ukuthwala* as the child was only 14 years old and did not consent to the marriage at any point.³³ The decision did not, however, hold that customary forms of marriage, including with children under 18 years, could not be performed, but rather that this 'misapplied form' of the customary practice was a 'perversion'. The High Court also accepted that these practices amounted to a "most severe and impermissible violation of women and children's most basic rights to dignity, equality, life, freedom, security of person and freedom from slavery".³⁴ Both the conviction and sentence were upheld.

Under section 12(3) of the Children's Act, genital mutilation or the circumcision of female children is

prohibited. There are no records of any ethnic or cultural group in South Africa that engages in female genital mutilation. Virginity tests, however, are most common among the Zulu tribe, which is the largest tribe in South Africa. Tests are usually performed by elderly women and involve inspecting the genitals of girls for torn hymens.

Virginity testing of female children under the age of 16 is prohibited under section 12(4) of the Children's Act, while virginity testing of a female child over the age of 16 is only permitted with the child's consent, if done in the manner prescribed and after proper counselling. The results of the test may not be disclosed without the child's consent. The body of a child who has undergone testing may also not be marked.

Traditional male circumcision is an integral part of the belief system of various ethnic and cultural groups in South Africa such as the Pedi, Xhosa and Venda.³⁵ It is seen as a rite of passage to manhood and plays an important role in the socialisation of boys and men. Under section 12(8) of the Children's Act, circumcision of a male child under the age of 16 is prohibited unless performed for religious purposes or for medical reasons. If the child is over the age of 16, he must consent. According to the World Health Organization (WHO), many boys in South Africa who undergo circumcision suffer serious medical complications or even death.³⁶ These issues have led to increased scrutiny by government, civil society, and the media, calling for the practice to be better regulated and strategies to be developed to mitigate risks.³⁷

Criminalisation

South Africa's sexual offence laws are wide-ranging and non-discriminatory. The preamble of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (**Sexual Offences Act**) is helpful in understanding the context in which this legislation was passed in 2007 and illustrates how vital this legislation is.³⁸ The preamble acknowledges that:

— the commission of sexual offences in South Africa is of grave concern;

— children, being particularly vulnerable, are more likely to become 'victims' of sexual abuse and exploitation;

— the prevalence of sexual offences in South Africa is primarily a social phenomenon, which is reflective of deep-seated, systemic dysfunctionality in South African society;

— legal mechanisms to address this social phenomenon are limited and are reactive in nature, but nonetheless necessary;

— the South African common law and statutory law do not deal adequately, effectively and in a non-discriminatory manner with many aspects relating to or associated with the commission of sexual offences;

— a uniform and co-ordinated approach to the implementation of, and service delivery in terms of, the laws relating to sexual offences is not consistently evident in government. The government therefore often fails to provide adequate and effective protection to survivors, thereby exacerbating their plight through secondary victimisation and traumatisation;

— several international legal instruments, including the United Nations Convention on the Rights of the Child, 1989, place obligations on South Africa towards combating and, ultimately, eradicating abuse and violence against children; and

— the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (**Constitution**), enshrines the rights of all people in South Africa, including the rights to equality, privacy, dignity, freedom and security of the person (which incorporates the right to be free from all forms of violence from either public or private sources), and the rights of children and other vulnerable persons to have their best interests considered to be of paramount importance.

As a signatory to several international conventions, South Africa has an obligation to uphold the protection of children from CSEA, both online and offline. These conventions include:

— The Convention on the Rights of the Child which was ratified in South Africa in June 1995.³⁹

— South Africa also signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child

Pornography (**Optional Protocol**) in February 2004.⁴⁰

— South Africa ratified the African Charter on the Rights and Welfare of the Child in January 2000.⁴¹

— South Africa ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in February 2004.⁴²

— South Africa is a pathfinding country of the Global Partnership to End Violence Against Children.⁴³

— In November 2011, South Africa became a signatory to the Council of Europe Convention on Cybercrime (the **Budapest Convention**) as a non-member of the Council of Europe party, however the Convention has not yet been ratified or entered into force.⁴⁴

— South Africa is a member government of the WePROTECT Global Alliance.⁴⁵

Classification of Sexual Offences with Children

The Sexual Offences Act was passed in 2007 to consolidate the South African common law and statutory law positions on sexual offences and to ensure that such offences were dealt with adequately, effectively and in a non-discriminatory manner. It has largely repealed and replaced an array of common law definitions, including an extension of the definition of rape in section 3 of the Sexual Offences Act to include any act of sexual penetration without the complainant's consent (as opposed to the act of penetration of a female vagina without the complainant's consent, which was gender-specific) and the introduction of the concepts of statutory rape and statutory sexual assault in sections 15 and 16.⁴⁶

Chapter Three of the Sexual Offences Act specifically deals with sexual acts committed against children, including sexual exploitation and sexual grooming of children, the exposure or display or causing the exposure or display of child pornography or pornography to children and using children for pornographic purposes or benefiting from child pornography.

Section 17 of the Sexual Offences Act classifies the sexual exploitation of children as:

— unlawfully and intentionally engaging the services of a child for financial or other reward, favour or compensation for the purpose of engaging in a sexual act with a child (irrespective of whether the sexual act is committed or not) or by committing a sexual act with a child; or

— unlawfully and intentionally offering the services of a child to a third person with or without the child's consent for a financial or other reward, favour or compensation;

– for purposes of the third person committing a sexual act with the child;

– by inviting, persuading or inducing the child to allow the third person to commit a sexual act with the child;

– by participating in, being involved in, promoting, encouraging or facilitating the third person committing a sexual act with the child;

– by making available, offering or engaging the child for purposes of the third person committing a sexual act with the child;

– by detaining the child, whether under threat, force, coercion, deception, abuse of power or authority, for purposes of the third person committing a sexual act with the child; or

— intentionally allowing or knowingly permitting a third person to commit a sexual act with a child, with or without the child's consent, while being a primary care-giver, parent or guardian of the child; or

— owning, leasing, renting, managing, occupying or having control of any property and intentionally allowing or knowingly permitting such property to be used for purposes of a third person committing a sexual act with a child, with or without the child's consent.

Section 17(4) of the Sexual Offences Act classifies benefiting from the sexual exploitation of a child as intentionally receiving financial or other reward, favour or compensation from a third person committing a sexual act with a child, with or without the child's consent. Section 17(5) of the Sexual Offences Act classifies living from the earnings of the sexual exploitation of a child as intentionally living

wholly or in part on such rewards, favours or compensation previously mentioned.

Section 17(6) of the Sexual Offences Act classifies promoting child sex tours as:

— making or organising any travel arrangements for or on behalf of a third person, whether that other person is resident within or outside the borders of South Africa, with the intention of facilitating the commission of any sexual act with a child, with or without the child's consent, irrespective of whether that act is committed or not; or

— printing or publishing, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual act with the child.

Section 18(1) of the Sexual Offences Act prohibits promoting the sexual grooming of a child, which includes:

— manufacturing, producing, possessing, distributing or facilitating the manufacture, production or distribution of:

– an article that is exclusively intended to facilitate the commission of a sexual act with or by a child;

– a publication or film that promotes or is intended to be used in the commission of a sexual act with or by a child; or

— supplying, exposing or displaying to a third person:

– an article that is intended to be used in the performance of a sexual act;

– child pornography or pornography; or

– a publication or film,

with the intention to encourage, enable, instruct, or persuade the third person to perform a sexual act with a child; or

— arranging or facilitating a meeting or communication between a third person and a child by any means from, to or in any part of the world, with the intention that the third person will perform a sexual act with the child.

Section 18(2) of the Sexual Offences Act goes on to prohibit the sexual grooming of a child, which includes a person:

- supplying, exposing or displaying to a child:
 - an article which is intended to be used in the performance of a sexual act;
 - child pornography or pornography; or
 - a publication or film,
- with the intention of encouraging, enabling, instructing and/or persuading the child to perform a sexual act;
- committing any act with or in the presence of a child or describing the commission of any act to or in the presence of a child, with the intention to encourage or persuade the child or to diminish or reduce any resistance or unwillingness on the part of the child to:
 - perform a sexual act with that person or a third person;
 - perform an act of self-masturbation in the presence of that person or a third person or while that person or a third person is watching;
 - the exposure of his or her body, or parts of his or her body to that person or a third person in a manner or in circumstances which violate or offend the sexual integrity or dignity of the child;
 - be exposed to child pornography or pornography;
 - be used for pornographic purposes as contemplated in section 20(1);
- arranging or facilitating a meeting or communication with a child by any means from, to or in any part of the world, with the intention that they will commit a sexual act with the child;
- having met or communicated with a child by any means from, to or in any part of the world, inviting, persuading, seducing, inducing, enticing or coercing the child:
 - to travel to any part of the world in order to meet him or her with the intention to commit a sexual act with the child; or

- during such meeting or communication or any subsequent meeting or communication to-
 - commit a sexual act with him or her;
 - discuss, explain or describe the commission of a sexual act; or
 - provide him or her, by means of any form of communication including electronic communication, with any image, publication, depiction, description or sequence of child pornography of the child himself or herself or any other person; or

— having met or communicated with a child by any means from, to or in any part of the world, intentionally travelling to meet or meeting the child with the intention of committing a sexual act with the child.

The above classification of child grooming is sufficiently broad.

South Africa is an observer country of the Convention on Cybercrime⁴⁷ and has implemented Article 9 of this convention into its domestic law in the Sexual Offences Act. Section 19 of the Sexual Offences Act deals with the exposure or display (or causing thereof) of child pornography or pornography to children. The section criminalises unlawfully and intentionally exposing a child to:

- an image, depiction or description of pornography or child pornography;
- any image etc containing a visual representation of a sexual nature of a child which may be disturbing or harmful to, or age-inappropriate for children (as contemplated in the Films and Publications Act (**Films Act**)⁴⁸ or other legislation); or
- any image etc containing a visual representation of pornography or an act of an explicit sexual nature of a person 18 years or older, to a child, with or without the child's consent.

Section 19A of the Sexual Offences Act was inserted by section 58 of the Cybercrimes Act.⁴⁹ It provides that any person who unlawfully and intentionally creates, makes or produces 'child pornography' in any manner, other than by using a child for 'child pornography' as contemplated in section 20(1) of the Sexual Offences Act, is guilty of an offence. It is also

unlawful to assist in the production of 'child pornography', as well as to distribute, make available or possess 'child pornography'. It is a criminal offence for any person to unlawfully and intentionally process or assist in a financial transaction knowing that such transaction will facilitate a contravention of section 20(1) of the Sexual Offences Act. Section 20 of the Sexual Offences Act criminalises using children for or benefiting from 'child pornography'. Any person who gains financially from this offence also commits an offence.

Additionally, an amendment to the Films Act will prohibit the following actions regarding the distribution of private sexual photographs and the filming and distribution of films and photographs depicting sexual violence and violence against children:

— firstly, section 18F will prohibit the distribution of private sexual photographs and films without the consent of the individual(s) who appear in the photograph or film; and with the intention of causing that individual harm. Should such photograph or film be distributed unlawfully, the internet service provider can be compelled to furnish the Film and Publications Board (**FPB**) or a member of SAPS with information concerning the identity of the person who published the photograph or film; and

— secondly, section 18G will prohibit the filming, production and distribution of films and photographs depicting sexual violence and violence against children in any medium, including the internet, and social media.

These prohibitions will only come into effect on a date as yet to be proclaimed by the President of South Africa.

The Children's Act is also a fundamental instrument in combating CSEA. The Children's Act comprehensively regulates the care and protection of children. Parents or family members are often involved in child trafficking. Section 275 of the Children's Act recognises that the Hague Convention on International Child Abduction is of force and effect in South Africa.

Under section 12(1) of the Children's Act 2005 (**Children's Act**),⁵⁰ all children have the right not to be subjected to social, cultural and religious practices

that are detrimental to their wellbeing. This includes the prohibition in section 12(2) of the Children's Act that a child below the minimum age set by law for valid marriage may not be given out in marriage or engagement and a child above that age cannot be given out without his or her consent. Although legislation does not specifically criminalise the actions of a legal guardian who gives a child out in marriage, both the Marriage Act,⁵¹ and the Recognition of Customary Marriages Act require the consent of both parties for a marriage to be valid and under section 1 of the Children's Act, exploitation in relation to a child is defined to include all forms of slavery or practices similar to slavery, including forced marriage.

Inconsistencies and loopholes exist in the Children's Act, Marriage Act,⁵² and the Recognition of Customary Marriage Act, which allow child marriage to take place under certain circumstances. According to the Marriage Act, the minimum legal age for marriage in South Africa is 18 years old for boys and 15 years old for girls. Furthermore, a minister or 'any authorised officer' can grant an exception for children of younger ages to marry. Moreover, the Recognition of Customary Marriages Act, although setting the marriageable age of boys and girls at 18 years and prescribing the need for spouses to consent to be married, provides exceptions.

Lanzarote Convention

South Africa has implemented Articles 3, 18 to 24 and 26 to 29 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) into domestic law. Similar provisions can be found in the following South African statutes:

- Chapter Three of the Sexual Offences Act, which deals with sexual offences against children;
- Chapter Four of the Sexual Offences Act, which deals with sexual offences against mentally disabled persons;
- section 41 of the Sexual Offences Act, which prohibits the employment of persons who have committed sexual offences;

— section 61 of the Sexual Offences Act and section 12 of the PACOTIP Act, which deal with extraterritorial jurisdiction;

— Chapter Two of the PACOTIP Act, which criminalises the trafficking of persons and further deals with liabilities and penalties;

— Chapter Two of the Criminal Procedure Act⁵³ (**Criminal Procedure Act**), which deals with the seizure, forfeiture and disposal of property connected with offences;

— section 6 of the Prevention of Organised Crime Act⁵⁴ (**POC Act**), which criminalises the acquisition, possession and use of proceeds of unlawful activities, and Chapter Five of the POC Act, which further deals with the aforesaid proceeds;

— section 1 and 24B of the Films Act, which incorporates the definition of ‘child pornography’ and deals with prohibition, offences and penalties on possession of films, games and publications that constitute child pornography;

— section 51 read together with Schedule 2 (regarding rape and compelled rape) of the Criminal Law Amendment Act of 1997⁵⁵, which deals with minimum sentencing for certain crimes and alludes to what could be considered as aggravating circumstances;

— sections 1 and 3 of the Extradition Act,⁵⁶ which makes provision for the extradition of persons who have committed extraditable offences;

— sections 76 and 77 of the Companies Act,⁵⁷ which deals with the duties and civil liabilities of companies’ directors; and

— section 332(2) and (5) of the Criminal Procedure Act, which makes provision, in any prosecution against a corporate body, for a director or representative of a corporate body to be dealt with as if they were the person accused of having committed the offence in question. Furthermore, a director or representative of a corporate body which is or was liable to prosecution, is deemed to be guilty, unless it is proved that they did not take part in the commission of the offence and that they could not have prevented it.

All peremptory provisions have been complied with, except for Articles 27(2) and 27(3)(b) in that these Articles require specific sanctions. While South Africa may not have statutory provisions which set out such sanctions, its courts have the power to make orders that it deems to be just and equitable. In addition, Article 26 has only been partially complied with; while the director or representative of a corporate body is to be dealt with as if they were the person accused of having committed the offence in question, if convicted the liability falls on the corporate body. Furthermore, the director or representative can escape personal liability if they can prove that they did not take part in the commission of the offence and that they could not have prevented it.

Age of Consent & Definition of a Child

A child is defined in the Sexual Offences Act as any person under the age of 18 years, while the age of consent to any form of sexual activity in South Africa is 16 years. A child under the age of 12 is incapable of consenting to sexual acts. The Sexual Offences Act eliminated the differentiation drawn between the age of consent for different sexual acts and the common law differentiation drawn between girls and boys for consensual sexual acts.

Sections 15 and 16 of the Sexual Offences Act were amended following the case of *Teddy Bear Clinic for Abused Children and Others v the Minister of Justice and Constitutional Development and Others*.⁵⁸ The Constitutional Court (the highest court in South Africa for constitutional matters) found that these sections were unconstitutional insofar as they criminalised consensual sexual conduct between adolescents.

Accordingly, under the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2012,⁵⁹ a child between the age of 12 and 16 years can consent to an act of sexual penetration or violation with another child between the ages of 12 and 16 years, or with a child of 16 or 17 years of age where their age difference is not more than two years.⁶⁰ In such cases, these acts are not crimes. However, if an act of sexual penetration or violation occurs between a child between the age of 12 and 16 and another person over the age of 16 years, where their age difference is more than two years, this is statutory rape or statutory sexual assault regardless of the child’s consent.⁶¹

Trafficking

The first trafficking legislation that South Africa adopted preceded the Palermo Convention. The POC Act deals with the trafficking and exploitation of minors, in that there are usually full scale operations of networks, transport and communication to effect and facilitate the trafficking and exploitation of children. The second was the Identification Act,⁶² which criminalised altering identity cards and being in possession of an imitated card.

South Africa has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁶³ (**Palermo Convention**) and is therefore obliged to adopt legislative measures that criminalise human trafficking. Following the ratification of the Palermo Convention, South Africa pushed for the development of a comprehensive, stand-alone trafficking law, rather than relying on other policies geared towards illegal immigration, child protection, and certain provisions of the criminal law.

As a result, in 2013 the South African government enacted the PACOTIP Act. The PACOTIP Act is largely based on the Palermo Convention and defines human trafficking broadly. Section 4 of the PACOTIP Act provides that a person is guilty of trafficking if they deliver or recruit, transport, transfer, harbour, sell, exchange, lease, or receive another person in or across the borders of South Africa, through various means (including the use of force, abuse of power or vulnerability, abduction, deception, or coercion aimed at the person or an immediate family member) for the purpose of exploitation.

Section 1 of the PACOTIP Act defines a ‘victim of trafficking’ as including a child who is found to be a survivor following an assessment in terms of section 18(6). There is no definition of trafficking specific to children; section 4(1) refers to ‘another person’, so it is implied that this includes children.

Section 4(2) of the PACOTIP Act criminalises the adoption of a child facilitated or secured through illegal means for the purpose of exploitation of that child.

The PACOTIP Act defines exploitation as including sexual exploitation, which in turn is defined with reference to any sexual offence in the Sexual

Offences Act or any offence of a sexual nature in any other law. Conversely, the Sexual Offences Act defines a sexual offence as including any offence referred to in Chapter Two of the PACOTIP Act that is committed for sexual purposes.

While the PACOTIP Act, like the Palermo Convention, addresses trafficking for the purpose of labour, the removal of organs, and sexual exploitation, the overwhelming focus of its implementation has been on the trafficking of women and children for sexual exploitation.⁶⁴

Section 18(1)(a) of the PACOTIP Act provides that despite any law, policy or code of conduct prohibiting the disclosure of personal information, any person who knows or ought reasonably to have known or suspected that a child has been subjected to trafficking must immediately report that knowledge or suspicion to a police official for investigation. A failure to comply with this section is an offence.

A person who makes such report in good faith is not liable to civil or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information,⁶⁵ and is entitled to have his or her identity kept confidential if his or her safety is at risk as a result of the report unless the interests of justice required otherwise.⁶⁶ There is an exception for legal professional privilege.

Section 284 of the Children’s Act also prohibits natural persons, juristic persons and partnerships from trafficking a child or allowing a child to be trafficked. Trafficking is defined as the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children within or across South African borders, by any means (including the use of threat, force, or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child), for the purpose of exploitation. This includes the adoption of a child facilitated or secured through illegal means.

Prosecutors sometimes rely on the POC Act in combination with the Sexual Offences Act, the former of which added additional charges—such as money laundering, racketeering, or criminal gang activity—and increased penalties of convicted defendants.

Extraterritoriality

Section 61 of the Sexual Offences Act stipulates that where a citizen or person (including a juristic person) who is ordinarily resident in South Africa, allegedly commits an act which constitutes a sexual offence or has had a sexual offence committed against them, a South African court would have jurisdiction for that offence where the offender is found in South Africa, regardless of whether the act constitutes an offence at the place of commission. The Sexual Offences Act does, however, prohibit action being taken against a person who has already been convicted or acquitted of that offence by a court of another jurisdiction.

Section 12 of the PACOTIP Act extends extraterritorial jurisdiction to South African courts in a similar manner regarding:

- an act committed outside South Africa which would have constituted an offence under the Sexual Offences Act if such an act was to be committed in South Africa, regardless of whether or not the act constitutes an offence at the place of its commission if the person to be charged:
 - if the person to be charged is a citizen of South Africa or is ordinarily resident in South Africa; or
 - has committed the offence against a citizen of South Africa or a person who is ordinarily resident in South Africa; and
 - is, after the commission of the offence, present in South Africa, or in its territorial waters or on board a ship, vessel, offshore installation, a fixed platform or aircraft registered or required to be registered in South Africa;
 - is for any reason, not extradited by South Africa or if there is no application to extradite that person; or
 - is a juristic person or a partnership registered in terms of any law in South Africa.

Section 12(1)(b) provides that only a High Court has jurisdiction over a person referred to in terms of this section. Subject to the National Director of Public Prosecutions' (NDPP) discretion, the NDPP must, in writing, designate an appropriate court in which to conduct a prosecution against any person accused of having committed an offence under the PACOTIP Act in a country outside South Africa.

The prosecution of extraterritorial crimes are therefore at the discretion of the NDPP. This may pose a challenge for CSEA survivors.⁶⁷ However, section 7(2)(b) of the Criminal Procedure Act provides that in any case that the NDPP declines to prosecute, the NDPP must at the request of the person intending to prosecute, grant a certificate signed by them stating that they have seen the statements or affidavits on which the charge is based and that they decline to prosecute at the instance of the State. The NDPP does not have discretion to refuse to issue such a certificate. On the basis of such certificate to that effect, a private prosecution may be instituted in an appropriate court.⁶⁸

Section 110A of the Criminal Procedure Act deals with South African citizens who have committed an offence outside the area of South African courts' jurisdiction and who cannot be prosecuted by the courts of the country in which the offence was committed, due to the fact that the person is immune from prosecution as a result of the operation of the provisions of:

- The Convention on the Privileges and Immunities of the United Nations 1946;
- The Convention on the Privileges and Immunities of the Specialised Agencies 1947;
- The Vienna Convention on Diplomatic Relations 1961;
- The Vienna Convention on Consular Relations 1963; or
- any other international convention, treaty or any agreement between South Africa and any other country or international organisation.

Should that person be found within the area of jurisdiction of any court in South Africa which would have had jurisdiction to try the offence if it had been committed within its area of jurisdiction, that court will, subject to section 110A(2) of the Criminal Procedure Act, have jurisdiction to try that offence. No prosecution may be instituted against a person under section 110A(1) unless the offence is an offence under the laws of South Africa, and the NDPP instructs that a prosecution be instituted against the person.

In addition, section 291 of the Children's Act stipulates that where a citizen, permanent resident, juristic person or partnership incorporated in South Africa commits an act outside South Africa which would have constituted an offence in terms of Chapter 18 of the Children's Act,⁶⁹ that person is guilty of the offence as if it had been committed in South Africa.

Although the Sexual Offences Act provides the South African courts with extraterritorial jurisdiction when hearing matters relating to sexual offences, the enforcement of this jurisdiction is subject to extradition treaties between the relevant countries involved. In other words, a state may only create a law outside its borders as long as there is no international law prohibiting such law. Further, a state may not enforce that law unless there is an international law permitting it.⁷⁰

Under the PACOTIP Act, a CSEA survivor must lay a formal charge in South Africa with the SAPS. The NDPP has the discretion to designate an appropriate court in which the person will be prosecuted in terms of section 12 of the PACOTIP Act. The institution of prosecution in terms of this section must be authorised in writing by the NDPP.

Extradition

Section 2 of the Extradition Act allows the President of South Africa to enter into an agreement with any foreign state which provides for the surrender of persons accused or convicted of an 'extraditable offence'. An extraditable offence is one that is punishable with a sentence of imprisonment or other form of deprivation of liberty for six months or more.

In terms of sections 1 and 3 of the Extradition Act read with section 12 of the PACOTIP Act, section 110A of the Criminal Procedure Act and section 61 of the Sexual Offences Act, as the minimum sentence for most CSEA offences is at least five years,⁷¹ CSEA offences would be extraditable offences in South Africa.⁷² For an offender to be extradited from or to South Africa, the specific requirements set out in these Acts must be followed, based on the circumstances of the case.

In the absence of a treaty, there might be no duty to extradite, but South Africa may be required to surrender the requested person or to punish them

under its own laws. This is known by the maxim *aut dedere aut judicare*—extradition or trial. This principle is exercised regarding international crimes in modern times.⁷³ South Africa would not extradite an accused person to stand trial for any offence for which the death penalty may apply, unless it received a guarantee that this penalty would not be imposed.⁷⁴ If it appeared that a person may be punished by reason of their race, religion, nationality, ethnic origin, or sex for political offences, South Africa would also not extradite such a person.⁷⁵

According to the United Nations Model Law on Extradition (2004),⁷⁶ it is a requirement that an offence committed in one jurisdiction be an offence in the jurisdiction requesting the offender be extradited to (i.e. that there be double criminality). Additionally, if the act in question is not deemed to be an offence in the requesting jurisdiction, the requesting country should provide assurance that the offence will be prosecuted with the same conditions and severity as it would have been in the requested country.

Statutes of Limitation

In South Africa, the legal term for statutes of limitation is 'prescription'. Section 18 of the Criminal Procedure Act provides that the right to institute criminal proceedings prescribes after 20 years for offences that do not fall within the list of excluded crimes set out in this section. The list of excluded crimes includes murder, treason, kidnapping and child-stealing, and has been expanded over time to include any sexual offence in terms of common law or statute. This was, however, not always the case and South African legislation used to deal with the survivors of sexual violence differently.

In the case of *L v Frankel*,⁷⁷ the South Gauteng High Court held that as no prescription period exists for rape and compelled rape, but the 20 year prescription period exists for other sexual offences, the law discriminates against survivors against whom a 'less serious' sexual offence than rape or compelled rape has been committed.⁷⁸ The Constitutional Court declared section 18 of the Criminal Procedure Act unconstitutional in as far as it provided for the prescription of the right to institute prosecution for sexual offences other than rape or compelled rape—it found a distinction between sexual offences irrational and arbitrary.⁷⁹

Section 12 of the Prescription Act 68⁸⁰ specifically deals with the running of prescription regarding sexual offences. The position is now clearly set out in Section 12(4), which provides that prescription will not commence to run for a debt that is based on the alleged commission of any sexual offence in terms of the common law or statute.

Outdated Terminology

The term ‘child pornography’ is referenced in South African legislation. It is accepted that this term is outdated, as it is thought to legitimise CSEA by implying that the child is complicit in the sexual exploitation. ECPAT’s Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse exclude ‘child pornography’, instead calling for the use of terms that are “considered less harmful or stigmatising to the child”, such as child sexual abuse materials (CSAM).

The term is defined broadly in the Sexual Offences Act to include “any image, however created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not...” The definition goes on to include a list of images or descriptions, such as an image of a person engaged in an act that constitutes a sexual offence. Nevertheless, CSAM should be used instead.

Other

Juvenile Offenders

According to the Child Justice Act, a child under the age of ten does not have criminal capacity and cannot be arrested.⁸¹ Furthermore, a child between the ages of ten and 14 is presumed to lack criminal capacity unless the state proves otherwise.⁸²

When a juvenile commits a sexual offence, section 50(2) of the Sexual Offences Act requires that the juvenile be placed on the National Register for Sex Offenders. The purpose of this register is to ensure that such offenders are prohibited from working with children.

In addition, and in light of the fact that section 18 of the Criminal Procedure Act was declared unconstitutional, proceedings may be brought against a juvenile offender several years after they have been convicted of the crime. In this sense, juvenile offenders are often treated in the same manner as adult offenders.

Sentencing

The penalties associated with CSEA offences are set out in the Sentencing Act.⁸³ Section 51 of the Sentencing Act makes provision for discretionary minimum sentencing for certain serious offences, which are set in Schedule 2 of the Sentencing Act and entail minimum imprisonment sentences of between three and 25 years.

Part 1 of Schedule 2 of the Sentencing Act includes the offences of rape and compelled rape of a child under the age of 16; when committed more than once; by more than one person; by a previously convicted rapist; or by a person who knowingly acquired an immune deficiency syndrome or the human immunodeficiency virus. Part 1 was amended in 2007 and again in 2013 to include trafficking in persons, as provided for in Section 10 of the PACOTIP Act and any offence referred to in Part 1 or 2 of Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act.⁸⁴ Section 51 of the Sentencing Act prescribes a sentence of automatic life imprisonment for a convicted offender who has committed any offence in Part 1 of Schedule 2.

Part 3 of Schedule 2 of the Sentencing Act covers rape, sexual exploitation and assault of a child under the age of 16 years. Section 51 prescribes a minimum sentence of ten years for a first offender, a minimum of 15 years for a second offender and a minimum of 20 years to third or subsequent offenders of any of these crimes.

Regarding child trafficking offences, the Children’s Amendment Act 2005 prescribes penalties from five years to life imprisonment or fines for the use, procurement, or offer of a child for slavery, commercial sexual exploitation, or to commit crimes. Furthermore, section 13 of the PACOTIP Act prescribes penalties of up to life imprisonment, a fine of up to 100 million ZAR, or both. The penalties are therefore sufficiently stringent. If the survivor is a child, this is considered to be an aggravating factor.⁸⁵

The penalties provided for in the Sentencing Act are significantly less stringent than those in the PACOTIP Act. For example, a person who sexually exploits a child in terms of section 17 of the Sexual Offences Act will, upon first conviction, be liable to a fine or imprisonment for up to ten years. The same penalties apply to a person convicted of producing ‘child pornography’, or who assists in or facilitates the creation of ‘child pornography’.⁸⁶

Gaps in Criminalisation

There are a number of issues which South Africa needs to address in criminalising CSEA offences. These include:

- Inconsistency and exceptions in legislation that allow children under the age of 18, particularly girls, to marry.
- The use of outdated terminology in South Africa’s legislation against CSEA offences, most notably “child pornography”.
- Allowing for a fine in lieu of imprisonment for sex trafficking in the PACOTIP Act, which has been criticised for not being proportionate with those minimum sentences prescribed for other serious crimes, such as rape. This issue presents a further inconsistency in that section 51 of the Sentencing Act provides that a High Court shall sentence a person convicted of trafficking in persons under the PACOTIP Act to life imprisonment, whereas the PACOTIP Act appears to allow the option of a fine.
- Critical sections of the PACOTIP Act, which are not yet in force as the implementing regulations for the immigration provisions in sections 15, 16, and 31(2)(b)(ii) have not yet been promulgated.
- While the Sexual Offences Act covers a wide range of sexual acts against children, the position is unclear where two consenting children engage in a non-penetrative sexual act.
- Legislation dealing with juvenile sex offenders does not focus on their rehabilitation and restoration as contributing members to society.
- There are no provisions which restrict those who have committed CSEA offences from travelling.

Prosecution

According to professionals working to support survivors of CSEA, one major factor that undermines efforts to prosecute offenders for CSEA offences is the fact that legislation and definitions addressing CSEA are ‘often too broad’ and can result in cases either not going to trial or being unsuccessful.⁸⁷

The abundant cross-referencing between various pieces of legislation (the Children’s Act, the PACOTIP Act, the Sexual Offences Act, and the NPPA) makes it clear that there is no centralised state institution dedicated to prioritising or streamlining the prosecution of CSEA offences. An ordinary lay person, let alone a child, would have difficulty in ascertaining what offences have been committed, and in terms of which act, and more importantly, where to obtain immediate help from. For example, the manner of reporting a CSEA offence to the National Prosecuting Authority is not common knowledge to the average South African, let alone a person who would be able to suspect that a CSEA offence has been or is being committed, especially considering that these offences do not occur brazenly. In amplification of the above, 3,766 out of 5,439 rape survivors were found to have been raped at the residence of the perpetrator or the survivor, or a residence known by the survivor such as family, friends, or neighbours.⁸⁸ In contrast, 1 605 rape survivors were found to have been raped in a public place.⁸⁹

Initiating Prosecution

It is mandatory to report CSEA offences whether on suspicion or with knowledge. Section 54 of the Sexual Offences Act creates a duty to report sexual offences committed against children. A person failing to report his or her knowledge that a sexual offence has been committed against a child is guilty of an offence and liable to a fine and/or imprisonment for up to five years. Under section 18 of the PACOTIP Act, a person who knows or ought reasonably to have known or suspected that a child has experienced trafficking must immediately report this to a police official. A carrier who transports a person within or across South African borders is also obliged to report a suspicion that any of its passengers is a survivor of trafficking, or else is guilty of an offence.⁹⁰

Section 20 of the National Prosecuting Authority Act⁹¹ (NPPA), provides that the power to institute and conduct criminal proceedings on behalf of the state vests in the NPPA. In terms of section 27 of the NPPA, if any person has reasonable grounds to suspect that an offence has been or is being committed, the matter may be reported to the Investigating Directorate in an affidavit elaborating on the nature and grounds of the suspicion. Section 28 goes further, in that if the Investigating Director finds that evidence has been disclosed regarding the commission of another offence which is not part of the ongoing investigation, they must inform the National Commissioner of the SAPS without delay. In private prosecution, which is applicable in cases where the Director of Public Prosecutions declines to prosecute an alleged offence, the legal guardian or curator of a minor may either in person or by a way of a legal representative, institute prosecution in any court competent to try the offence in question.

Prosecution Process

CSEA offences criminalised under the Sexual Offences Act are prosecuted through specialised Sexual Offences Courts. According to the Department of Justice and Constitutional Development, there are currently 106 Sexual Offences Courts throughout South Africa.⁹²

Where Sexual Offences Courts do not exist, either the High Court or the Regional Magistrates' Courts will prosecute the case, depending on the severity of the crime.⁹³

Children's Courts do not deal with criminal cases; instead, they adjudicate on matters such as custody arrangements or maltreatment. Section 45(2) of the Children's Act expressly provides that a children's court may not try a person for a criminal charge, other than in instances where a person fails to comply with an order of a children's court.⁹⁴

In terms of the prosecution of cross-border crimes, including human trafficking, South Africa has a solid legal basis for international cooperation. As a State Party to the United Nations Convention on Transnational Organised Crime, South Africa has an obligation to cooperate with other states when requested to do so and may request cooperation of other States.⁹⁵

Investigation & Evidence

South Africa has one of the largest national police forces in the world.⁹⁶ As a result of the establishment of several specialised units dealing with sexual and related offences, South Africa is seeing an increase in reporting and investigations of CSEA, more prosecutions, and improved convictions of CSEA cases.⁹⁷

Specialised Family Violence, Child Protection and Sexual Offences (FCS) Units within the SAPS were re-established in 2010 to ensure the effective prevention and investigation of related crimes.⁹⁸ The service provided by the FCS Units appears to be adequate, however sources have confirmed that levels of expertise and specialised skills and therefore additional and ongoing training is required.⁹⁹ According to ECPAT, training for all police services involved in CSEA cases, as well as improved resources, is desperately needed.¹⁰⁰

The same is also true for human trafficking offences. According to Advocate Rasigie Bhika from the NPA, the PACOTIP Act has ensured that an increasing number of human trafficking cases are now entering the criminal justice system and stringent sentences are imposed on those convicted.¹⁰¹ However, despite the introduction of the PACOTIP Act, very few SAPS officers have been sufficiently trained on it. This is illustrated by an interview with a senior SAPS officer in Musina:

Researcher: Have you heard about the Trafficking Act of 2015?

Police officer: I have heard but I haven't looked at it.

Researcher: Have you had any workshops, or attended some workshops on child trafficking?

Police officer: Yes, but just trafficking in general and not child trafficking specifically.¹⁰²

South African law enforcement agencies have increased efforts to investigate, prosecute, and convict traffickers, including those that operate within organised criminal syndicates that facilitate the crime. In operations across at least five of the country's nine provinces, law enforcement officials engaged with anti-trafficking efforts, coordinating and executing raids on more than a dozen brothels, factories, and

syndicates that facilitated the creation and distribution of pornography.¹⁰³

While the SAPS has a sector dedicated to trafficking, it has been argued that they were unwilling to use their resources and to follow up on existing cases.¹⁰⁴ A social worker from Musina named Patience is quoted expressing that:

Maybe if you went to them [the SAPS] you find out that they are talking about their own capacity, let them talk about their time, their vehicles, the patrols and maybe if, there is a case that happens and there is no follow up, and most cases in Musina, its lack of follow up... you find out that maybe either the victim don't follow up, or the caregivers don't just call.¹⁰⁵

In mid-2020, the government removed, and did not replace, a key official who led inter-ministerial anti-trafficking efforts, which hampered coordination, and as a result law enforcement was notably less engaged on trafficking from the onset of the pandemic.¹⁰⁶ Multiple observers reported that agencies do not investigate some reported trafficking cases,¹⁰⁷ even when they had the resources and cooperative survivors to help build cases.¹⁰⁸

Presumption Survivor is a Child

There are no presumptions in the Sexual Offences Act that the survivor is a child. The National Policy Guidelines for Victims of Sexual Offences do state that "until the contrary is proved, allegations of sexual offences are to be accepted as such." Thus, an allegation of statutory rape is to be accepted as such unless it is proved that the survivor was over the age of 16.

Procedure for the Child to Give Evidence

SAPS policy states that the procedure for gathering evidence from a survivor of any sexual offence is as follows:

— A member trained by the FCS Unit or a specialised individual must be contacted to assist the child.

— The child is permitted to have a person of their choice present to support and reassure him or her during the interview.

— The interview will be conducted in surroundings that are either familiar to the survivor or reassuring to them.

— Once sufficient information has been obtained from the survivor, a docket must be opened, registered on the CAS and an affidavit must be made in which details of the offence must be specified.

— The officer should determine whether the survivor requires medical assistance and if so, make arrangements for them to obtain medical assistance as soon as possible.

— The medical examination will be conducted at state expense and by a medical professional.

— A male member may not be present during the medical examination of a female survivor, and vice versa. Even a member of the same gender may only be present during the medical examination if the survivor agrees to it.¹⁰⁹

However, doubts have been raised as to how closely this procedure is followed by SAPS officers.¹¹⁰

In some Sexual Offences Courts, although not all, children are able to use closed-circuit television when giving their evidence, so that they do not need to be in the court room with the accused offender.¹¹¹ This limits the potential for re-traumatisation for the survivor.

Defences

An accused person may raise a defence to the charges of rape and sexual assault if the child deceived the accused into believing that they were 16 years or older at the time and the accused person reasonably believed the child was 16 years or older.¹¹²

According to the PACOTIP Act, the consent of the child or person having control of the child to trafficking is not a defence.¹¹³

Unwillingness to Proceed with 'Formal' Trial

Widespread distrust in the criminal justice system, particularly for survivors of sexual violence, undermines efforts to prosecute offenders.¹¹⁴ This distrust manifests in survivors withdrawing their

cases, withholding information that is considered too confidential or embarrassing to disclose, or even failing to report crimes committed against them in the first place.¹¹⁵

The majority of rapes, including those committed against children, are never reported to the police.¹¹⁶ Fears from survivors that the police will not believe them, that perpetrators may harm them following their disclosure, that they will be blamed for what happened, or that the court case will take too long, are significant contributing factors to this under-reporting.¹¹⁷

According to experts, most police officers are perceived by survivors as unable to help or support them.¹¹⁸ Furthermore, a history of corruption in the SAPS, described as a 'chronic problem', further contributes to the general lack of citizen trust in law enforcement.¹¹⁹

Gaps in Prosecution

— There is a limited availability of guidelines and information supporting law enforcement in dealing with cases of CSEA. SAPS officers need widespread and ongoing training in order to improve investigative skills to support prosecutions, as well as improve response and service provided to survivors.

— The SAPS have been described by service providers as lacking the capacity or willingness to deal with cases of trafficking, perhaps also due to a lack of training on the provisions of the PACOTIP Act.¹²⁰

— Although South Africa's National Policy Framework on the Prevention and Combating of Trafficking in Persons purports to promote the prevention of human trafficking, the protection of survivors and the prosecution of sexual offenders, the implementation of the Policy remains a pipe dream, especially since the role of Chair of the National Inter-sectoral Committee on Trafficking in Persons (NICTIP) remains vacant and there is no one to spearhead the interagency anti-trafficking efforts.¹²¹

— In matters regarding the age of consent, a perpetrator is permitted to use the defence that they believed the child to be over 16. This leniency could

undermine genuine cases of abuse and exploitation, and prevent survivors from receiving justice.

— Due to survivors' fear of stigma, backlash from perpetrators, and distrust of the police, there is a significant lack of faith in the criminal justice system and cases of CSEA are under-reported.

Protection

Protection of Survivors During Proceedings

South Africa has taken steps to ensure the protection of survivors of CSEA during proceedings. Sexual Offences Courts are built in such a way that children get the necessary care, respect and support at court. For example, the child is able to use a waiting room whilst at court to make sure that they do not come into contact with the accused offender. Toys are reportedly available to provide a relaxing environment for the child.

Additionally, in Children's Court cases, where a child is present at the proceedings, the court may order any person present in the room to leave the room if it is in the best interests of the child to do so.¹²²

The Witness Protection Act¹²³ affords protection to witnesses and related persons regarding sexual offences against children. It provides for the establishment of an office for the protection of witnesses, temporary protection pending placement under protection, placement of witnesses and related persons under protection and services related to the protection of witnesses and related persons.

The matter of *Centre for Child Law v Media 24 Limited* concerned the right of child survivors to anonymity and extended this anonymity protection after child survivors, witnesses, and accused persons turn 18 years of age.¹²⁴ The Centre for Child Law contended that anonymity protection is essential to avoid intrusive media scrutiny that results in prolonged trauma for child participants in criminal matters and may expose them to danger. The majority of the Constitutional Court found that there was a vacuum in the law, in that it failed to provide anonymity protection to child survivors. The majority held that anonymity provided to child accused or witnesses in criminal proceedings was also required for child survivors, who were in a similar position of vulnerability. By protecting the privacy of child

survivors, it makes the reporting process less traumatising for the child and removes the fear that society will know about their matter.

Protection of Children in General

In 2019, South Africa published its National Plan of Action for Children 2019-2024 outlining its aim to implement an appropriate, responsive and effective framework to advance children's rights, including their protection from violence.¹²⁵

Social services to protect children are provided for under the Children's Act.¹²⁶ Social workers play an important role in ensuring that the child is safe, investigating the report of abuse, and supporting the child and family to recover.¹²⁷ The Children's Act also established a surveillance system, the National Child Protection Register (NCPR), which contains records on specific children, detailing the circumstances of abuse in order to monitor cases and coordinate services.¹²⁸ According to Jameson, Sambu and Mathews, the NCPR is 'not properly maintained', which greatly limits its effectiveness in tracking and supporting survivors.¹²⁹

Professionals working with children report that there is weak monitoring, and considerable issues with practical implementation, coordination and cooperation between the various government departments which are responsible for the protection of children.¹³⁰ Under the Children's Act, police are obligated to report every case of CSEA to the Department for Social Development (DSD), but discrepancies between statistics from the police and the DSD suggest that this is not taking place.¹³¹ Therefore, it is likely that children do not receive adequate and appropriate protection services, as the DSD has not been notified. Furthermore, even when cases are referred to the DSD, reportedly, the quality of social work files is inconsistent and poor, making it track outcomes of individual cases and ensure that children are safe.¹³²

Furthermore, limited ongoing training, funding shortfalls and staff burnout are also cited as factors limiting the effectiveness of child protection systems in South Africa.¹³³

Protection of Trafficked Children

In June 2021, South Africa was downgraded to a *Tier 2 Watchlist* Country by the Office to Monitor and Combat Trafficking in Persons after it had been upgraded to *Tier 2* the previous year. The year preceding South Africa's upgraded status was the year in which South Africa reached record-breaking highs in occurrences of gender-based violence, sexual assault and exploitation.¹³⁴

Following the downgrading, the South African government responded with initiatives that suggested that it could be open to further improving anti-CSEA efforts.¹³⁵ These efforts included increased investigations, prosecutions, and convictions of traffickers, including within organised criminal syndicates.

In 2019, South Africa launched its national policy framework on trafficking,¹³⁶ which is a strategic plan to improve capacity and coordination among government agencies, and it conducted increased awareness-raising activities.¹³⁷ The government also increased training of national and provincial frontline responders. It identified more trafficking survivors and referred all of those identified to care-providing protective services in partnership with NGOs and international organisations, and increased protective services for survivors who assisted ongoing law enforcement investigations.¹³⁸

Further, the government adopted the Southern African Development Community regional data collection tool and launched a national baseline study.¹³⁹ This study was organised following a workshop for the National InterSectoral Committee on Trafficking in Persons and the Provincial Trafficking in Persons Task Teams. Unfortunately, this task team has been defunct since 2019 following the removal of a key official who has not since been replaced. One of the objectives of this tool is to support the government in the collecting and analysis of data on trafficking at country level in a coordinated manner. The Directorate of Priority Crime Investigation (**Hawks**) collaborated closely with the National Prosecuting Authority (**NPA**) to compile evidence and build trafficking cases. One of the investigations was a joint operation by the Department of Employment and Labour and SAPS, in which the authorities arrested seven Chinese nationals (four men and three women) for alleged

forced labour of 91 Malawian nationals, 37 of whom were children.¹⁴⁰

South Africa's enthusiasm to combat CSEA was unfortunately short-lived, thus the downgrade in June 2021.¹⁴¹ The latest TIP Report demonstrates a significant stagnation in the government's anti-trafficking efforts. The TIP Report highlights that corruption and official complicity in human trafficking remains a significant obstacle, and the government did not take action in most reported cases.¹⁴²

While the government maintained modest shelter and protection services for survivors, it identified substantially fewer survivors and only referred approximately half of those identified to care in the TIP report's reporting period.¹⁴³ Moreover, some law enforcement officials reportedly continued to inappropriately arrest and detain suspected sex trafficking survivors during raids targeting commercial sex establishments.¹⁴⁴ A poor understanding of trafficking hinders the government's overall anti-trafficking efforts,¹⁴⁵ especially considering that the government has not promulgated implementing regulations for the PACOTIP Act's immigration provisions for the eighth consecutive year. The Department of Employment and Labour instituted mandatory trafficking training for all new labour inspectors, but the government did not comprehensively monitor or investigate forced child labour.¹⁴⁶

Sections 18, 32 and 35 of the PACOTIP Act specifically deal with child trafficking survivors, the assistance of a foreign survivor of trafficking (the definition of which in section 1 includes a child), and the escorting of a survivor of trafficking. In terms of section 18, when a child suspected of being a survivor of trafficking comes into contact with a designated child protection organisation, the organisation must report that child to a police official for investigation immediately. Thereafter, notwithstanding the police's peremptory obligation to deal with that child in terms of section 110(4) of the Children's Act, they may place that child in temporary safe care. Section 32 sets out that the Director-General: Social Development must take reasonable steps to find either family members, an organisation, or an institution which renders assistance to survivors of trafficking, in the country to which they are to be repatriated. In Section 35, the same standard of the best interests of a child (as referred to in the Children's Act) is considered in order to enable the

authorisation by the Director-General of an adult at the State's expense to escort a child from where the child was found, to where the child was trafficked from.

Section 156 of the Children's Act authorises the allowing of a child, who has been trafficked and is in need of care and protection, to remain in South Africa for the duration of their court order, even if that child has entered the country illegally.

Legislation implores criminal justice officials not to discriminate against survivors, undocumented or 'illegal' immigrants or refugees. Nevertheless, trafficking survivors still run the risk of attempting to report a sexual crime and end up being further victimised by the SAPS. A tangible practical issue arises when an undocumented foreign migrant or refugee child experiences CSEA. Such a child may be hesitant to approach the authorities given South Africa's history of xenophobic attacks, with some xenophobic incidences being alleged to be spearheaded by the SAPS themselves.¹⁴⁷

A critical case involving undocumented foreign migrant children in South Africa was a case in which two teenage Rwandan asylum seekers were raped and subsequently imprisoned in June 2004.¹⁴⁸ The teenage girls fled the Rwandan genocide and, during their journey to South Africa, were raped by a truck driver with whom they were travelling. The truck driver had promised them documentation and accommodation. However, on arriving in South Africa, neither of these was forthcoming. Instead, the truck driver demanded sexual favours and threatened to abandon the children if they did not comply.¹⁴⁹ According to reports, the teenagers made multiple attempts to obtain assistance from local authorities including the SAPS, a magistrate's court and the Department of Home Affairs. The teenagers were imprisoned, and later sent to a place of safety. Two non-governmental organisations, The Centre for Child Law and Lawyers for Human Rights, were appointed to provide legal representation to the teenagers. However, shortly after the attorneys were appointed, the teenagers disappeared and were never found.¹⁵⁰

This case illustrates the lack of procedural guidelines, interdepartmental strategies and implementation mechanisms, application of Constitutional imperatives and provision of appropriate legal representation for undocumented foreign migrant

children and child survivors of trafficking in South Africa. These procedural gaps occur despite the existence of a robust international and South African legal framework, which should in theory ensure the protection of undocumented foreign migrant children in South Africa.¹⁵¹

Counselling

Children throughout South Africa who have experienced or are experiencing CSEA are able to access free telephone counselling via Childline South Africa, which is supported in providing this free crisis line by Vodacom, one of the country's largest mobile communications companies.¹⁵²

In addition to Childline, there are numerous NGOs, institutions and programmes in South Africa which aim to protect and support CSEA survivors, including the Thuthuzela Care Centres (**TCCs**). TCCs are one-stop facilities established as a critical part of South Africa's anti-rape strategy, aiming to reduce secondary victimisation and to build a case ready for successful prosecution. Fifty-one TCCs have been established since 2006,¹⁵³ typically bringing together professionals from health, forensic and legal services, counselling and survivor support to provide more holistic and coordinated care.¹⁵⁴

Despite the plethora of social problems in South Africa, including in Diepsloot, "there are no public mental health services available in Diepsloot to address the mental health consequences of such widespread exposure to generalised violence".¹⁵⁵ In 2016, the local clinics in Diepsloot did not stock rape kits, and no government hospital in the area offered rape counselling. The closest TCC was at Tembisa Hotel, which is about 30km away from the township. Rape survivors therefore have to travel extensive distances to access care and to attend at court. It is therefore up to NGOs and private and civil society organisations to fill the gap left by the government.

One such organisation includes Diepsloot Victim Lifeline, more commonly known as Green Door shelter. Green Door is a safe house located in the Diepsloot informal settlement that offers support and temporary shelter to survivors of sexual abuse and domestic violence. It is the only shelter of its kind in Diepsloot, where the rate of violence and rape is among the highest in the world. The shelter's services are critical as without it, survivors of abuse, the majority of which are vulnerable women and

children, would have nowhere else to seek help and necessary support. A single police station services the sprawling township and, in many instances, survivors do not report their cases to the police for fear of secondary victimisation. The Green Door's founder, Brown Lekekela, witnessed this first-hand while working as a trauma counsellor at the SAPS Victim Empowerment Centre, and this motivated him to open a shelter where survivors could find refuge, and receive counselling and assistance with opening a case against their abusers. Green Door works with SAPS to ensure a case is opened, and to protect its beneficiaries from any secondary victimisation. Beneficiaries of Green Door's services are typically women and children who have suffered at the hands of abusive partners, relatives or community members. The shelter is basic and operates miniscule funding from private sources, but provides a safe place for vulnerable women and children to seek help and restore their dignity.

Bhekisisa, Green Door, social enterprise organisation Afrika Tikun, Lawyers Against Abuse and the South African Depression and Anxiety Group, all launched a mobile phone application in Diepsloot to make it easier for survivors to know where they can seek help.¹⁵⁶

Protection of Children in Disaster Settings

According to UNICEF, children and young people in South Africa are among those most at risk of the impacts of climate change, threatening their health, education and protection.¹⁵⁷

Whilst South Africa does have disaster preparedness measures in place, including the Disaster Management Act and National Disaster Management Framework,¹⁵⁸ it does not currently address the particular and increased risks children face during times of climate-related disasters, crises and conflicts.

Other

Collection and Dissemination of Data on Child Protection

South Africa does not have an adequate picture of the full scope and impact of child abuse, neglect and exploitation, as there is no single national database, despite the Children's Act having established the

National Child Protection Register (NCPR). Various role players, including those discussed in this report, who do maintain statistics, do so primarily for their own use and the different data collection systems make it difficult to compare data.¹⁵⁹ There is heavy reliance on the information collected by SAPS. This information only provides data on reported cases of abuse, which due to the nature of the abuse, is likely to be under-reported. It is unclear whether the increase in cases reported to SAPS is a reflection of increased willingness to report or an increase in the actual incidence of abuse.

The strengthening of data collection and dissemination on child protection is highlighted as a priority in the National Plan of Action for Children 2019-2024.¹⁶⁰ The collection of district, provincial and country-level data on child abuse is necessary to effectively plan and allocate resources, as well as review and continually improve the child protection system.¹⁶¹

Prevention

The South African government has made a range of efforts to improve the identification of children who are, or at risk of becoming, sexually abused or exploited.¹⁶² These efforts in relation to trafficking include:

- public education campaigns encouraging survivors to access services;
- programmes for children in education settings and the community urging them to 'speak out' (i.e. tell a trusted adult about their abuse or that of other children);
- providing confidential services such as helplines that allow children to talk about their concerns, including abuse;
- improving the accessibility or 'child friendliness' of services;
- screening or directly asking about victimisation in all health care settings;
- screening vulnerable groups for indicators thought to be linked with sexual exploitation;

- training parents, communities and professionals on how to 'spot the signs' of sexual exploitation and how to respond; and

- setting up specialist outreach services to engage with vulnerable groups such as runaway or trafficked children.¹⁶³

Register of Offenders

Chapter Six of the Sexual Offences Act established, and regulates, a National Register for Sex Offenders (NRSO). Section 41 prohibits persons who have committed sexual offences against children from:

- employment involving work with children in any circumstances;
- holding a position of authority, supervision or care of a child or holding a position where they gain access to a child or places where children are present or congregate;
- being granted a licence or given approval to manage or operate any entity, business concern or trade involving the supervision over or care of a child, or where children are present or congregate; or
- becoming the foster parent, adoptive parent, kinship care-giver or temporary safety care-giver of a child.

The NRSO is a record of the names of those found guilty of sexual offences committed against children and people with intellectual disabilities. The register gives employers in the public or private sectors such as schools, crèches and hospitals the right to check that any potential employee is fit to work with these protected groups. It is not open to the public.

Anyone found guilty of sexual offences against children and persons with mental disabilities must be put on the NRSO.

The court in the case of *J v the National Director of Public Prosecutions and Others*¹⁶⁴ found that automatically including the particulars of persons who were children at the time of commission of sexual offences in the NRSO is contrary to the 'best interest of the child' principle and therefore not justified in an open and democratic society.

A further register has been established by section 111 of the Children's Act, which provides that the Director-General must keep and maintain a National Child Protection Register (NCPR), which lists particulars of persons who have been found unsuitable to work with children by the court. Employers offering services which allow for access to children must, before employing a person, establish from the Registrar of the NCPR whether or not the potential employee's name is on the NCPR. If the potential employee's name appears on the NCPR, they will not be allowed to work in this environment. To establish whether a potential employee's name appears in Part B of the NCPR, the employer must complete a Form 29, which they can obtain from the Department of Social Development.

The purpose of Part A of the NCPR in terms of section 113 of the Children's Act is to:

- keep a record of abuse and neglect inflicted on children;
- enable the monitoring of these children;
- use the information in the register to protect these children from further abuse and neglect;
- share information between professionals in the child protection team;
- determine patterns and trends of child abuse; and
- use the information for planning and budgetary purposes to prevent abuse and protect children nationally.

There are no travel restrictions on persons who have committed CSEA offences.

Child Online Safety

South Africa has legislation, both pre-existing and proposed, to strengthen online child protection, including the Film and Publications Amendment Act (which, along with further regulating the classification of publications, films and games, it also proposes to regulate prohibited online content, such as child pornography); the Child Justice Act (which protects the rights of children who are accused of, or who have committed, crimes);¹⁶⁵ and the Electronic Communications Transaction Act (which also deals

with online privacy and ICT related offences).¹⁶⁶ The protection of children online also falls under the ambit of various auxiliary laws, such as the Protection of Personal Information Act,¹⁶⁷ and the PACOTIP Act.

There are agencies in South Africa that have been tasked with ensuring online safety for South African users. The FPB is tasked to protect children from harmful content by educating the public on the role of the FPB, as well as raising awareness campaigns for both children and parents, which extends to online content. According to a recent news report, South Africa has become a "fertile hunting ground" for online child sexual predators who use the internet and social media to target minors.¹⁶⁸

Distribution of CSEA Content Online

Section 24A of the Films Act provides for prohibitions, offences and penalties related to the distribution and exhibition of films, games and publications. Regarding children, section 24A(4) makes it an offence for any person to distribute or exhibit any film, game or publication classified as X18, or which contains depictions, descriptions or scenes of explicit sexual conduct, unless such film, game or publication is a *bona fide* documentary or is of scientific, literary or artistic merit or is on a matter of public interest, to a person under the age of 18.

Despite the offences listed under section 24A of the Films Act prohibiting child sexual abuse material and strictly regulating the distribution of certain pornography, it appears that sections 24A(2), (3) and (4) of the Films Act are not consistently implemented or problems are experienced in implementing these sections in respect of online distribution and exhibition through local and offshore websites and on- and offline advertising.¹⁶⁹

Section 24C of the Films Act sets out certain obligations on internet access and service providers where they provide 'child-oriented services' and contact services. Subsections (2) and (3) provide that:

"Any person who provides child-oriented services, including chat-rooms, on or through mobile cellular telephones or the internet, shall -

(a) moderate such services and take such reasonable steps as are necessary to ensure that

such services are not being used by any person for the purpose of the commission of any offence against children;

(b) prominently display reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child-oriented service, as well as in the medium used to access such child-oriented service including, where appropriate, chat-room safety messages for chat-rooms or similar contact services;

(c) provide a mechanism to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider;

(d) report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service; and

(e) where technically feasible, provide children and their parents or primary caregivers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.”

Awareness & Education

In 2009, the Government of South Africa launched its ‘National Policy Guidelines for Victim Empowerment’ focused on responses to CSEA survivors.¹⁷⁰ The government passed and began implementing, including training officials on, standard operating procedures (SOPs) for referring trafficking survivors to care.

South Africa has also introduced several training programmes regarding the prevention of CSEA and identification of CSEA survivors for law enforcement personnel. For example, in 2017 the Department of Social Development organised six workshops on CSEA for 198 social workers, five police officers, three Department of Home Affairs and a Department of Labour representative.¹⁷¹ SAPS implements annual awareness-raising initiatives during times such as Child Protection Week, Youth Month,

Women’s Month, and the 16 Days of No Violence against Women and Children.¹⁷² In 2021, the Deputy Minister of the Department of Justice and Constitutional Development conducted at least 15 radio interviews on trafficking, and the Department of Social Development hosted several webinars on topics related to child trafficking.

The Support Programme for Abuse Reactive Children is a diversion programme established by the Teddy Bear Clinic in Johannesburg, South Africa.¹⁷³ It diverts children aged six to 18 years with sexually harmful behaviours assessed as being low to medium risk to others and those who have committed sexual offences from the criminal justice system to a therapeutic programme.¹⁷⁴ Children may be referred directly to the programme by their caregivers, although in practice most come via court orders. The programme aims to help children to understand the consequences of their behaviour and equip them with a range of psychosocial skills and resources. Sessions cover modules on social skills and empathy training, cognitive restructuring, impulse control, conflict resolution, and acknowledging behaviour. Concepts of masculinity, male sexuality, and relapse prevention are also explored.¹⁷⁵

Recommendations

Legal

— Laws addressing child marriage should be harmonised so that the minimum age of marriage for children of all genders is set at 18 years without exception.

— Replace outdated terminology currently present in legislation with preferred terms, notably ‘child pornography’ with child sexual abuse materials (CSAM).

— The government should urgently promulgate implementing regulations for the PACOTIP Act’s immigration provisions in sections 15, 16 and 31(2)(b)(ii).

— The amendments to the Films Act should be brought into effect.

— An amendment should be made to the Cybercrimes Act to include the criminalisation of child pornography so that Part 2 of Schedule 2 of the

Sentencing Act would prescribe a minimum sentence of 15 years for a first offender, a minimum sentence of 20 years for a second offender and a minimum sentence of 25 years for third or subsequent offender of any offence relating to CSAM.¹⁷⁶

— A National Action Plan in response to human trafficking should be implemented.¹⁷⁷

— Legislation or regulations should impose travel restrictions on persons who have committed CSEA offences.

— Legislation dealing with juvenile sex offenders should be amended to focus on their rehabilitation and restoration as contributing members to society.

Prosecution

— There is a need for further training for specialised and dedicated teams in the SAPS who are skilled in proactive, intelligence-led and court-driven investigations in CSEA and human trafficking cases.

— The necessary finances to implement the National Policy Framework on Human Trafficking should be secured.

— Parallel financial investigations, asset forfeiture and the mapping of cybercrime and online activities related to human trafficking should become standard practice in investigations.¹⁷⁸

— An integrated information system to facilitate effective monitoring and implementation of the PACOTIP Act should be established.

— South Africa should increase efforts to investigate, prosecute, and convict officials complicit in trafficking crimes and traffickers within organised crime syndicates. This should include strengthening SAPS capacity and computer forensics to investigate child exploitation leads, and increasing efforts to identify trafficking victims.¹⁷⁹

— Trafficking victims should be systematically referred to care using the victim referral SOPs.¹⁸⁰

— Citizens’ distrust in the police and criminal justice system must be addressed through continual training and sensitisation programmes for professionals, and ongoing development of skills amongst the police

force. In addition, there should be an established channel for civil society to safely report allegations of official corruption and complicity to the government.

Protection

— A co-ordinated approach should be adopted to provide for the needs of sexually exploited children and young people, which are multi-dimensional and are not likely to be met by one sector alone.¹⁸¹

— The Government of South Africa should provide funding opportunities for civil society organisations that enable multi-sectoral collaboration, professional development training and support for frontline workers.

— There is a strong need for supervision and monitoring of social workers, effective case management, evidence-based and standardised assessments of children’s needs, ensuring that children have a safe environment as well as access to therapy and family support and efficient methods of information management which promote the privacy and dignity of child victims, and allow social workers and police to track outcomes.

— To overcome the considerable barriers sexually exploited adolescents face in accessing protective services, outreach programmes should be used to reach vulnerable children who are missed by other services, help identify unmet need, establish contact with hard to reach groups, motivate access to services, raise awareness about help and building trusting relationships between outreach workers and children.¹⁸²

— Existing drug rehabilitation services should be extended to trafficking victims and additional trafficking-specific shelters should be established for male, female, transgender, and child victims.¹⁸³

— Services should be expanded so that rape survivors, including children who have experienced CSEA, can access TCCs and other services, even if they live in a remote or rural area.

— Traumatized children should be able to access quality therapeutic support in a timely manner. In addition, well-resourced shelters must be available for children and their families to use if it is not safe to remain at home.

— The protection of children from harm, including CSEA and trafficking, must be integrated into disaster risk management and response.

— Improve the quality and detail of data related to CSEA so that it is consistent, disaggregated and categorised to better inform policy and programming responses.

Prevention

— The role of Chair of the National Inter-sectoral Committee on Trafficking in Persons (NICTIP) should be filled.

— A single national database of CSEA and neglect should be established, which is electronic and not solely reliant on information collected by SAPS. Child protection workers should be continually trained on how to submit information to the database.

— South Africa should implement mandatory training for teachers and child-care professionals on how to prevent sexual violence before it happens and on how to identify previously unidentified victims or perpetrators. This mandatory prevention education should include information on nature and extent of child sexual abuse, how to identify risks and how to reduce risks especially in organisational contexts and preventing adults having unsupervised access to children.¹⁸⁴

— South Africa should implement mandatory training for teachers and child-care professionals on how to prevent sexual violence before it happens and on how to identify previously unidentified victims or perpetrators. This mandatory prevention education should include information on nature and extent of

child sexual abuse, how to identify risks and how to reduce risks especially in organisational contexts and preventing adults having unsupervised access to children.¹⁸⁵

Cultural/Education

— An education campaign similar to the early 2000s Soul Buddies campaign and the One Man Can campaign should be launched.¹⁸⁶ Public awareness campaigns, and creating safe organisations for children could improve the reporting, prosecution and conviction of offenders.¹⁸⁷

— Advocacy and campaigning at the macro-level should be implemented as they assist in keeping sexual abuse and exploitation, and violence in general, on the radar.¹⁸⁸

— To facilitate the objectives of the PACOTIP Act, SAPS officers should have a course dedicated to their role and obligations in terms of the PACOTIP Act vis-à-vis CSEA victims. The course could be incorporated into the Basic Police Development Learning Programme which all SAPS officer recruits undergo when enlisting in the SAPS.¹⁸⁹

— Guidelines should be established on how to approach a child sexual abuse report and fixed sanctions should be enacted for SAPS officer who fail to properly discharge their duties in relation to a possible child sexual offence report.

— Parent education programmes that aim to improve communication about sexual and gender-based violence between parents and adolescent children should be put in place.¹⁹⁰



Uganda



Overall, Uganda has a comprehensive and strong legal framework to address CSEA. However, some gaps do exist, and the implementation of laws and policies to protect children from exploitation and abuse, as well as support survivors, is limited.

As a signatory to the UN Convention on the Rights of the Child since 1990, Uganda has an international obligation to ensure all children enjoy all rights enshrined in the UNCRC.¹ To further reaffirm its commitment to protecting children from all forms of CSEA, Uganda ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the **Optional Protocol**) in 2001,² and signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2001.³

Demonstrating their commitment to tackling CSEA regionally, particularly given that it hosts such a large population of refugee children, Uganda has ratified the African Charter on the Rights and Welfare of the Child,⁴ the African Union Convention on Cyber Security and Personal Data Protection 2014 (the **Malabo Convention**),⁵ and the International Conference of the Great Lakes Region (the **ICGLR**) Protocol on the Prevention and Suppression of Sexual Violence against Women and Children.⁶

Additionally, to address the sexual exploitation and abuse of children online, Uganda is a member of the WeProtect Global Alliance,⁷ and became a pathfinding country of the Global Partnership to End Violence Against Children in 2016.⁸

On 3 May 2021, the Parliament of Uganda enacted the Sexual Offences Bill 2019 (the **SOB**). The SOB intends to harmonise the disparate legislation that previously governed CSEA offences and to address gaps in that legislation, particularly in the Penal Code Act Cap. 120 (as amended in 2007) (the **Penal Code**).⁹ The SOB's objectives include the prevention of sexual violence, enhancement of punishment of sexual offenders, protection of survivors during trials for sexual offences, and the establishment of the extraterritorial application of the law.¹⁰ The SOB intends to resolve defects in the existing law, including outdated provisions and narrow elements of sexual offences that 'do not reflect the evolving trends in social attitudes, values and sexual practices'.¹¹ It comprehensively criminalises child

marriage, the sexual exploitation of children in travel and tourism (**SECTT**) and indecent communication.¹²

Whilst the SOB is sorely needed to tackle high levels of sexual violence in Uganda, its passing was met with controversy in Uganda and from international human rights organisations. Most criticism levelled at the SOB was not directly applicable to CSEA offences, however the provisions that attracted controversy included the following:

- Criminalisation of consensual same sex relationships.¹³ Despite the Anti-Homosexuality Act 2014 being ordered to be invalid, the entrenchment of the discrimination of homosexuals may serve to discourage CSEA survivors from reporting crimes committed by perpetrators of the same sex, due to the fear of being stigmatised or met with homophobia from family or friends.
- Criminalisation of people procuring sex. This may lead to sex workers (including children being sexually exploited) being prosecuted and unable to access the necessary support.
- The definition of rape and consent in the SOB does not allow consent to be withdrawn either before or during sex.
- Criminalisation of 'false rape allegations'. This will further discourage rape survivors from reporting crimes due to fears of being penalised.¹⁴

Following this international criticism, on 3 August 2021 President Museveni rejected the Sexual Offences Bill and returned it to Parliament, stating that it covered offences already provided for in the Penal Code.¹⁵ The SOB has now been referred to the Legal and Parliamentary Affairs Committee for reconsideration before a final decision is taken.¹⁶ At time of writing in March 2022, no updates regarding the SOB and its proposed provisions could be found.

Issues in the prevention and prosecution of CSEA crimes and the protection of CSEA survivors also stem from pre-existing cultural beliefs and traditional practices existing in a predominantly patriarchal society (including child marriage and female genital mutilation), and from a lack of funding and resources in implementing legislation, including through training and the allocation of police officers and other personnel. These cultural beliefs and traditional practices deter CSEA survivors from reporting crimes.

Problematic provisions in the SOB may not foster an open and accepting society in which survivors are treated as such by the criminal justice system, and therefore feel comfortable reporting offences. In this way, if the President does assent to the SOB in its current form, it may serve to create an additional barrier to CSEA survivors reporting crimes and in prosecuting them up to conviction.

CSEA Profile

Child sexual exploitation and abuse (**CSEA**) is a widespread and growing issue throughout Uganda. A study carried out in 2018 by the Ugandan Ministry of Gender, Labour and Social Development found that in the 13 to 17 year age group, one in four girls and one in ten boys reported sexual violence in the previous year. Over a third of these children endured their first experience of sexual abuse before the age of 13.¹⁷ Furthermore, UNICEF reports that 35 per cent of girls and 17 per cent of boys experience sexual violence before reaching 18.¹⁸

The most frequent perpetrators of sexual violence against girls were neighbours and strangers.¹⁹ Intimate partners and friends were also cited as frequent perpetrators. Boys reported friends, classmates, and neighbours as the most frequent perpetrators.²⁰

During the COVID-19 pandemic, children were forced to remain at home under a Presidential Directive which saw schools closed in March 2020. On 26 October 2020, police reported that more children were being raped in the six-month reporting period by people expected to protect them, including their parents, guardians, and teachers.²¹ The report indicated that a total of 6,888 children were raped, with 6,805 girls being survivors of rape and 83 boys.²² Reportedly, police and protective services in

Uganda were not adequately prepared for such a volume of CSEA cases.

Many factors that lead to a heightened risk of children becoming survivors of CSEA are present in Uganda: poverty, gender inequality, and low levels of education.²³ Uganda also has the third largest refugee population globally due to lengthy armed conflicts in neighbouring countries, such as the Democratic Republic of Congo and South Sudan.²⁴ Two-thirds of this population are children, and nearly ten per cent of child refugees in Uganda are unaccompanied,²⁵ creating conditions for perpetrators to exploit and abuse vulnerable children.²⁶

Although no comprehensive data is available to account for children in Uganda who are being sexually exploited, it is a considerable problem in the country.²⁷ It is not always a monetary exchange for sex; there have been reports of girls providing sexual services for older men in return for basic needs.²⁸ Family poverty has been identified as the main factor behind these situations: a report in 2015 found that 15 per cent of girls aged 18–24 reported exchanging sex for material support during childhood.²⁹

Uganda is a source, transit and destination country for children trafficked for sexual purposes.³⁰ Traffickers exploit girls and women aged 13–24 for domestic sex trafficking with high instances recorded in the vicinity of sports tournaments and road construction.³¹ It has been estimated that between 7,000 and 12,000 children are exploited in sex trafficking in Uganda.³² The northern region of Karamoja is a hotspot for targeting survivors in domestic trafficking, with reports across the country of highly organised internal trafficking networks which some have alleged are made possible by complicit officials.³³

The use of mobile phones and consequent internet access has increased significantly in Uganda, leading to Ugandan children being exposed to additional risks.³⁴ The use of technology provides a further avenue for income generation for poverty-stricken, vulnerable children. While little to no research or data collection has taken place on the prevalence of online CSEA in Uganda,³⁵ there is anecdotal evidence that the provision of self-generated sexual material (including sexting) is becoming more common.³⁶ For example, children who visit internet cafes have access via chat rooms to a wider pool of

'clients' around the world to whom they can market their services.³⁷

In Uganda's capital, Kampala, the production of child sexual abuse material (**CSAM**) is a commercial enterprise, involving organised and coordinated networks of music celebrities and bar and karaoke group owners. An estimated 1,800 children are exploited every week through this form of commercial sexual exploitation. Offenders are often not prosecuted, which may be as a result of law enforcement officials turning a blind eye to these crimes due to the payment of bribes or that they are simply not seen as being problematic.³⁸

The tourism sector in Uganda is growing exponentially, leading to children becoming increasingly vulnerable to CSEA.³⁹ The popularity of voluntourism, orphanage tourism and large events means that vulnerable children will more frequently come into contact with foreign tourists, with little to no supervision or other protection.⁴⁰ This is because many orphanages wish to exploit the boom in orphanage tourism and are operating primarily as profit centres with no governmental regulation or monitoring.⁴¹

Traditional beliefs and practices encouraging child marriages contribute to the prevalence of CSEA offences in Uganda. This makes it very challenging to eliminate CSEA: these traditional beliefs, which stem from the fact that Uganda is a patriarchal society, need to be challenged for any legislation to truly have its desired impact. Patriarchal family structures can create an environment that normalises, and therefore facilitates, all forms of violence against women and children simultaneously.⁴²

Although the Constitution of the Republic of Uganda 1995 (the **Constitution**) provides that the minimum age of marriage in Uganda is 18 years, Uganda still has one of the highest rates of child, early and forced marriage globally,⁴³ being 18th in the world.⁴⁴ Uganda has a prevalence rate of child marriage of 40 per cent of girls being married by the age of 16 and ten per cent by the age of 15.⁴⁵

This is because many parents either cannot afford to send their daughters to school or believe that girls do not need to go to school given their destiny to serve their fathers, husbands and brothers in the home.⁴⁶ Parents also gain financial security from seeing their daughters married. For example, in the mountainous

sub-counties inhabited primarily by Bakonjo communities of Kabarole, Karangura and Kabonero, child brides are often exchanged for between one to five goats.⁴⁷ The prevalence of child marriage in northern Uganda is as high as 59 per cent.⁴⁸ There is a widely held traditional belief that younger girls who are less educated attract a higher bride price, as it is believed that girls who go to school are more likely to be 'promiscuous' and 'corrupted'.⁴⁹ Many vulnerable girls, particularly those in refugee settlements and from the poorest households with no education, turn to child marriage to obtain basic necessities, such as food, shelter and clothing, that would otherwise be unaffordable.⁵⁰ Accordingly, pregnancy rates are much higher amongst these girls.⁵¹

Female genital mutilation (**FGM**) is still practiced by a few communities in Uganda (including the Sabinu and the Pokot), who are reluctant to eliminate the cultural practice. In women aged 15 to 49, the prevalence rate of FGM is 0.3 per cent.⁵² This represents a national decrease and is low when compared with some other African countries, and is one of the lowest rates in East Africa.⁵³ However, in the Karamoja region in the north-east of Uganda, the prevalence rate is much higher at 6.4 per cent.⁵⁴ Amongst the Sebei and Karamojong communities, FGM is practiced in order to initiate girls into adulthood.⁵⁵ It is usually done at the age of 10.⁵⁶

In the regions in which FGM is most prevalent, resistance to FGM can lead to stigmatisation and dismissal from the community, creating a barrier to the eradication of CSEA.⁵⁷ Many girls are taken into neighbouring countries such as Kenya, Tanzania and South Sudan, where laws prohibiting FGM may not be as stringent or are not enforced.⁵⁸ The girls most vulnerable to FGM live in communities that are close to the Kenyan border, such as the Pokot and Sabinu communities.⁵⁹

Criminalisation/Legislation

Classification of Sexual Offences with Children

Ugandan law criminalises CSEA in a number of ways. Sexual offences against children are currently primarily criminalised under the Penal Code. The sexual offences against children in Chapter XIV of the Penal Code were intended to be repealed and replaced by Part III (Sexual Offences Against Children) of the SOB. The SOB intended to provide for punishment of new forms of sexual violence and

exploitation that have emerged. The amendment to the Children Act Cap. 59 in 2016 (the **Children Act**) also introduced offences against the person of the child, including certain CSEA-related offences.

Despite many laws which address CSEA offences, the Human Dignity Trust reports that the criminalisation of such offences is 'very limited' in Uganda.⁶⁰

Child Sexual Abuse

Currently, child sexual abuse, referred to as 'defilement of persons under 18 years of age', is criminalised under Section 129 of the Penal Code (as amended in 2007).⁶¹ Any person who performs, or attempts to perform, a 'sexual act' with a child is guilty of 'defilement' and liable to life imprisonment. The attempted act of 'defilement' is punishable by imprisonment up to 18 years.

A 'sexual act' is defined as either the penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ; or the unlawful use of any object or organ by a person on another person's sexual organ.

Section 13 of the proposed SOB provides for the offence of 'defilement', which is committed when any person performs a sexual act with a child, being a person under the age of 18. A sexual act is defined broadly to include:

- penetration of a person's sexual organ, mouth or anus by a person's or animal's sexual organ or object;
- contact or stimulation of a person's sexual organ with another person's or animal's sexual organ or object; or
- insertion of a person's or animal's body part or any object into the sexual organ, anus or mouth of another person, although this does not include penetration or stimulation or insertion of an object done for sound health practices or a proper medical procedure.

Perpetrators are liable on conviction to imprisonment for 18 years, while attempts are punishable by imprisonment for 15 years.

Aggravated 'defilement' was originally created by the Penal Code when amended in 2007. Under the Penal Code, aggravated 'defilement' is punishable by death. The offence is also criminalised in section 14 of the proposed SOB is committed where any person performs a sexual act with a child and at the time:

- the child is below the age of 14;
- the child has a disability;
- the offender is infected with HIV or Acquired Immunodeficiency Syndrome (**AIDS**);
- the offender is a person in authority over the child;
- the offender is a serial offender; or
- the offender is a relative.

On conviction under the SOB, an offender is liable to imprisonment for life. Attempted aggravated 'defilement' carries a penalty of imprisonment for 18 years.

Incest (defined as performance of a sexual act with another person with the knowledge that the other person is related to him or her) is criminalised under section 12 of the SOB and is punishable by imprisonment for life. The definition of 'relatives' extends to grandparents and grandchildren, stepparents and stepchildren, uncles and aunts and nieces and nephews, and children-in-law, and does not distinguish between adopted sons or daughters.

If introduced, the SOB will repeal the previously gender specific offence of indecent assault on boys under 18 years (created under section 147 of the Penal Code).

Child Sexual Abuse Material (CSAM)

Uganda ranks in the top 82 countries worldwide in terms of its legislation criminalising child sexual abuse material (CSAM).⁶²

Whilst Uganda is not a signatory to The Convention on Cybercrime (Budapest Convention), Article 9 has been implemented into local law in section 23 of the Computer Misuse Act 2011 (CMA),⁶³ which prohibits the production, offering, distribution or transmission,

and procurement of 'child pornography', all through a computer.⁶⁴ Uganda is, however, a signatory to the African Union's Malabo Convention.

CSAM, referred to as 'child pornography', is defined in the CMA as including pornographic material that depicts:

- a child engaged in sexually suggestive or explicit conduct;
- a person appearing to be a child engaged in sexually suggestive or explicit conduct; or
- realistic images representing children engaged in sexually suggestive or explicit conduct.

Unlawful possession of 'child pornography' on a computer, regardless of intent to distribute it, is criminalised under the CMA. Furthermore, a person who makes pornographic materials available to a child commits an offence.⁶⁵ Exposure of children to pornographic material may be used as part of a process of grooming or sexual extortion.⁶⁶ Those found guilty under the CMA of involvement in 'child pornography' are liable on conviction to a fine up to 360 currency points (the equivalent of 7,200,000 UGX) or imprisonment up to 15 years, or both.

Other offences concerning child online safety under the CMA include cyber stalking, cyber harassment and offensive communication,⁶⁷ all of which do not attract long sentences or high fines (five years or a fine of 120 currency points, three years or a fine of 72 currency points, or one year or a fine of 24 currency points respectively). The offence of online harassment (defined as the use of a computer for making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent) under section 24 of the CMA could be used to prosecute online grooming/solicitation perpetrators.⁶⁸ However, the maximum sentence is not adequately stringent.

Online grooming, unwanted sexting and sexual extortion of children are not covered in Ugandan law.⁶⁹

Section 14 of the Anti-Pornography Act 2014 (the **APA**) also criminalises the production or participating in the production of, trafficking in, publishing, broadcasting, procurement, importing, exporting or in any way abetting child sexual abuse material

(CSAM), referred to as 'child pornography'.⁷⁰ The APA provides for a higher fine for the offence than the CMA: up to 500 currency points (the equivalent of 15,000,000 UGX). As the possession of CSAM is not criminalised under the APA, it could create a loophole which undermines the CMA's criminalisation of this offence.

Sections 2, 11, 13 and 15 of the APA were recently annulled by Uganda's Constitutional Court, following public outcry as they had led to women being attacked for wearing 'indecent' clothing.⁷¹ Reportedly, the Constitutional Court observed that the prohibition of pornography in the law was a limitation of freedom of expression that did not serve a legitimate aim.⁷² However, these annulled sections are concerned with adults, not crimes committed against children, and therefore the APA's criminalisation of CSAM still stands.

The supply, giving, displaying or distribution of sexual content and material (except for material provided as part of sex education or reproduction health as part of an educational institution's curriculum) to a child is also criminalised under section 18 of the proposed SOB and is punishable by imprisonment for ten years. If an offender were to be prosecuted under the SOB, they may face a lesser sentence than that under the CMA.

The Sexual Exploitation of Children in Prostitution and the Sexual Exploitation of Children in Travel and Tourism (SECTT)

Article 25(1) of the Constitution criminalises slavery and servitude. Article 34(1) provides that children should be protected from social or economic exploitation and must not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or development.

Child sexual exploitation, defined as engaging a child in any work or trade that exposes the child to activities of a sexual nature (whether paid or not), is criminalised under section 8A of the Children Act.⁷³ This includes inducing or coercing a child to engage in sexual activity, using children in prostitution or other unlawful sexual practices, and using children in pornographic performances or materials. Offenders are liable on conviction to imprisonment up to five years or a fine up to 100 currency points. Engaging a child in harmful or hazardous employment (defined

as work that exposes a child to, amongst other things, physical or psychological torture or sexual abuse, or any other form of child labour which includes slavery; trafficking in persons; debt bondage; prostitution; pornography and illicit activities) is also criminalised under section 8 of the Children Act.

The sexual exploitation of children in prostitution, referred to as 'child prostitution', is further criminalised under section 19 of the proposed SOB and offenders are liable on conviction to imprisonment up to ten years. The offence is defined broadly to include:

- knowingly permitting a child to remain in any premises for the purposes of prostitution;
- procuring or attempting to procure a child to become a prostitute, within or outside Uganda;
- procuring or attempting to procure a child to leave Uganda with intent that the child becomes an inmate or frequents a brothel elsewhere;
- procuring or attempting to procure a child to leave their usual residence in Uganda with intent that they may, for the purposes of prostitution, become an inmate of or frequent a brothel;
- inducing a person to be a client of a child for sexual acts or for any form of sexual abuse or indecent exhibition or show;
- taking advantage of his or her influence over or relationship to a child to encourage, entice or cause the child to engage in prostitution;
- threatening, intimidating or forcing a child into prostitution; or
- owning, leasing, renting, managing, occupying or having control over property for purposes of prostitution involving children.

Procuring a child to perform a sexual act with any other person within or outside Uganda is also an offence under section 15 of the proposed SOB. This offence carries a penalty of ten years' imprisonment. A person who intentionally performs, or causes another to engage in, a sexual act in the presence of a child or in a place where they can be observed by a

child, commits an offence, punishable by imprisonment for ten years.⁷⁴ This offence may be committed for the purposes of grooming a child for sexual activity.

'Child sex tourism' is also criminalised in section 20 of the SOB. The offence prohibits a person from:

- making or organising a travel arrangement for themselves or on behalf of another person resident within or outside Ugandan with the intention of facilitating any sexual activity with a child; or
- printing or publishing, in any manner, information intended to promote or facilitate arrangements for sexual acts with a child.

The penalty for this offence on conviction is imprisonment up to ten years, a fine of 2,000 currency points or both. The Prevention of Trafficking in Persons Act (the **PTIP**) also covers 'sex tourism' by defining sexual exploitation to include it.⁷⁵

Child Marriage

As previously mentioned, the Constitution provides that the minimum age of marriage is 18 years and that the parties may only enter into marriage if they freely consent. As the Constitution is the supreme law in Uganda, all legislation inconsistent with it is void. However, the following laws governing different types of marriages are still in force, leading to ineffective enforcement of prohibitions against child marriage:

- The Marriage of Africans Act 1904 implies that minors can be married with the consent of parents or guardians, as does The Marriage and Divorce of Mohammedans Act 1906;
- The minimum age of marriage in section 11 of the Customary Marriage (Registration) Act 1973 is 16 for girls and 18 for boys;
- A Hindu marriage can be solemnised in accordance with section 2 of the Hindu Marriage and Divorce Act 1961 if the groom is 18, the bride is 16 and her guardian consents; and
- Minors (under the age of 21) are able to get married provided that their parents have consented.⁷⁶

A 2014 Overseas Development Institute study found that child marriage persists regardless of the Constitution setting the minimum age of marriage at 18 (and offenders being aware of this), and the stringent penalties for the offence of 'defilement'.⁷⁷ It seems as though in some cases, legislation and its enforcement has had the unintended consequence of driving child marriage underground, leading to increasing informal 'cohabitation' arrangements.⁷⁸ Girls and their children have even less legal or material protection in these circumstances.

Uganda has not ratified the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964. However, it held a national launch of the African Union Common Position on Ending Child Marriage 2014 (the **Common Position**).⁷⁹ The Common Position aims to encourage member states to put in place national action plans to end child marriage and to establish and enforce legislation that sets the minimum age of marriage at 18.

In accordance with the Common Position, the Marriage and Divorce Bill 2009 (the **Marriage Bill**) aims to address disparities between existing marriage legislation, by introducing a minimum age of marriage of 18 years for all marriages, regardless of whether they are customary or religious.

Some customs provide that a bride price is a requirement for a valid marriage. A bride price also serves as a major incentive for impoverished parents to force marriages on their underage daughters. The payment of a bride price is considered problematic, in that it vitiates free consent by making the provision of consent contingent on the demands of those negotiating the bride price. This was the primary argument of the appellants in an appeal before the Supreme Court in 2015 in which they claimed that payment of bride price was contrary to Article 31(3) of the Constitution and was therefore unconstitutional.⁸⁰ While the appellants ultimately were unsuccessful due to a lack of evidence, the case resulted in an important obiter that underage customary marriages were invalid due to the legal age of marriage in the Constitution and that they continued to occur due to poor law enforcement, rather than a failure in the legal framework.⁸¹

The Marriage Bill provides that a bride price can no longer be a requirement for a valid marriage. It also criminalises the practice of requiring repayment of

bride price in order for a marriage to be dissolved. However, the Marriage Bill is yet to be passed into law.⁸²

The proposed SOB specifically criminalises child marriage under section 22; the offence is punishable by imprisonment for ten years. The offence is defined broadly. Any person who commits to following is guilty of an offence:

- conducts, directs, participates or abets a marriage of a child including participation in formal or informal marital rites and initiation practices with a child; or
- purports to marry a child in a formal or informal ceremony of marriage or any other arrangement with or without the consent of a parent or guardian of the child.

Given that a child is incapable of consenting, the consent of the child is not a defence.

FGM

The Prohibition of Female Genital Mutilation Act 2010 (the **PFGMA**) created the specific offence of carrying out FGM and is comprehensive in its criminalisation of all forms of the practice. FGM is defined as 'all procedures involving partial or total removal of the external female genitalia for non-therapeutic reasons'.

Offenders (including girls or women who carry out the act on themselves) are liable on conviction to imprisonment up to ten years. The offence of aggravated FGM includes the following:

- death, infection with HIV or disability occurs as a result of the FGM;
- the offender is a parent, guardian or person having authority or control over the 'victim'; or
- FGM is carried out by a health worker (this is intended to cover medicalised FGM).

The offence carries a sanction of life imprisonment.⁸³ Attempted FGM and procuring, aiding, abetting, inducing or coercing a girl to participate in FGM is also punishable by imprisonment up to five years.⁸⁴ If the offender is convicted, a court can also order the payment of compensation to the survivor of an

amount the court considers just under section 13 of the PFGMA. Section 14 empowers the Family and Children Court (**FCC**) to issue an appropriate order to prevent FGM likely to occur.

The PFGMA attempts to holistically address the underlying causes of FGM and to ensure that those most frequently involved in encouraging it are not exempt from punishment. For example, section 7 of the PFGMA criminalises participation in events that lead to FGM, with a maximum sentence of five years. If the offender is a parent, guardian, husband or person having authority or control over the survivor, the PFGMA provides for an increased sentence up to eight years.⁸⁵

The PFGMA seeks to create an environment in which reporting is encouraged, by entrenching a duty to report a commitment or an intention to commit FGM to the police or other authority under section 16. If this is not done within 24 hours of awareness, the failure to report becomes an offence punishable by imprisonment up to six months, a fine up to 12 currency points or both.

Exposing children to harmful customary or cultural practices is criminalised under section 7 of the Children Act.⁸⁶ A 'harmful customary or cultural practice' is defined as being any activity that is mentally, physically, socially, or morally harmful to a child and includes an activity that interferes with a child's education and social development. This would include FGM and child marriage. The penalty is imprisonment up to seven years, a fine up to 168 currency points or both. Any harm caused as a result of FGM would also be punishable under section 219 of the Penal Code (in terms of the offence of grievous harm) by imprisonment for seven years.⁸⁷

In terms of regional efforts to end FGM, the PFGMA's extraterritorial application aims to address the issue of cross-border FGM. In addition, the East African Community, which includes Uganda, Kenya, South Sudan and Tanzania, enacted the East African Community Prohibition of Female Genital Mutilation Act in 2016 (the **EAC FGM Act**) in an effort to eradicate FGM, by ensuring that perpetrators are brought to justice through the prevention of jurisdictional arbitrage and by raising awareness.⁸⁸ It prohibits FGM as a 'trans-national crime'; provides for the setting of minimum penalties and establishment of institutions; and has provisions dealing with prosecution, prevention and protection of

girls susceptible to FGM. The contents of the EAC FGM Act are similar to those of the PFGMA in terms of offences and penalties, but they are more detailed. Member states are also authorised to issue protection orders for girls at risk. The EAC FGM Act provides for a regional database on cross-border FGM to be created, which is to be bolstered by regional efforts such as 'exchange of criminal intelligence, training of key personnel and strengthening cross-border security'.⁸⁹ Importantly, the EAC FGM Act takes precedence over domestic laws of member states, thereby mitigating the risk of Ugandans travelling to neighbouring states to commit FGM.

Lanzarote Convention

Uganda is not a signatory to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**). However, most of the provisions of the Lanzarote Convention have been implemented (or will be implemented, if the SOB is assented to) into domestic law as follows:

- The definition of child in Article 3 (as a person under the age of 18 years) has been implemented across domestic legislation.
- The provisions of Article 18 are currently incorporated in the SOB.
- Offences concerning 'child prostitution' (Article 19) are covered by the Constitution and Children Act and, if assented to, will be covered by the SOB.
- Offences within the Lanzarote Convention concerning 'child pornography' (Articles 20 to 24) are covered by the CMA and APA.⁹⁰
- Several laws provide for corporate liability in accordance with Article 26. This includes the CMA, section 19 of the APA and section 3 of the PTIP Act, which provides that legal persons are liable on conviction to a fine of 1,000 currency points and temporary or permanent closure, deregistration, dissolution, or disqualification from practice of certain activities.
- Articles 27 (sanctions and measures) and 28 (aggravating circumstances) are incorporated into domestic law.

— Article 29 (previous convictions) is not incorporated into domestic law. This means that final sentences passed by other parties to the Lanzarote Convention do not need to be taken into account when Uganda courts are determining sanctions.

Age of Consent & Definition of a Child

In accordance with Article 3 of the Lanzarote Convention, domestic legislation is consistent in defining a child as being under the age of 18.

According to Article 31(1) of the Constitution, the age of consent in Uganda is 18. A person under the age of 18 cannot consent to sexual intercourse.

In *Uganda v Kusemererwa Julius*,⁹¹ the court emphasised the difference between a girl and a woman and the importance of this distinction in terminology when determining whether the offence committed is rape or 'defilement'. The court differentiated the offences of rape, 'defilement' and aggravated 'defilement', providing clarity on the law. The court determined that in instances of 'defilement', being sex with a girl under the age of 18 but over the age of 14, consent is not a relevant factor in determining whether the accused committed the offence; a girl under the age of 18 is incapable of giving consent. The *Julius* case was significant in establishing a precedent regarding the age of consent.

The Penal Code does not provide for a close-in-age defence for consensual sexual acts between children.⁹² Instead, it establishes the offence of "child-to-child sex", specifically criminalising sexual acts between children.⁹³ A child under 12 years old found guilty of the offence of "child-to-child sex" would not be criminally liable and would instead be considered a "child in need of care and protection" and be treated accordingly. However, this means that children aged between 12 and 18 years old would potentially be prosecuted.

Trafficking

Uganda is currently on the Tier 2 Watch List for the second consecutive year.⁹⁴ It has signed but not ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (supplementing the UN Convention

against Transnational Organized Crime) (the **Palermo Protocol**).⁹⁵

The PTIP Act was passed on 23 October 2009 in response to the Palermo Protocol. Uganda has adequate domestic laws against trafficking of children in place. However, the implementing regulations for the PTIP Act have to date not been passed.

Section 3 of the PTIP Act prohibits trafficking or facilitating trafficking through force or other forms of coercion for the purpose of engaging the survivor in 'prostitution', 'pornography', sexual exploitation or forced or arranged marriages. It also prohibits trafficking a person by means of force or the threat of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or giving or receiving of a payment or benefit in order to obtain consent of a person having control of another for the purpose of exploitation. This offence is punishable by imprisonment of 15 years.

Section 4 of the PTIP Act creates the offence of aggravated trafficking. Those individuals found guilty of a section 4 offence are liable to imprisonment for life. This includes circumstances in which:

- the 'victim' is a child;
- adoption, guardianship, fostering and other orders regarding children are undertaken for the purpose of exploitation;
- the offence is committed by a close relative or person having parental care, authority or control over the 'victim' or by a public officer or law enforcement officer; or
- the 'victim' dies, becomes a person of unsound mind, suffers mutilation, or is infected with HIV/AIDS or any other life-threatening illness.

Section 5 of the PTIP Act specifically prohibits trafficking in children. The section encompasses all forms of exploitation criminalised in section 3, along with the use of a child in the commission of a crime; the abandonment of a child in a foreign territory; the use of a child in any armed conflict or ritual; and the removal of any part of a child for the use in a ritual. Under section 5, any such offence may result in the conviction of aggravated trafficking in children and may attract a death sentence.

The penalties under the PTIP Act are considered to be sufficiently stringent for the seriousness of the crime.⁹⁶ However, a lesser penalty is provided under section 109 of the Children Act: a person contravening section 8 (harmful employment) of that Act commits an offence and is liable on conviction to a fine up to 100,000 UGX, or to imprisonment for up to six months or both.

Extraterritoriality

There is no general extraterritorial jurisdiction law in Uganda; specific laws stipulate whether they have extraterritorial application.

CSEA offences currently criminalised under the Penal Code do not have extraterritorial jurisdiction unless the offences are committed partly in Uganda.⁹⁷

Section 40 of the proposed SOB provides for its extraterritorial application.⁹⁸ An unlawful sexual act that constitutes an offence in Uganda and is committed outside Uganda by a citizen or permanent resident of Uganda against another citizen or resident of Uganda should be triable under the courts of Uganda. However, the SOB does not cover CSEA crimes committed by Ugandans abroad against children of other nationalities. The written consent of the Attorney General is also required for any such proceedings to be instituted. A person cannot be tried in Uganda if acquitted or convicted of the same offence in another country.

Under section 19 of the PTIP Act, citizens and permanent residents of Uganda may be prosecuted in Uganda for offences related to trafficking in persons (provided that the same are offences in Uganda) committed outside Uganda with the permission of the Attorney General. The survivor must also be a citizen of Uganda at the time.

The PFGMA has extraterritorial jurisdiction pursuant to section 15, where FGM is committed on a girl ordinarily resident in Uganda outside Uganda. This aims to address cross-border FGM.

The CMA has territorial jurisdiction only. It applies if the accused (regardless of nationality or citizenship) or computer, programme or data was in Uganda at the material time.⁹⁹ The APA also does not have extraterritorial application.¹⁰⁰

Extradition

Ugandan law requires the existence of an extradition treaty or arrangement (such as an extradition law) for extradition. Both citizens and permanent residents of Uganda can be extradited.

Double criminality is not a condition for extradition. A suspect can be extradited from Uganda to another country to stand trial for breaking the CSEA laws of that country irrespective of a similar law existing in Uganda. Moreover, Ugandan law only exempts the surrender of a foreign national where the offence is of a political nature, or where the accused has committed another offence other than that for which he/she is being extradited, in which case he/she will first be discharged, whether by acquittal or on the expiration of his/her sentence or otherwise.¹⁰¹

Statutes of Limitations

There are no statutes of limitations on CSEA offences in Uganda.

Outdated Terminology

Uganda has modernised its legislation and so it contains very few references to outdated terms. However, the term 'defilement' still appears in the Penal Code and the proposed SOB. While the Act describes what this offence entails, the use of the term could be considered harmful and stigmatising to child survivors. 'The effect of using the term 'defilement' in law, is that the child is punished twice: first by being sexually abused and second by being labelled unclean,' Dr Lungowe Matakala argues regarding the use of this term in Zambian legislation.¹⁰²

In addition, the use of the terms 'child pornography' and 'child prostitution' in Ugandan legislation implies that children are complicit in sexual abuse, which serves to legitimise CSEA. These terms are recommended to be replaced by child sexual abuse material (CSAM) and the sexual exploitation of children in prostitution respectively.

Other

Juvenile Offenders

Under section 88 of the Children Act, the minimum age of criminal responsibility is 12 years.

Where an offence under the proposed SOB is committed by a child under the age of 12, then the matter is intended to be dealt with in accordance with Part V of the Children Act. If an offence is committed by a child against another child and both are over the age of 12, then Part X of the same Act applies. Section 104A of the Children Act stipulates that the death penalty cannot be handed down to child offenders.

In determining criminal responsibility or an order for a child offender, the police, prosecutor or a person presiding over the matter must consider the age of the person at the time the offence was allegedly committed. When determining the age of a child offender, the court must assess all available information fully, including official documentation (such as a birth certificate, school records, health records, statements certifying age from the parent or child) and medical evidence.

Child offenders have special protection under the Children Act. For example, under section 101, instead of the words 'conviction' and 'sentence' being used in reference to a child appearing before the FCC, the words 'proof of an offence against a child' and 'order' should be used. In addition, under section 102, child offenders' privacy must be respected throughout proceedings, to avoid harm being caused by undue publicity. No person will, regarding a child charged before a family and children court, publish any information that may lead to the identification of the child except with the permission of court. It is an offence to publish the name or address of the child; the name or address of any school the child has been attending; or any photograph or other matter likely to lead to the identification of the child. On conviction, offenders are liable to a fine up to 500,000 UGX or to imprisonment up to six months or to both.

Sentencing

As noted, some CSEA offences attract the death penalty,¹⁰³ although this is not usually implemented.

There has been a campaign by human rights activists to end the death penalty in Uganda,¹⁰⁴ but this campaign has attracted different opinions in the country.

In *Uganda v Umutoni Annet*¹⁰⁵, the court took into consideration the age of the survivors when determining the accused's sentence: human trafficking attracts a sentence of 15 years whereas trafficking in children attracts the death sentence. Although the court did not sentence the accused to death, it rightly examined the issue of consent (i.e. that children are incapable of giving consent) and the ages of the survivors as required under the law.

In the case of *Attorney General v Suzan Kigula & 417 Others*,¹⁰⁶ the Constitutional Court of Uganda provided dicta on the death penalty. The respondents were convicted of different offences in different instances, where they were sentenced to death. The respondents subsequently filed a petition challenging the constitutionality of the death sentence in the Supreme Court. The court reasoned that offences imposing a mandatory death sentence were indeed unconstitutional, as a mandatory sentence prevented the court from taking into consideration all circumstances of the accused and the crime. However, the court noted that the death sentence was not itself unconstitutional. The court found that the method of death by hanging was neither cruel, inhumane nor unconstitutional. However, the court found in favour of the respondents by noting that the practice of keeping convicts on death row for multiple years amounted to torture. Consequently, it was reasoned that where an individual sentenced to death is not executed within three years of sentencing, the sentence automatically converts to a life sentence in prison.

Due to the *Suzan Kigula* decision, the implementation and enforcement of the death sentence within Uganda is based on judicial discretion. Moreover, the provision for mitigating factors under the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2013 has enabled courts to distance themselves from the death penalty. The last civilian executions were carried out in 1999 and in 2005 under military jurisdiction.

The only reported cases involving FGM from 2014 resulted in two women who procured and participated in FGM on seven girls in the Moroto District being

sentenced to between three and ten years' imprisonment,¹⁰⁷ and five men and women who performed, procured and aided in FGM in the Kapchorwa District being sentenced to four years imprisonment.¹⁰⁸

Treatment of Children of Different Genders

Currently, under the Penal Code, child sexual abuse or 'defilement' is a gender-neutral offence. However, the offence of rape is only able to be committed against female children, as well as adult women.

Furthermore, homosexual activity is currently criminalised under Ugandan law according to Section 145 of the Penal Code and the proposed SOB. This criminalisation of homosexual activity might lead to children who have been exploited or abused by perpetrators of the same sex not reporting such offences to the authorities for fear of being charged with a crime themselves.

Gaps in Criminalisation

Evidently, there are several gaps to be addressed in the criminalisation of CSEA in Uganda:

— While the SOB provides for new forms of CSEA to reflect evolving trends in social attitudes, values and sexual practices, it still fails to reflect certain universally recognised terminology regarding CSEA offences.

— Extraterritorial jurisdiction over CSEA and related offences is very limited.

— Despite the existence of online child sexual exploitation offences in the CMA and APA, in practice the laws are hard to implement due to their non-specific nature, which leaves perpetrators room to prey on children both online and offline.¹⁰⁹

— There is also no legislation prohibiting possession of child pornography through a medium other than computers and instances of accessing or intentionally viewing child pornography.

— Additionally, there is no legislative provision that defines and proscribes modern forms of CSEA such as online grooming and solicitation (including sexual extortion), and live streaming of child sexual abuse. According to a report issued by ECPAT, 'legislation

should criminalise all forms of grooming, offline and online, with or without the intention of entering into physical contact with the victim'.¹¹⁰

— Laws providing for corporate liability do not stipulate that such is without prejudice to the criminal liability of the natural persons who committed the offence, as required under Article 26 of the Lanzarote Convention.

— If an offender is tried under the Children Act for child trafficking, he or she will face substantially lower penalties. Further, the reference to force, fraud or coercion as an element of the definition of child sex trafficking in the Children Act is inconsistent with the definition of trafficking of child survivors under international law (in that 'children can never be willing participants to their own exploitation'¹¹¹) and conflicts with the PTIP Act.¹¹²

— The potential for the death penalty as punishment for CSEA offences may place children at even higher danger, as perpetrators may decide to kill their 'victims' in order to avoid detection.

— The criminalisation of homosexuality can leave children who are sexually exploited or abused by perpetrators of the same sex at risk of further harm and unlikely to report offences committed against them.

Prosecution

CSEA cases are prosecuted by the Directorate of Public Prosecutions (**DPP**). Under Article 120 of the Constitution, the functions of the DPP include directing police services to investigate any information of a criminal nature, instituting criminal proceedings against any person or authority, and taking over and continuing criminal proceedings that have been instituted or undertaken by any other person or authority. To aide in the DPP's management and handling of CSEA cases, the DPP established the Department of Gender, Children and Sexual Offences.¹¹³

Initiating Prosecution

The prosecution of a CSEA offence depends on a survivor, their parents or guardian, or any other person filing a complaint with the police. It is an offence under section 43 of the proposed SOB for a

parent, guardian, relative or other person in a position of authority or trust to fail to report, threaten, intimidate, coerce or force a survivor not to report a sexual offence. This offence is punishable by imprisonment for three years.

The police may also receive referrals from local government council (**Local Council**) officials: most survivors in the upcountry areas in Uganda report to the Local Council. The Local Councils are mandated to refer survivors to the authorities for further assistance. The Local Councils are also required to provide survivors with access to support services and resources, including psychological or medical care and legal assistance through the police and the criminal justice system.

Under section 11 of the Children Act, members of the community who are aware or have evidence of a child's rights being infringed must report this to the Local Council.¹¹⁴ The Local Council must summon the parties concerned and decide how best to remedy the situation in accordance with the best interests of the child, and/or to refer the matter to the Ugandan police services for further management in instances of CSEA.

Though the Local Council is designated as an initial point of contact for community members to report concerns of CSEA, it does not have authority to deal with CSEA offences attracting severe sanctions. However, the significant position of the Local Council within communities provides its members with a unique understanding of the social and economic aspects affecting local African societies, making it well positioned to engage the police in the first instance.

Prosecution Process

After reporting a CSEA offence to the police, the survivor is typically subjected to medical examination on Police Form 3, which is used to ascertain the age of the survivor and the nature and age of the injuries and abuse.

The Family and Children Court (**FCC**) is established under section 13 of the Children Act, in every district and any other lower government unit designated by the Chief Justice by notice in the Gazette. The FCC has jurisdiction for CSEA offences by and between children and for applications relating to child care and protection.

Other CSEA offences are tried by the Chief Magistrates and the grave offences, such as aggravated 'defilement', are tried by the High Court.

Investigation & Evidence

A special Ugandan police unit, the Child and Family Protection Unit (the **CFPU**), is dedicated to handling issues with children. The CFPU works jointly with the Criminal Investigations and Intelligence Directorate in CSEA cases.

According to Nabasitu in her 2018 report, the investigation and successful prosecution of sexual offences against children in the Ugandan criminal justice system is faced with many challenges, including limited medical evidence, absence of eye witnesses, traumatic cross-examination by defence counsel and 'limitations of victim's tender age'.¹¹⁵

Presumption Survivor is a Child

Under Ugandan domestic law, there is no presumption that a survivor of CSEA is a child.

In terms of Part X (Children charged with offences), section 88 of the Children Act (Age of criminal responsibility), a person is presumed to be a child if he or she claims or appears to be younger than 18 years old, pending a conclusive determination of age by the court. Under section 107 of the Children Act, if a child is brought before the court (otherwise than for giving evidence and whether charged with an offence or not) and appears to the court to be below the age of 18 years, the court will make an inquiry as to the child's age. The court is entitled to take any evidence (including medical) which it may require.

Under section 108 of the Children Act, a presumption of age by the court is conclusive evidence of that person's age for the purpose of court proceedings and a court order or judgement cannot be invalidated by any subsequent proof that the age has not been correctly stated to the court. Further, a certificate signed by a medical officer as to the age of a person under 18 years is evidence of age.

The Registration of Persons Act 2015 makes it compulsory for every child to be registered at birth. Despite this, Uganda has a poor system of birth registration, creating challenges in determining the age of a child. This failure to accurately record social

data is detrimental when determining how a child should be treated by the criminal justice system. There is also a national directive in place requiring all citizens aged 16 years and above to register for national identity cards. If a child were to become involved with the criminal justice system, a birth certificate or national identity card would provide conclusive proof of age, enabling them to be better protected and their rights respected.

Where the age of an accused person or survivor is in doubt and the person has no birth certificate or national identity card, there are administrative guidelines in place to determine the age of the individual. Under the Implementation of the Children Act Guidelines, the police services can rely on 'other evidence' to prove the age of the child, such as testimony of the father or mother of the child or from members of the community where the child lives or was born. Other ways of determining the age of a child include the court's own observation and a common-sense assessment of the age of the child.¹¹⁶

Procedure for the Child to Give Evidence

Pursuant to section 24 of the proposed SOB, the court may decide to hold all or any part of the proceedings in camera or to remove people from court whose presence is not necessary. The court is also obliged to take into consideration and act in the best interests of a child survivor.

Except with the court's leave, it is an offence to:

- reveal the personal particulars of 'victims' of sexual offences, witnesses or complainants that may enable them to be identified;
- publish or broadcast information intended to lead to the identification of the aforementioned persons; or
- take a picture of the aforementioned persons.

This offence is punishable by imprisonment for six months, a fine up to 12 currency points or both.

Under section 26 of the SOB, a survivor of a sexual offence must not be subjected to cross-examination on their previous sexual experience, except with the court's leave. This provision is intended to protect survivors from being subjected to harrowing cross-

examination in order to cast aspersions on their character, leading to children feeling as though they are somehow to blame for the crimes committed against them.

The FCC's proceedings, which include those concerning CSEA offences committed by children, are held in camera and proceedings are meant to be informal where possible and by inquiry rather than by exposing the child to adversarial procedures.¹¹⁷

However, reportedly, these child-friendly justice measures are often not implemented in practice in Ugandan courts.¹¹⁸

Corroboration

Section 26 of the proposed SOB provides that corroboration of the evidence of a survivor of a sexual offence is not required.

Defences

There are no close-in-age defences for consensual acts between young people.¹¹⁹

Under section 3(4) of the PTIP Act, consent of the child's parents or guardian is not a defence to the offence of trafficking where the survivor is a child. The consent of a parent or guardian of a child who is the survivor of child marriage is also not a defence under the SOB. Importantly, neither consent of the survivor nor the existence of any culture, custom, ritual, tradition, religion or any other non-therapeutic reason for undertaking FGM are defences to this offence.¹²⁰

Unwillingness to Proceed with 'Formal' Trial

Under-reporting of CSEA offences is a widespread issue in Uganda. Many children do not report crimes as they are afraid of getting in trouble, they are embarrassed, or they do not think there is anything wrong with what was done to them.¹²¹ According to Together for Girls, only eight per cent of children who experienced sexual violence reported their abuse and sought support from services.¹²²

Furthermore, limited resources and skills in the criminal justice system result in lengthy court proceedings,¹²³ with most cases taking approximately four years to be resolved, leading

survivors to withdraw cases or be unwilling to revisit their trauma by testifying.¹²⁴

Survivors are often unable to travel to report crimes or to access support services, due to distance or economic factors.¹²⁵ Cases are subsequently removed from the formal criminal justice system, hindering the child's access to effective reparation.

Gaps in Prosecution

Although the government of Uganda has made some efforts to improve the prosecution of CSEA offences, gaps nevertheless remain. A variety of barriers hinder the prosecution of CSEA offences:

- Those responsible for implementing and enforcing laws are poorly educated on how to assist CSEA survivors.¹²⁶ The manner in which police investigations are conducted is not child friendly and is often insensitive to CSEA survivors. This serves to further discourage them from approaching the police to report a crime. It remains common for police officers to question a CSEA survivor on whether he or she provoked the offender or how they were dressed in an effort to apportion blame to the survivor. There is also a high turnover of police officers.¹²⁷
- Economic instability and no coherent legal aid system limit survivors and their families' willingness to report crimes and pursue prosecutions of offenders.
- A lack of specialist judges and magistrates to manage CSEA cases due to the criminal justice system being underfunded and under-resourced. As a result, an excessive length of time is spent prosecuting CSEA cases; witnesses often die and complainants may lose interest.
- Cultural and societal barriers which inhibit survivors' reporting of CSEA offences result in offenders escaping with impunity.
- There is a general lack of awareness and understanding across the Ugandan population of children's rights within the law and the functioning of the criminal justice system. This is especially the case in communities in which FGM continues to be practised.¹²⁸ Insufficient funds are apportioned to the civil service to disseminate this information.

— Offenders in positions of power. Uganda is a patriarchal society, so the majority of leadership positions within the criminal justice system and across society are occupied by males. It is common for CSEA offenders to be among those who are in positions of power, which consequently limits the enforcement of law which would be to their detriment.

— Loopholes in the prosecution process. Some CSEA cases are handled in open court, preventing survivors from testifying against their offenders due to fear of retaliation. The court is then often unable to convict due to a lack of evidence. Uganda has not yet adopted the use of electronically recorded evidence. While Uganda's courts restrict the public from attending trials involving CSEA survivors, loopholes in laws allow child survivors' identities to be disclosed through the service of witness summons.

— Cross-examination has been described as an 'oppressive tool for intimidating and confusing children.'¹²⁹ In CSEA cases, the rigorous use of cross-examination is rooted in cultural beliefs that women and children are promiscuous and liars.¹³⁰

— Witnesses are not currently afforded protection under the law, leading to reluctance to testify for fear of reprisal.

— Systemic corruption and bribery. State officials and law enforcement officers often succumb to corrupt practices, such as being 'bought off' by offenders, to compensate for low public sector salaries.

— The costs involved in investigation of extraterritorial CSEA crimes may be too high for the Ugandan government to incur, so it is unlikely that, even with existing extraterritorial CSEA legislation and even if extraterritorial application of this legislation was extended, these crimes would be investigated and prosecuted.

— Poor implementation and enforcement of laws, including the PFGMA. This is evidenced by the fact that FGM continues to be supported and is practised in secret 'in hidden and remote locations to avoid prosecution', with low prosecution rates (according to a 2016 UNFPA-UNICEF Joint Programme report, out of 32 reported cases and six arrests, none of these went to court).¹³¹ Further, it has been reported that 'Traditional cutters [are] continuing their trade despite the law, as it is their primary source of income'.¹³²

— The areas in which FGM is predominantly practised are very remote and traditional groups are resistant to granting police access.¹³³

Protection

Overall, as highlighted by the Ministry of Gender, Labour and Social Development and UNICEF in their 2013 report, whilst legal frameworks to protect children from sexual exploitation and abuse are robust and widespread, the primary issue which leaves children vulnerable to these forms of violence is poor implementation.¹³⁴

Protection of Survivors During Proceedings

Part IV of the proposed SOB aims to provide survivors with support during the trial process, by providing for:

— payment of compensation pursuant to section 23. The court may order that, in addition to any sentence imposed, a convicted offender compensates the 'victim' for any physical or psychological harm caused. While admirable, the delay in proceedings concluding means that 'victims' may have to wait a very long time before they are able to access funds to obtain services they should have received at the outset;

— proceedings to be held in camera;

— prohibiting the publication of information; and

— not allowing evidence of character and previous sexual history to be admitted.

The Children Act provides for the hearing of matters before the FCC to be held in camera, as does section 13(2) of the PTIP Act in cases involving children and sexual exploitation.

However, despite laws and policies in place, the implementation of these protective measures in order to mitigate the risk of re-traumatisation for survivors and limit the impact of proceedings on children has been called into question. According to ACORD and Raising Voices Uganda, 'while the law protects against this, in practice it is not upheld.'¹³⁵

Furthermore, Uganda has no specific witness protection law. A Witness Protection Bill 2015

(**Witness Protection Bill**) is currently before Ugandan parliament. If enacted, it will:

— establish a witness protection agency and a national witness protection programme intended to provide protection and safety for witnesses throughout proceedings;

— facilitate witnesses in the witness protection programme to testify during proceedings; and

— establish the parameters and scope for prosecutors to determine witness protections necessary during investigations and trial and after trial.

Pending enactment of the Witness Protection Bill, in June 2019 the office of the DPP formulated and launched the Witness Protection Guidelines.¹³⁶ These are intended to be used by prosecutors as a temporary measure in determining the parameters for witness protection and the scope of protection afforded throughout the investigation and trial process. Additionally, the police services, judiciary and the DPP apply ad hoc mechanisms to protect witnesses, including providing security and ensuring confidentiality by ensuring that identifying information of witnesses is not disclosed.

Protection of Children in General

The Ministry of Gender, Labour and Social Development holds overall responsibility for child protection in the country, specifically within the Department of Youth and Children Affairs.¹³⁷ At the district level, the Community Based Services Department holds the mandate for Child Protection.¹³⁸

In 2020, Uganda launched the action plan of the National Child Policy, which stated ending violence against children as a national priority.¹³⁹ It was developed in collaboration with UNICEF in 2019 and aims to coordinate better the efforts of different sectors in Child Protection.¹⁴⁰

Under section 42A of the Children Act, every child has the right to be protected against sexual abuse and exploitation, child marriage, child trafficking, institutional abuse, FGM and any other form of physical or emotional abuse.

The Children Act emphasises the welfare of the child and entrusts the community with ensuring that all children are well taken care of. According to section 10, it is the general duty of every Local Council, from the village to the district level, to safeguard and promote the welfare of children within its area. To achieve this aim, each Local Council must designate one of its members to be responsible for the welfare of children, who is referred to as the Secretary for Children's Affairs. Under section 11 of the Children Act, any matter involving the welfare of a child must be reported to the local authorities of the area to ensure the child's best interests are protected.

Various reporting obligations are imposed under the Children Act. Under section 42A, if a person has reasonable grounds to believe that a child has been abused or is in imminent danger, they may [our emphasis] report this to a designated child protection organisation (which includes the Local Council, a medical practitioner or probation and social worker) or authority. Medical practitioners, social workers, teachers or Local Councillors at the LC 1 level are mandated to report on any matter that affects the wellbeing of a child in their charge. The person to whom the report has been made is obliged to investigate the report and if substantiated, initiate proceedings under the Children Act to protect the child.

A designated child protection organisation must report the matter to the probation and social welfare officer, and if they have conducted an investigation, report their findings to the police. Any designated child protection organisation, probation and social welfare officer or police officer who has conducted an investigation may:

— take measures to assist the child or refer the child to protective services (including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification and problem solving); or

— initiate actions for the long-term protection of the child if assessed that the current environment in which the child lives poses a significant threat or risk to the child.

Article 10 of the ICGLR Kampala Declaration on Sexual and Gender-based Violence 2011 established a fund that makes compensation available for survivors.¹⁴¹ The fund is managed by the African

Development Bank and is mandatorily funded by the ICGLR member states' contributions in addition to voluntary contributions of Cooperating and Development partners. Despite the availability of the fund and as noted above, survivor compensation is often sought outside formal mechanisms by parents or other guardians or relatives, which may deny justice to child survivors.

The National Council for Children, established under the National Council for Children Act Cap. 60, was replaced by the National Children Authority (**NCA**) established under section 9A of the Children Act. The NCA's functions include awareness-raising, making recommendations for reform and policy measures, monitoring the implementation of laws and progress of investigations, receiving complaints from the public, data management and research coordination, and advising, coordinating and assisting government, local authorities and NGOs in campaigns against child abuse.¹⁴²

Courts may release CSEA suspects and accused persons on bail for any offence as long as the person is not a threat to the public and will not interfere in investigations. However, domestic courts tend to restrict the overseas travel of these persons, particularly to ensure they remain within the court's jurisdiction. Persons who are under criminal investigation may be prevented from travelling overseas. According to section 24(2) of the Police Act Cap. 303, whilst a person is on bond, provision may be made for them to appear at regular intervals before a senior police officer, which would imply that they cannot leave the country. However, upon conviction and following the serving of jail time, a convicted person is not prevented from travelling overseas.

A person convicted of an offence under the SOB must disclose this conviction when applying for employment that places them in a position of authority or care of children, or when offering or agreeing to take care of or supervise children. A failure to comply is an offence carrying a penalty of imprisonment up to seven years and the termination of employment.¹⁴³ In addition, section 9 of the PTIP Act creates the offence of a failure to disclose a previous conviction of a trafficking offence when seeking employment in a position of authority or role with responsibility over children.

Other domestic legislation states that convicted persons may be excluded from activities involving contact with children in public service. Article 80 of the Constitution states that a person convicted of an offence involving moral turpitude may not take up certain public offices. However, this principle has proven challenging to enforce in the private arena. According to section 15 of the Education (Pre-Primary, Primary and Post Primary) Act 2008, a person who is convicted of a criminal offence involving moral turpitude may be de-registered or refused entry on a teacher's registry.

The draft Kampala Capital City Authority, in partnership with the Ministry of Gender, Labour and Social Development, produced the draft KCCA Child Protection Ordinance 2019. It seeks to curb the growing number of street children in the Kampala Metropolitan area who are particularly exposed and vulnerable to CSEA. If passed into law, it will aim to get vulnerable children off the streets and into safe shelters.

Despite the existence of robust survivor protection and support provisions in legislation, meaningful implementation of this legislation is limited. According to Together for Girls, only 6.5 per cent of children received services after experiencing sexual violence, among those who experienced sexual violence prior to age 18.¹⁴⁴ As highlighted by the Ministry of Gender, Labour and Social Development in the 2020 National Child Policy, 'human resource and logistical challenges (such as lack of transport, low funding, and even staffing gaps) constrain the ability of key institutions, both at the national and district level, to fulfil their statutory responsibilities.'¹⁴⁵ Furthermore, anecdotal evidence suggests that a high rate of corruption continues to challenge the effectiveness of programmes currently in place.

Protection of Trafficked Children

Section 12 of the PTIP Act provides for various forms of protection, assistance and support for trafficking survivors, which is to be provided by the government and other agencies.¹⁴⁶ This includes:

- 'victims' being informed of their rights in a language they understand;
- preserving their rights to institute civil proceedings;

- being provided available health and social services, medical care, counselling and psychological assistance, on a confidential basis in a language they understand;

- the right to be considered for provision of safe and appropriate accommodation and material assistance where necessary and possible; and

- referral to appropriate organisations and institutions for assistance and support.

Protection of trafficked children must be in accordance with their special needs especially regarding education, accommodation and care. Survivors are also entitled to information on the nature of support to which they are entitled.

The PTIP Act prohibits the penalisation of trafficking survivors for unlawful acts committed as a direct result of being subject to trafficking. However, reports indicate that the government has continued to detain and place on bond some trafficking survivors, including children, in an attempt to compel them to cooperate with and periodically report to law enforcement in support of criminal investigations.¹⁴⁷

The regulations for the PTIP Act have not yet been passed. This means that the implementation of the survivor protection provisions in section 12 is unenforceable. Additionally, there is still no formal mechanism to systematically refer trafficking survivors to appropriate care. NGOs and international organisations provide most survivor services via referrals to NGO-operated shelters, which provide psychological counselling, medical treatment, family tracing, resettlement support, and vocational education without contributing in-kind or financial support. Continued reliance on ordinary police structures that have been marred by bureaucracy and corruption is not adequate.

The government has set up several shelters for children at risk of trafficking, such as the youth training centre in the Karamoja region and the rehabilitation centres in Kampala and Wakiso.¹⁴⁸ After removing children from the streets of Kampala, where they are at a high risk of being trafficked, children are provided with food, counselling, and at least three months of vocational training, before returning them to their families.¹⁴⁹

The Coordination Office for the Prevention of Trafficking in Persons (the **COPTIP**) was established in March 2013 at the Ministry of Internal Affairs Headquarters. According to the COPTIP, traffickers are becoming more organised and are coordinating their actions by operating in regional trafficking networks.¹⁵⁰

Uganda passed the National Action Plan for Prevention of Trafficking in Persons in Uganda (the **NAP**) on 1 April 2015. The NAP was developed in conformity with the aspirations of the Palermo Protocol, Ouagadougou Action Plan of 2006 and PTIP Act and is a guiding tool for implementing actions to combat trafficking in persons in Uganda. The NAP is used to raise awareness, stimulate national and community action, and build ownership and commitment from government and public stakeholders to combat trafficking in persons.

The National Task Force, which is led by the Ministry of Internal Affairs' Permanent Secretary, together with the COPTIP serving as its secretariat, have continued to implement the NAP and coordinate all anti-trafficking efforts in Uganda.

Counselling

There is no formal mechanism to systematically refer survivors of CSEA offences to appropriate care.¹⁵¹ Post-trauma care is currently provided by NGOs and international organisations, who are responsible for providing most survivor services such as shelters. Most survivors cannot afford the medical examination required for their cases.¹⁵² Moreover, many of the private services such as counselling are costly and scarce.¹⁵³

The SOB fails to address certain areas which have the potential to affect CSEA survivors adversely.¹⁵⁴ For example, it does not mandate the availability of physical and psychological support services for survivors.

There is a pervading lack of knowledge across Ugandan society of facilities available to support CSEA survivors. Even where child survivors are aware of available services, they do not seek these out as they think that they are not necessary or do not want to receive services.¹⁵⁵ Alternatively, they do not ask for help as they are either too embarrassed or fearful of getting into trouble.¹⁵⁶

Protection of Children in Disaster Settings

Every child is vulnerable to abuse and neglect, which vulnerability becomes extreme during disasters and conflict. Conflict and disasters (natural and man-made) continue to undermine and disrupt the provision of education, general welfare and wellbeing and protection of children against CSEA in Uganda. There are high numbers of child refugees in Uganda, having fled from armed conflicts in neighbouring African countries.

There is no specific piece of legislation that governs the protection of children during disaster settings; therefore, there are no clear-cut measures to be adopted during these times. The Ministry of Gender, Labour and Social Development is responsible for coordinating child protection and coordination both in normal times and during disasters.

Other

Protection of Adopted Children

The Children Act provides protection regarding international adoptions. Section 46 stipulates the conditions for a non-Ugandan citizen to adopt a Ugandan child. The applicant must:

- have stayed in Uganda and fostered the child for 12 months;
- not have a criminal record;
- have a recommendation concerning their suitability to adopt a child from their country's probation and welfare office or other competent authority; and
- satisfy the court that their country of origin will respect and recognise the adoption order.

However, reportedly, there have been several unethical practices linked to the establishment and operation of children's and babies' homes and the adoption process.¹⁵⁷ Highlighted as a particular concern according to a report published the Republic of Uganda and UNICEF, is the circumvention of the adoption process through the use of the less stringent legal guardianship process; the deliberate recruitment of children from within the community into childcare institutions with prospects of financial gain

through adoption and legal guardianship; and the relinquishment of parental responsibility under false circumstances.¹⁵⁸

Collection and Dissemination of Data on Child Protection

As highlighted by the Ministry of Gender, Labour and Social Development in the 2020 National Child Policy, availability of reliable, up-to-date, nationally-representative and well-disaggregated data on key child protection indicators is limited.¹⁵⁹ Such limitations are attributed to a lack of financial and human resources.

To address this issue, one of the key priorities identified in the National Child Policy 2020 is to develop a robust monitoring and evaluation system that drives systematic research, analysis and dissemination of data on child protection at both national and subnational levels.¹⁶⁰

Prevention

No stakeholders in the Ugandan tourism industry (including hotels, tour operators and travel agencies) have signed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, which is a project joining the tourism private sector and ECPAT International (an international organisation dedicated to ending the sexual exploitation of children) (**ECPAT**) to prevent the sexual exploitation of children at tourism destinations.¹⁶¹

Register of Offenders

Currently, Uganda does not maintain a national list of child sexual offenders.

Uganda also neither prohibits those convicted of CSEA offences in Uganda from travelling abroad nor those convicted of CSEA offences abroad from travelling to Uganda. However, Part V of the SOB prescribes the establishment of a sex offenders' register whereby persons convicted of sexual offences will have their particulars registered with the National Identification and Registration Authority (**NIRA**) for their entire lives.¹⁶² Within ten days of judgement being handed down convicting an offender, the court must forward particulars and a certified copy of the judgement to NIRA, which will

then enter the particulars of the conviction on the register.

Anyone will be able to access the register. The Minister is yet to pass regulations setting out the procedure and conditions of access.

Section 24 of the APA also provides for a Register of Pornography Offenders with the names of convicted offenders and storage of files used in the prosecution that secured the conviction.

Child Online Safety

Uganda is a member of the International Federation of Social Workers (the **IFSW**), a global organisation that 'promotes social work, shares best practice models and facilitates international cooperation to achieve social development and social justice globally'.¹⁶³ Uganda therefore has access to guidance on child sexual abuse material and online grooming in the Guiding Principles for Social Workers Working with Others to Identify and Protect Children From all Forms of Sexual Abuse.

Section 3 of the APA provides for the creation of a Pornography Control Committee. However, this committee was not constituted until 2017 (over three years after the law came into force).

Distribution of CSEA Content Online

In 2009, the Global Partnership to End Violence against Children and its associated fund were launched to support actions that prevent online child sexual exploitation. Uganda is also a member of the WePROTECT Global Alliance to End Child Sexual Exploitation Online, which is committed to ending online child sexual exploitation, by identifying and protecting survivors, removing child sexual abuse material from the internet and finding offenders.¹⁶⁴ In partnership with WePROTECT, a grant from the Fund was awarded to UNICEF Uganda in 2016 to address online child sexual exploitation in line with the WePROTECT Model National Response.

In 2015, Uganda launched its use of an internet hotline, the IWF Portal, to report instances of child sexual abuse/exploitation material.¹⁶⁵ The hotline is run with the support of the Internet Watch Foundation and reports are analysed by experts in the United Kingdom. The National Information Technology

Authority Uganda (**NITA-U**) has said that 'the partnership will provide an effective solution that leverages the IWF expertise and international collaboration to remove online child sexual abuse content from the Ugandan perspective'.¹⁶⁶

In late 2016, UNICEF Uganda and the Ministry of Internal Affairs hosted the National Working Group on Online Child Sexual Exploitation and Abuse. NITA-U and the Uganda Communications Commission participated. Both play a critical role in strengthening Uganda's efforts to prevent and respond to online child sexual exploitation as part of the project. The National Working Group has been tasked with initiating strategies to prevent the online grooming of children for sexual exploitation and monitor the implementation of concrete responses to this crime. It also raises awareness about the promotion of child online safety.

Uganda has not taken any additional steps to implement the provisions of the Malabo Convention since its signing.¹⁶⁷

In November 2021, the Commissioner for Children and Youth in the Ministry of Gender, Labour and Social Development announced that Uganda would develop a National Child Protection Action Plan to address online CSEA in the country.¹⁶⁸

Awareness & Education

Law enforcement training has been carried out by the CPFU, the Ministry of Internal Affairs and various NGOs. However, this training is not the norm, especially in rural areas, which explains why it is difficult for law enforcement in many parts of Uganda to identify CSEA survivors and offenders.

In accordance with Article 5 of the Lanzarote Convention, the government has created several media awareness campaigns, including the Uganda National Helpline Initiative.¹⁶⁹

As mentioned above, Uganda has also carried out several workshops with stakeholders, including NGOs and civil society organisations, on CSEA-related issues.

Uganda has been a member of the ICGLR since its establishment in 2000. It therefore complies with its Protocol on the Prevention and Suppression of

Sexual Violence against Women and Children and commits within this framework to prevent and fight sexual exploitation and provide assistance to survivors.

Recommendations

There are several steps which should be taken as a matter of priority to help combat CSEA offences against children in Uganda and to ensure that Uganda is aligned with best practices as outlined in international conventions such as the Lanzarote Convention, Budapest Convention and the Palermo Convention, including:

Legal

- As the supreme law of Uganda, the Constitution should incorporate a specific provision protecting children from sexual abuse.
- The SOB should be reconsidered by the Legal and Parliamentary Committee as a matter of urgency, with the problematic provisions identified above either removed or amended. Once assented to by the President, regulations to the SOB should be passed without delay to enable the implementation of this law.
- Regulations to the PTIP Act should be passed to stipulate procedures for the protection of child trafficking survivors and to enable continuous monitoring of the systems put in place.
- The Marriage Bill should be passed to prioritise the legal reform of marriage laws.
- The Witness Protection Bill should be enacted and a proper legal framework developed to protect witnesses and survivors when they testify.
- The EAC FGM Act should be fully implemented. The PFGMA should be further strengthened by including the detailed content of the EAC FGM Act and by ensuring that survivors pressured into agreeing to FGM are not penalised, as currently provided in section 4 of the PFGMA regarding women who undertake FGM on themselves.¹⁷⁰
- The CMA and AP should be amended to provide for their extraterritorial application.

— Extraterritoriality in existing legislation (and in the SOB) should be extended to apply to CSEA offences committed by Ugandans outside Uganda against non-Ugandan children.

— Online child sexual exploitation offences should be consolidated into one law to avoid contradictions and ambiguities, and to expressly criminalise online grooming and sexual extortion.

— A defence should be enacted for children or young persons (where the age gap between the offender and the survivor is less than two years) engaged in consensual sexual activity, to prevent the further criminalisation of children.

— Outdated terminology in the SOB, including the term 'defilement', should be removed. 'Child pornography' in domestic legislation should be replaced by the term 'child sexual abuse material' with further descriptions regarding specific offences in legislation (for example, the publication and distribution of child sexual abuse images), and 'child prostitution' should be replaced with 'the exploitation of children in/for prostitution'.

— Decriminalise homosexual activity and address gaps in the criminalisation of CSEA that mean boys cannot legally be 'victims' of rape.

— The reference to force, fraud or coercion as an element of the definition of child sex trafficking in the Children Act should be removed, and persons who have reasonable grounds to believe that a child has been abused or is in imminent danger should be obliged to report this to a designated child protection organisation or authority under the Children Act.

— Uganda should ratify the Palermo Protocol.

— The provisions of Article 29 of the Lanzarote Convention should be incorporated into domestic legislation.

— Orphanages should be subject to government regulation and monitoring, particularly to help combat CSEA offences.

Prosecution

— The Ugandan government should allocate funding to allow for better implementation of existing

legislation and to address the high corruption rate in law enforcement and other public offices. Resources should be dedicated to ensuring the proper investigation and prosecution of CSEA crimes.

— The Ugandan government should seek to recruit, train and support more personnel (including police, specialist judges and magistrates) to handle CSEA cases, particularly on the contents of the law and in working to eliminate cultural and societal barriers to prosecution. Training should be continuous and of a sufficiently high standard.

— Judges and magistrates should be encouraged to impose the sentences set out in the law.

— The government should seek to implement education programmes for the civil service to ensure that they are properly equipped to support CSEA survivors throughout prosecution.

— The police should develop improved procedures for collecting evidence in CSEA cases.

— The legal age of marriage in the Constitution should be enforced, and non-conforming legislation amended.

— Children should be encouraged to report acts of sexual violence committed against them. The government should emphasise that children who report crimes will receive relevant assistance free of charge, including legal and health services. This information should be made available to children in schools and community centres.

— Positive actions should be taken to encourage children to cooperate in the prosecution of CSEA offences by testifying in court (including implementing the use of electronic evidence), to ensure that perpetrators can be brought to justice. Survivors and witnesses should be provided with additional support and protection. The compensation available to survivors for harm caused should be publicised.

— Advice should be provided to Local Councils and police services to combat systemic corruption.

— FGM cases should be monitored and reported to improve efficiency and inform policy makers and law enforcement.¹⁷¹

— Medical workers should be trained and mandated to report and record all instances of FGM and other signs of sexual abuse, to contribute towards better data collection.

— Stakeholders should cooperate on countering CSEA at the domestic, regional and international levels, especially in the East African Community and particularly given Uganda's proximity to areas of conflict and the prevalence of cross-border FGM.

Protection

— Legislation providing for the protection of vulnerable children in Uganda should be enforced. Uganda should build on its institutional capacity to enable the provision of effective protection and assistance to CSEA survivors.

— The government should implement counselling, medical and rehoming support services free of charge to CSEA survivors, who are often forced to return home after making a report without having received any support to aid in protecting their mental, emotional or physical wellbeing.

— Robust processes should be established to improve reporting, referral and response to crimes.

— Trafficking survivors should be treated humanely and not prosecuted for offences committed as a result of being trafficked.

— The government should continue to develop and implement standard operating procedures for survivor identification and referral to services and should train officials in those procedures. Particular attention should be given to identifying vulnerable populations, including impoverished, orphaned and refugee children.

— The government should financially support survivors as they move through the criminal justice system (particularly those who must complete medical examinations) regarding their care to ensure that access to services is not a barrier to justice.

— Protection measures, such as emergency helplines and safe shelters, should be put in place and publicised in remote areas where girls are at risk of FGM and where these services are most likely to be unavailable.

Prevention

— A sex offenders register should be created, as intended by the SOB.

— An active police presence on roads to schools should be established during commute times when child sexual abuse crimes are most often committed.

— Civil society organisations have contributed meaningfully to efforts to prevent and raise awareness of CSEA.¹⁷² Civil society should continue to be involved as this will be crucial in eliminating CSEA in Uganda.

— Community members should be encouraged to recognise their role in protecting and safeguarding children's rights.

— Research should be conducted on online CSEA and child sexual exploitation in tourism and travel to determine its prevalence in Uganda.

— Any prosecutions relating to FGM and child marriage should be widely reported in all local languages and through local media, such as community radio.

— Stakeholders in the Ugandan tourism industry should sign the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism to demonstrate their commitment to combatting child sexual exploitation in travel and tourism.

Cultural/Education

— Cultural and societal attitudes towards CSEA should be addressed. This could be achieved through the government, in collaboration with civil society organisations and the private sector, developing and implementing a communication strategy designed to raise awareness of the social and cultural norms that typically legitimise sexual violence; the forms of CSEA; its negative consequences; and clear and accurate information on the laws in place to combat CSEA. This may include large-scale public awareness campaigns and educational initiatives in schools, which are both easy to understand and in local languages where needed. Substantive funds should be directed towards this. Rural communities, where girls are more likely to be

subjected to problematic traditional practices (such as FGM and child marriage), should be prioritised. In these areas, in which literacy rates are often low, community radio or other media channels typically subscribed to should be used to disseminate information.

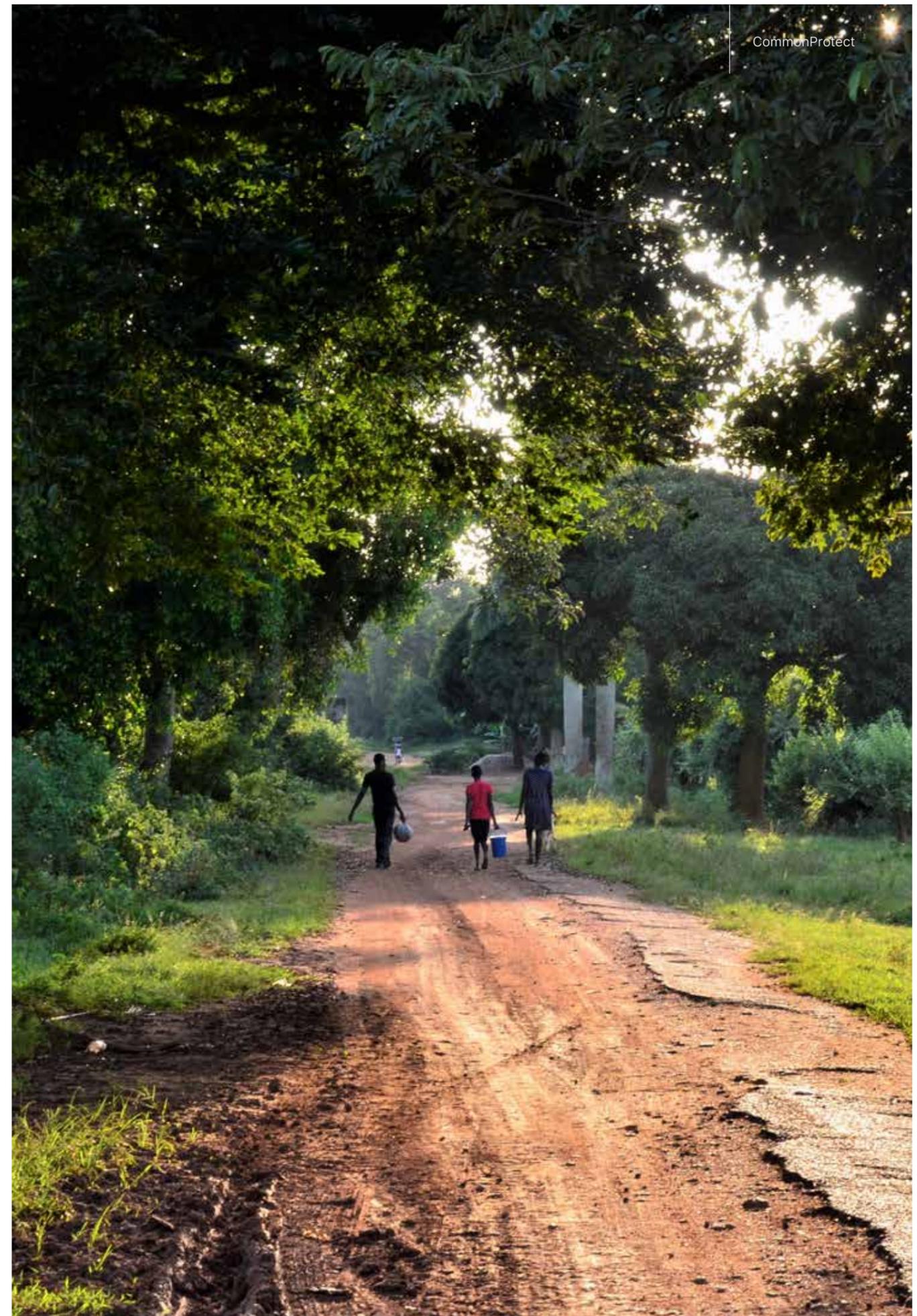
— Civil society organisations and social welfare departments in local government should encourage community members to report incidents to the authorities and educate them on how and where to report CSEA crimes. Information on reporting CSEA offences should be made readily available in all community spaces.

— The government should seek to involve local community and religious leaders in policy discussions on CSEA to ensure that accurate information and education is being shared with communities by trusted and respected individuals. Leaders should be involved in education on CSEA laws, including their

responsibilities and how crucial the law is in protecting girls in their communities.

— To combat child sex trafficking, the government should implement extensive training programmes (including for immigration officials and those involved in the travel and tourism industry) to reach broader sections of society.

— Local Councils should seek to work in partnership with community leadership to foster a change in social and cultural beliefs that lead to poor reporting and enforcement of laws, specifically concerning FGM and child marriage. Emphasis should be placed on eliminating societal pressures to take part in practices which amount to CSEA, as well as implanting community-based programmes to help eliminate economic stability, which often drives parents or survivors to accept payment in exchange for dropping cases or to accept marriage of their under-age daughters.



The United Republic of Tanzania

The United Republic of Tanzania (the Union) was formed in 1964 and comprises Tanzania Mainland (formerly Tanganyika) and the semi-autonomous archipelago of Zanzibar. It occupies a strategic geographical position in East Africa within the African Great Lakes region and is a member of the East African Community (the EAC) and the Southern African Development Community (the SADC). Each part of the Union has its own constitution, parliament, government and budget, and development has unfolded differently.¹

The Union has taken steps to improve the legal framework for the protection of children, but many are still vulnerable to violence, neglect, sexual abuse and exploitation. Domestic legislation generally recognises a wide range of CSEA offences, and the country's public and private sectors continue to take steps to try to address this widespread issue. The government has made attempts to combat CSEA by developing various National Action Plans, often with the help of international partners. However, plans have rarely been implemented in a timely manner.

Addressing the high prevalence of violence is a central development goal for Tanzania. The government has committed to providing effective leadership for eliminating violence, recognising that failing to act is detrimental to Tanzania's progress towards achieving Agenda 2030 and reducing the national economic cost of violence.² As part of the political commitment, Tanzania was the first African country to become a pathfinder country in the Global Partnership to End Violence Against Children and implement the WHO's seven INSPIRE strategies.

CSEA Profile

Violence against women and children is a daily reality for large numbers in the Union. The 2009 Violence against Children Study (VACS) found that violence against children is a serious and widespread problem in Tanzania.³ In the Mainland, almost 75 per cent of both girls and boys experienced physical violence before the age of 18 by an adult or an intimate partner. In addition, nearly three in 10 girls and approximately one in seven boys experienced some form of sexual violence before the age of 18.⁴ Neighbours and strangers, often at least 10 years older, were the most frequently reported perpetrators of sexual violence that occurred to females before reaching 18 years old.⁵

In Zanzibar, rates of sexual violence were lower with approximately 6 per cent of females and 9 per cent of males reporting having experienced sexual violence before the age of 18.⁶ Perpetrators were most commonly strangers, neighbours and dating partners, and the most common locations were someone's house, at school, or while travelling to or from school.⁷

In 2015, the CRC Committee expressed serious concern regarding the levels of physical and sexual violence against children in Tanzania, particularly the sexual exploitation of girls.⁸ More recently, a Legal and Human Rights Centre (LHRC) report from 2020 noted a 49 per cent increase in incidents of violence against children from 10,551 in 2016 to 15,680 in 2019.⁹ The most common CSEA offences committed in Tanzania are rape, sexual abuse by relatives and sexual harassment.¹⁰ Incidents of rape increased from 5,802 in 2015 to 7,837 in 2019,¹¹ with many of those survivors being children.¹² Incidents of child rape and 'sodomy' increased from 2,365 in mid-2018 to 4,397 in mid-2019.¹³ The LHRC's Media Survey 2020 showed that 87 per cent of the reported incidents of violence against children were sexual, while 13 per cent constituted physical and other forms of violence.¹⁴ The report also noted a perceived increase in incidents of violence against children throughout the school closure period caused by the Covid-19 pandemic in the Tanzanian community.¹⁵

The LHRC highlighted poverty, a lack of childcare knowledge, harmful cultural beliefs and a lack of awareness about children's rights as some of the many factors that contribute to violence against children.¹⁶ Furthermore, there is a low rate of education amongst children, with girls only accounting for 38 per cent of upper secondary students.¹⁷ Approximately 2 million children, mostly

from rural areas, do not attend school.¹⁸ All these factors make children more prone to exploitation.

Although there are no official figures on the scale of the problem, it has been reported that commercial sexual exploitation of children is on the rise.¹⁹ Indeed, the 2009 VACS found that approximately 1 in 25 females aged 13 to 17 years reported that they had been given money or goods in exchange for sex. There were too few boys aged 13 to 17 reporting child exploitation to calculate a reliable national estimate.²⁰ Furthermore, in 2019 a report found that, although there was an obvious lack of data, the sexual exploitation of children in travel and tourism (SECTT) was a significant and growing issue in Tanzania.²¹

Tanzania is a source, transit, and destination country for child trafficking for forced labour and commercial sexual exploitation.²² The children most at risk of trafficking are those who are orphaned or come from impoverished backgrounds.²³ Children are usually exploited through domestic servitude and sex trafficking.²⁴

Child trafficking is often facilitated by the families themselves, particularly poor families in rural areas. Some are duped, entrusting their children to brokers who sometimes enter communities to recruit and transport them, believing their children will have a better life and access to education or employment in urban areas and abroad.²⁵ Others are manipulated through the traditional practice of child fostering, whereby poor parents entrust their children into the care of wealthier relatives or respected community leaders living in urban areas.²⁶

As with most countries, the advancement of technology has led to an increase in online sexual abuse of children, including the production and dissemination of child sexual abuse images. In 2013, ECPAT International reported that online child sexual abuse was on the rise in Tanzania.²⁷ The recent *Disrupting Harm* survey by ECPAT, Interpol and UNICEF (**Disrupting Harm**) estimates that 200,000 children in Tanzania were subjected to online CSEA in just one year.²⁸ The report also highlighted the general lack of awareness and understanding about online child sexual exploitation and abuse in Tanzania by frontline workers, noting that it is a 'new' issue and that many do not understand the concept.²⁹ There are acknowledged issues with data in Tanzania, but data collected by law enforcement

also suggests that online CSEA offences rose between 2017 and 2019. CyberTips related to Tanzania that have been reported by NCMEC total 20,625, mostly from Facebook and about suspected child sexual abuse material (CSAM).³⁰

Incidents of sexual violence and the abuse of children by teachers at schools have been found to be committed and the CRC Committee has drawn attention to the lack of disciplinary or criminal investigation of teachers for their professional misconduct.³¹ Between 2016 and 2020, a total of 9,819 complaints were filed against teachers in Tanzania, of which the main complaints related to alcoholism and sexual violence.³² Certain regions have also reported a concern over increasing incidents of anal rape among pupils at school (abuse perpetrated by other pupils) and in their homes by relatives.³³ Contributing factors to the increase in anal rape in the communities include poverty and customs and traditions, such as a local dance known as *vigodoro* or *kigodoro*.³⁴

Refugees in Tanzania are at heightened risk of exploitation and abuse. There are over 200,000 refugees and internally displaced people in Tanzania, most fleeing civil strife in Burundi and Congo and mainly living in refugee camps in the Kigoma region of north-west Tanzania. The UNCRC Committee has expressed concern about the scarce opportunities for long-term refugee children to access education and develop life skills, and the insufficient assistance for the increasing numbers of unaccompanied and separated children without parental care in the camps, which leaves them vulnerable to exploitation.³⁵ Children are exposed to safety risks in the community and unsafe family environments, with high levels of physical violence and instances of neglect. There is evidence of exploitation of boys and girls through labour, including giving away a child, mainly a daughter, to pay a debt; forced marriage; teenage pregnancy; and violence in schools.³⁶

In addition to physical and sexual violence, harmful traditional practices exist which serve as pathways to CSEA, such as child marriage and female genital mutilation (**FGM**).

Although there has been some progress in reducing the practice of child marriage over the last decade, it remains prevalent in Tanzania with an approximate prevalence rate of 31 per cent.³⁷ According to UNICEF, Tanzania has the 11th highest absolute

number of women married or in a union before the age of 18 in the world.³⁸ Human Rights Watch has documented cases when girls as young as seven were married.³⁹

The prevalence rates and drivers of child marriage in Tanzania vary across regions and ethnic groups, but include income poverty, traditional socio-cultural norms and practices related to marriage, adolescent fertility, gender inequality, and weak legal and policy frameworks.⁴⁰ Whilst the practice does also take place among the urban population, it is most common in rural communities, and is mainly limited to those with poor economic conditions and strong religious beliefs and cultural ties.⁴¹ Girls from poor families are twice as likely to be married early than girls from wealthier homes.⁴² A bride price, or dowry, is often paid by the groom's family to the bride's family in cattle and cash, and is considered a means of reducing insecurity caused by poverty—girls are viewed as a means for families to obtain much-needed income.⁴³

Nine percent of currently married girls aged 15-19 are in polygynous unions.⁴⁴ In many cases, child wives are forced into polygamous marriages and encounter abuse not only from their husbands and in-laws, but also from their co-wives.⁴⁵

FGM is another harmful traditional practice that is prevalent in Tanzania.⁴⁶ Although Tanzania has criminalised FGM under the age of 18 years under the Tanzanian Sexual Offences Special Provision Act of 1998, which is an amendment to the penal code, it is still widely practised in some communities. At least 7.9 million women and girls in Tanzania are estimated to have undergone FGM.⁴⁷ The Demographic and Housing Survey 2015–2016 showed that the prevalence of FGM in women aged 15–49 is 10 per cent.⁴⁸ Although FGM is decreasing, girls are still at considerable risk in certain regions of Tanzania.⁴⁹ The prevalence of FGM in rural areas is more than double that in urban areas.⁵⁰ Studies have shown that Christian groups are more likely to practice FGM than other faith groups. Mara Region, for example, is 95 per cent Christian or Animist.⁵¹ The UNCRC Committee has expressed concern that FGM is being increasingly performed at a very young age, including on babies.⁵² It also appears that the practice is being conducted in a more secretive manner due to fear of being caught and fined. The practice is uncommon in Zanzibar with low rates (less than 1 per cent).⁵³

The government has acknowledged that FGM is a harmful practice that is pushing back development in the country, particularly in the areas where it is prevalent.⁵⁴

The greatest challenges facing Tanzania regarding domestic laws addressing CSEA are linked to social and cultural attitudes.

— Attitudes towards CSEA: it is clear that at least some of the Tanzanian population do not fully appreciate the wrongfulness of sexual behaviour with children. This is particularly the case in certain cultural groups, where CSEA is often not properly recognised or taken seriously. In some areas, 'witchdoctors' encourage the rape of children as a means of bringing the perpetrator economic success.⁵⁵

— Attitudes about child rights: children belong to their parents and caregivers, and are not perceived to be rights holders. Therefore parents and caregivers can treat them as they please.⁵⁶ The UNCRC committee has expressed concern at the lack of awareness of child rights among the general public, including traditional and religious leaders and government officials.⁵⁷

— Views on consent: some cultures in Tanzania do not believe a woman's consent is required for sex. This cultural belief is especially relevant in cases of marital rape, where the fact of marriage is considered implied consent to all future sexual acts.⁵⁸ The failure to recognise and understand the need for consent also applies to cases of CSEA.

— The culture of silence and stigma against survivors of CSEA: CSEA survivors are often heavily stigmatised in Tanzania. This in turn leads to children (or their parents) choosing not to report crimes due to fears of social alienation that enable perpetrators to escape punishment. This also leads to a lack of information on the extent and severity of CSEA as a national issue.⁵⁹ For example, in 2017, President Magufuli shockingly pardoned two men who in 2003 had been charged with raping 10 primary school girls and sentenced to life in prison.⁶⁰ The two men were high-profile singers and their release was celebrated by many in Tanzania, whilst NGOs said the move was "promoting a culture of human rights violations in which young victims of sexual violence are being punished while perpetrators are going free."⁶¹

— Discriminatory attitudes regarding girls' access to education: a lack of access to education increases girls' likelihood of getting married at a younger age, which may ultimately put them at a higher risk of falling victim to sexual abuse or marital rape.⁶²

— Bride price transaction: child marriage is partly driven by poverty and a girl child is exchanged for a dowry (livestock or cash) via marriage.⁶³

— Acceptability of child labour and commercial sexual exploitation of children due to poverty.⁶⁴

Criminalisation/Legislation

The United Republic of Tanzania has a mixed legal system. Statutory law is based on the English Common Law system, but customary and Islamic law is also a source of law, established under section 9 of the Judicature and Application of Laws Act 2002 (the **JALA**).⁶⁵ Customary law is in effect when it does not conflict with statutory law. Islamic law applies to Muslims, empowering courts to apply Islamic law in personal and family matters.

International agreements and protocols dealing with CSEA have been signed by Tanzania; however, not all have been implemented into domestic law. Tanzania follows a dualist legal system whereby international instruments only become part of the domestic legal order after parliament passes a bill domesticating the instrument. Generally, the delay in implementation is due to the high levels of bureaucracy required to implement such measures in Tanzania. Tanzania has ratified the following international human rights treaties relevant to child protection: the UN Convention on the Rights of the Child,⁶⁶ the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (the **Optional Protocol**),⁶⁷ the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the **Palermo Protocol**).⁶⁸

Tanzania is also a signatory to the following regional treaties: the African Charter on the Rights and Welfare of the Child (**ACRWC**); the African Charter on Human & Peoples' Rights (the **Banjul Charter**); the Protocol to the African Charter on the Rights of Women in Africa (the **Maputo Protocol**); and the

East African Community Prohibition of Female Genital Mutilation Act.

Classification of Sexual Offences with Children

Tanzania has made progress in enacting legislation targeting child sexual exploitation and abuse and exploitation, but implementation is a challenge. Nevertheless, the legal framework still needs to be strengthened.⁶⁹ Existing laws are not always harmonised, and in some cases are contradictory. However, some laws pertaining to CSEA have been amended to reflect socio-economic change, such as protection of male children from sexual violence.⁷⁰

The arrangement between mainland Tanzania and Zanzibar requires that the two regions enact separate laws on children's issues.⁷¹

The key pieces of legislation enacted which address CSEA offences include:

- The Constitution 1977 (Tanzania)
- The Constitution 2006 (Zanzibar)
- The Law of the Child Act 2019 (Tanzania)
- The Children's Act 2011 (Zanzibar)
- The Penal Code, as amended by the Sexual Offences Special Provisions Act No. 4 of 1998 (Tanzania)
- The New Penal Code 2018 (Zanzibar)
- The Sexual Offences Special Provisions Act 1998 (Tanzania)
- The Law of Marriage Act 1971 (Tanzania)
- The Anti-Trafficking in Persons Act 2008 (Tanzania and Zanzibar)
- The Cybercrimes Act 2015 (Tanzania and Zanzibar)

The Constitution 1977 (Tanzania)⁷² is the first source of law for the United Republic of Tanzania. Neither the Constitution of the United Republic of Tanzania nor the 2006 Constitution of Zanzibar specifically

protect children against sexual violence or exploitation, but they do outline children's rights to have their human rights protected.⁷³

The Law of the Child Act 2019 (Tanzania)⁷⁴ is applicable in Mainland Tanzania and implements into domestic law most of the rights of the child provided for in international and regional instruments.⁷⁵ However, whilst the Act attempts to incorporate the principles enshrined in the UNCRC and the ACRWC, certain aspects remain inconsistent. For example, the Act has not amended section 13 of the Law of Marriage Act 1971, which allows the marriage of girls from the age of 15. The Committee of the UNCRC has encouraged Tanzania to create an appropriate legal framework to ensure that all laws comply with the provisions of the Convention, and to reform existing legislation and strengthen the protection of children's rights.⁷⁶

The right of the child to have his/her best interests taken as the primary consideration is explicitly set out in the Law of the Child Act (Tanzania).⁷⁷ However, the Committee of the UNCRC has expressed concern that this right is not adequately applied or interpreted by legislative bodies and therefore is not incorporated in policies and programmes concerning children.⁷⁸ The right of the child to have his/her best interests taken as a primary consideration is explicitly set out in the Children's Act 2011 (Zanzibar).⁷⁹

The Law of the Child Act (Tanzania) also provides for the protection of children from sexual exploitation, and contains provisions prohibiting CSAM.⁸⁰ It makes it an offence to publish, produce or display a photograph or picture of a child or body of a child containing brutal violence or in a "pornographic posture."⁸¹ The Act also protects a child from being engaged in any work or trade that is of a sexual nature, including pornographic performances or materials. Section 14 states that anyone in violation of Section 13(1) will be liable on conviction to a fine up to five million TZS, or to imprisonment for up to six months, or both.

The Penal Code (Tanzania) contains a wide range of criminal offences, including sexual offences, and makes them punishable by law.⁸² Offences of a sexual nature are covered at sections 130–160A of the Penal Code (Tanzania). These sections expressly prohibit (amongst others) the following sexual offences against children:

- Rape⁸³
- Defilement by husband of wife under 18⁸⁴
- Procuration for prostitution⁸⁵
- Procuring defilement by threats⁸⁶
- Abduction of girls under 16 years⁸⁷
- Sexual exploitation of children⁸⁸
- Permitting the defilement of a girl on one's premises⁸⁹
- Indecent assault of boys under 14⁹⁰
- Sexual assault on persons and indecent assaults on women⁹¹
- Parents allowing children to undergo FGM⁹²

This Sexual Offences Special Provisions Act 1998 (**SOSPA**) (Tanzania) amended the Penal Code (Tanzania) and is designed to include sections dealing with sexual and other offences to further safeguard the personal integrity, dignity, liberty and security of women and children.⁹³ The SOSPA also criminalises FGM as detailed below.

The provisions of the penal codes of Mainland Tanzania and Zanzibar concerning criminalising the sexual exploitation of children resemble one another.

The New Penal Code 2018 (Zanzibar) also criminalises:

- Rape⁹⁴
- Attempted rape⁹⁵
- Indecent assault⁹⁶
- Defilement of a boy⁹⁷
- Procuration of prostitution⁹⁸
- Procuring illicit sexual intercourse⁹⁹

- Householder permitting defilement of a boy or girl¹⁰⁰
- Indecent assault of a boy¹⁰¹
- Sexual exploitation of children¹⁰²
- Grave sexual abuse¹⁰³

In both Mainland Tanzania and Zanzibar, the offence of rape can only be committed by males against women and female children. Nevertheless, the Penal Code (Tanzania) does criminalise certain sexual acts with boys, such as sexual assault and grave sexual abuse that does not amount to rape, while the New Penal Code (Zanzibar) creates the offence of “defilement of a boy”.

There is no close-in-age exemption, and consensual sexual activities between peers below 18 are not recognised under the laws of Tanzania. Boys under 12 years old and 14 years old in Mainland Tanzania and Zanzibar respectively are presumed to be incapable of having sexual intercourse. Boys aged 12–18 and 14–18, respectively, can be charged with the offence of rape for having consensual sexual intercourse with girls under 18 years.

As highlighted by the Human Dignity Trust, the criminalisation of CSEA offences is limited under Tanzanian laws.¹⁰⁴ For example, at the time of writing, there are no offences covering the grooming of children for sexual purposes, sexual communication with a child, or sexual assault of boys aged 14–18. Sexual assault of girls aged 15–18 is also excluded if they are married to the perpetrator.

Online CSEA & CSAM

There is a lack of clear laws around online CSEA.¹⁰⁵ In Mainland Tanzania and Zanzibar, offences related to online CSEA are addressed mainly through the Cybercrimes Act.¹⁰⁶ The Cybercrimes Act provides quite a comprehensive definition CSAM and explicitly criminalises acts of distribution associated with ‘child pornography’, as well as the attempt to commit these crimes. It also makes cyberbullying an offence.¹⁰⁷

The definition of CSAM, referred to in the Cybercrimes Act as ‘child pornography’, encompasses “pornographic material that depicts, presents or represents: (a) a child engaged in a

sexually explicit conduct; (b) a person appearing to be a child engaged in a sexually explicit conduct; or (c) an image representing a child engaged in a sexually explicit conduct.” Whilst this definition does not explicitly cover audio and written forms of CSAM, the inclusion of the generic term ‘material’ could widen its scope. Under this law, some forms of CSAM remain un-criminalised, including depictions of the sexual parts of a child’s body for primarily sexual purposes and digitally generated CSAM including realistic images of non-existent children.¹⁰⁸

Persons who publish, make available or facilitate access to CSAM through a computer system are liable to substantial penalties under the Cybercrimes Act. Whilst the term ‘publish’ comprehensively covers all acts of distribution of CSAM, the Act does not criminalise acts related to the production of CSAM, nor does it make it an offence to possess CSAM for any purpose or knowingly obtain access to CSAM.¹⁰⁹

The Children’s Act (Zanzibar) is the only law in Tanzania that criminalises the possession of and access to CSAM.¹¹⁰ It defines CSAM to include “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of sexual parts of a child for primarily sexual purposes.”¹¹¹ “By whatever means” appears to imply that the definition covers all types of CSAM including written and audio forms. Sections 2 and 110 of the Act makes it an offence to produce, disseminate, sell, import or export CSAM, possess it for any purpose or access it through the internet or other communications technology. However, the livestreaming of child sexual abuse, online grooming of children for sexual purposes and sexual extortion are not explicitly stated and criminalised in the legislation.

A lack of clear laws around CSEA makes it difficult for law enforcement to act and for children to obtain justice. The Disrupting Harm research was unable to identify any child survivor of online CSEA who had instituted criminal proceedings against their offenders.¹¹² As internet use in Tanzania becomes more extensive, more children will inevitably be exposed to the risk of CSEA. Tanzania has the opportunity to prevent increasing child exposure by strengthening its legal framework and policy response now.

Child Marriage

The Law of Marriage Act 1971 sets the legal age for marriage at 18 for boys. However, female children aged 15 are able to marry if they have parental consent,¹¹³ and those aged 14 can marry with a court’s permission.¹¹⁴ The law also makes it illegal to marry a primary or secondary school student.¹¹⁵

Under customary and Islamic law, in Tanzania, attaining puberty signifies attaining the age of majority. The Law of Marriage Act provides that ‘marriages may be contracted in civil, Islamic or customary form, according to the relevant civil, Islamic or customary law’.¹¹⁶ As highlighted by the Commonwealth Lawyers Association, the interrelationship between customary and criminal law is unclear.

Tanzania has ratified several international treaties addressing the eradication of child marriage. Notably, the Maputo Protocol prohibits child marriage, setting the minimum age for marriage at 18.¹¹⁷ The African Charter itself, which Tanzania ratified in 2003, prohibits child marriage and requires states to take effective action to set the minimum age of marriage at 18.¹¹⁸ The Southern African Development Community–Parliamentary Forum (**SADC-PF**) adopted a Model Law on child marriage to bring all member states’ laws on child marriage into line with their international human rights commitments.¹¹⁹ However, Tanzania has not yet implemented the model law.

Despite ratifying these international commitments, Tanzanian domestic law still allows child marriage.

In a landmark ruling in 2016, the High Court in *Rebeca Z. Gyumi v Attorney General*¹²⁰ declared the sections of the Law of Marriage Act allowing child marriage to be unconstitutional and called on the government to amend the law.¹²¹ The petition had argued that the Marriage Act violated girls’ fundamental rights to equality, dignity, and access to education, and contravened Tanzania’s Law of the Child Act. The government appealed the decision but in 2019 the Court of Appeal upheld the decision of the High Court, confirming that child marriage is unconstitutional and that the minimum age of marriage for both female and male children must be increased to 18 years.¹²² Despite the Court of Appeal’s decision, the government has not amended the Law of Marriage Act to set the minimum age of

marriage for boys and girls to 18 and remove the parental consent exceptions provision for marriage before the age of 18 to reflect the ruling to outlaw child marriage.¹²³

Female Genital Mutilation

FGM is not sufficiently addressed under Tanzanian legislation, and there is currently no accurate definition of FGM.¹²⁴ The SOSPA is the main law criminalising FGM in Tanzania and amended Section 169 of the Penal Code to include a prohibition on FGM on girls under 18 years,¹²⁵ but it does not provide for protection to women aged over 18 years. It criminalises the performance and procurement of FGM, arrangement and assistance of acts of FGM. However, the law does not include an obligation to report FGM,¹²⁶ and it does not criminalise the participation of medical professionals in acts of FGM, or the practice of cross-border FGM.¹²⁷

In 2016, the East Africa Community, which includes Tanzania, enacted the East African Community Prohibition of Female Genital Mutilation Act (the **EAC Act**)¹²⁸ to promote harmonisation and cooperation in the prosecution of perpetrators of FGM in the region.¹²⁹ According to its Article 16, the EAC Act takes precedence over Partner States’ FGM laws. The penalties are set out in Part II (Female Genital Mutilation and Related Offences) and are currently higher than Tanzania’s domestic laws. Article 4 details that ‘aggravated’ FGM (resulting in death, disability or HIV infection) carries a punishment of life imprisonment. Imprisonment for a minimum of three years or a fine of at least 1,000 USD or both is the penalty for procuring, aiding or abetting the practice of FGM, participating in cross-border FGM, or failing to report that FGM has taken place.

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA.

Tanzania has implemented some key components of the Lanzarote Convention through various pieces of domestic legislation, however there remains room for further implementation.

For example, Tanzanian law recognises that a child is a person under the age of 18 years.¹³⁰ The age of consent for girls in Tanzania is also 18 years,¹³¹ which reflects the age of consent envisaged under the Lanzarote Convention for the purpose of criminal offences. However, the age of consent for boys is not clearly defined.

Furthermore, sections 134 and 138B of the Penal Code address the abduction of girls under 16 and the sexual exploitation of children.¹³² In addition, section 13 of the Cybercrimes Act makes it a crime to possess child pornography.¹³³

Article 25 of the Lanzarote Convention regarding jurisdiction over any offence under the Convention has largely been reflected in Tanzanian law due to the application of extraterritorial jurisdiction over offences in the Penal Code.

Age of Consent & Definition of a Child

Both Tanzania and Zanzibar define a child as a person under the age of 18.¹³⁴

In Tanzania, according to the Penal Code as amended by the Sexual Offences Special Provisions Act, the age of consent is set at 18 for girls. The age of consent for boys is, however, not clearly defined; 'indecent assault' of boys under 15 is criminalised and therefore implies that the age of consent for boys is 15.¹³⁵

In Zanzibar, the Penal Code sets the age of consent at 18 for girls regardless of whether consent is given, unless the girl is married and has reached puberty. Again, the age of consent for boys is not explicitly clear.

Historically, domestic law provided an exception to the age of consent such that a female of 15 or over was able to give consent to sexual acts with her husband.¹³⁶ The law was amended in 2019 to remove this provision. Under the new section 138 of the Penal Code, any person married to a woman under the age of 18 who attempts to have sex with her is guilty of an offence and liable to imprisonment for 10 years.¹³⁷

There is currently no 'close-in-age' exemption in Tanzanian law, meaning that children under the age

of consent engaged in consensual sexual activity with each other are at risk of being criminalised.

Trafficking

The Anti-Trafficking in Persons Act 2008 (the **ATIP Act**), which applies to both Mainland Tanzania and Zanzibar, criminalises sex trafficking and labour trafficking.¹³⁸ The introduction of this Act placed the Palermo Protocol into domestic law.¹³⁹ The ATIP Act also criminalises those who commit a range of trafficking-related conduct, e.g. recruitment, transportation, adoption, and contracting marriage, for the purpose of pornography.¹⁴⁰ The Act also defines 'pornography' as "any representation, through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes."¹⁴¹

The Act prescribed punishments of 10 to 20 years' imprisonment, a fine between 5 million and 150 million TZS, or both for offences involving child survivors. The penalties are judged to be sufficiently stringent, except that allowing a fine in lieu of imprisonment is not commensurate with penalties for other serious crimes, such as rape.¹⁴² Currently, the ATIP Act contains an additional procedural provision requiring the police to obtain a warrant before making a trafficking-related arrest; this is a higher threshold than for other similarly serious crimes.¹⁴³ Reportedly, the Anti-Trafficking Secretariat has drafted an amendment to the anti-trafficking law, but Parliament has not yet reviewed the proposed amendment.¹⁴⁴

Recently, the US government has been working with Tanzania's Anti-Trafficking Secretariat under the Ministry of Home Affairs and other stakeholders to increase efforts to investigate, prosecute, and convict trafficking offenders while respecting due process of law and human rights.¹⁴⁵

Extraterritoriality

As set out in Article 6 of the Penal Code, the jurisdiction of the Courts of Mainland Tanzania, for the purposes of the Penal Code, extends to:

— every place in Mainland Tanzania and the territorial waters;

— any offence committed by a citizen of Mainland Tanzania in any place outside Mainland Tanzania; and

— any offence committed by any person on an aircraft registered in Mainland Tanzania.¹⁴⁶

Notably, this jurisdiction does not extend to resident, non-citizens outside Tanzania.

There are no specific extraterritorial laws pertaining to the prosecution of a citizen or resident for engaging in CSEA with a child outside of Tanzania. However, many of the CSEA offences are criminalised under the Penal Code and thus fall under Article 6 of the Penal Code.

Regarding the applicability of the provisions of law criminalising online CSEA, the Cybercrimes Act extends the jurisdiction of the courts to offences punishable under the Act committed by nationals of Tanzania outside Tanzania. However, this extraterritorial jurisdiction applies only if the act in question constitutes an offence both in Tanzania and in the country where it was committed under the principle of double criminality.

Extradition

Extradition is governed by the Extradition Act 1965 (Tanzania).¹⁴⁷ Double criminality is a prerequisite factor for extradition out of Tanzania. Consequently, a requesting nation, when submitting an extradition request, must show that the offence is a crime in both their country and in Tanzania.

Tanzania considers CSEA offences extraditable offences, as set out in the Schedule to the Extradition Act.¹⁴⁸ Regarding extraditing Tanzanian nationals, extradition treaties usually make the process more straightforward. When no such treaty exists, a diplomatic agreement between countries to work together when a matter of this nature arises in the future will generally suffice for permitting extradition.

Statute of Limitations

Criminal offences in the United Republic of Tanzania are not subject to limitation under the Law of Limitations Act.¹⁴⁹ Provided that there is sufficient evidence, the state may bring a prosecution against an accused at any point in time. However, in practice

it is recommended that CSEA offences are reported as soon as possible to increase the chances of a successful prosecution.

Outdated Terminology

Terms such as 'defilement' and 'sodomy' are referenced in the United Republic of Tanzania's legislation and are a legacy of the colonial period. The use of these terms in law could be considered harmful, as they reinforce gender-stereotypical views about sexuality and who can be a 'victim' of sexual abuse.¹⁵⁰ Furthermore, the term 'child pornography' is used in the United Republic of Tanzania's legislation. ECPAT's Luxembourg Guidelines exclude these terms, instead calling for the use of terminology which is 'considered less harmful or stigmatising to the child'.¹⁵¹

Other

Sentencing

Sentences for CSEA offences are included in the Penal Code.

An individual found to have committed an offence of the sexual exploitation of a child is liable upon conviction to imprisonment for a term of between 15 and 30 years, without the option of a fine.¹⁵² The court may also order compensation to be paid to the survivor.¹⁵³ The rape of a child is punishable by life imprisonment.¹⁵⁴ Kidnapping, or assisting in the kidnapping of a child, is punishable by imprisonment for seven years.¹⁵⁵

Those found guilty of cruelty to children, which includes carrying out or causing the carrying out of FGM, assault, ill-treatment or neglect, are liable on conviction to imprisonment for between five and 15 years, or to a fine up to 300,000 TZS (around 129 USD), or to both. In addition, they will be ordered to pay compensation of an amount determined by the court to the person against whom the offence was committed.¹⁵⁶

When convicted of a CSEA offence, Tanzanian courts impose strict and serious sentences, as can be evidenced by the case of *Viking and Others V Republic*.¹⁵⁷ In this instance, the Court affirmed the sentence of life imprisonment and payment of compensation of two million TZS (around USD 862)

to each of the survivors for four appellants who were convicted of raping and sexually abusing 10 girls between the ages of six to eight years old.¹⁵⁸

Treatment of Children of Different Genders

Under the laws in both Tanzania and Zanzibar, some of the provisions criminalising CSEA offences appear to treat survivors differently according to their gender. This legislative gender disparity is noted in the following offences:

- rape: the Penal Code specifies that only a female can be raped;¹⁵⁹
- abducting girls (but not boys) under the age of 16 is governed by a separate provision of the Penal Code;¹⁶⁰
- procuring the rape of a girl or woman;¹⁶¹
- permitting the defilement of a girl (but not a boy) on one's own premises;¹⁶² and
- the indecent assault of boys (but not girls) under 14.¹⁶³

Domestic laws should be amended to ensure that boys are as equally protected as girls under the above-mentioned sections of the Penal Code.

Furthermore, under Section 154 of the Penal Code, homosexuality is criminalised in Tanzania, including the 'unnatural offences' of 'carnal knowledge of any person against the order of nature' and 'permit[ting] a male person to have carnal knowledge of him against the order of nature'.

Gaps in Criminalisation

Though laws in both Tanzania and Zanzibar have criminalised a wide range of CSEA offences, there are gaps which should be addressed to improve the protection of children from CSEA offences. These include:

- Laws criminalising CSEA offences are limited and often not explicitly applicable to children.
- Neither the Constitution of the United Republic of Tanzania nor the 2006 Constitution of Zanzibar

specifically protect children against sexual violence or exploitation

— Current legislation has no offences covering sexual grooming and sexual communication with a child, or sexual assault of boys aged 14–18.

— The laws of the United Republic of Tanzania are not currently harmonised with the Lanzarote Convention.

— The age of consent for boys is not explicitly clear in legislation, potentially exposing them to CSEA without legal recourse.

— There are no close-in-age exemptions in place which permit sexual activity between two children who are close in age. This exposes children to potential criminalisation.

— Extraterritorial jurisdiction does not apply to residents of Tanzania committing crimes overseas.

— The use of outdated terminology in legislation criminalising CSEA offences, such as 'defilement', 'sodomy' and 'child pornography'.

— The Cybercrimes Act does not currently explicitly criminalise audio and written forms of CSAM, the depiction of depictions of the sexual parts of a child's body for primarily sexual purposes, and digitally generated CSAM including realistic images of non-existent children, acts related to the production of CSAM, the possession of CSAM for any purpose or knowingly obtaining access to CSAM.

— The Children's Act (Zanzibar) does not criminalise the live-streaming of child sexual abuse, online grooming of children for sexual purposes or sexual extortion.

— Despite the landmark High Court ruling in 2019, the Law of Marriage Act still stipulates that girls aged 14 and 15 may be married with permission from a court and parental consent respectively.

— Gendered definitions of some CSEA offences, including 'rape' and 'defilement', mean that boys are not equally as protected against CSEA as girls.

— The criminalisation of homosexual activity may lead to children who have been exploited or abused

by perpetrators of the same sex not reporting such offences to the authorities for fear of being charged with a crime themselves.

Prosecution

The High Court of Tanzania and the High Court of Zanzibar are courts with unlimited original jurisdiction to hear all types of cases.¹⁶⁴ These High Courts exercise original jurisdiction on matters of a constitutional nature. Appeals go from there to the Court of Appeal. The subordinate courts include the Resident Magistrate Courts and the District Courts, which adjudicate on appeals from the Primary Courts. The Primary Courts are the lowest courts in Tanzania's judiciary, and they deal with criminal cases. Civil cases on family law matters, which apply customary law and Islamic law, must be initiated at the level of the Primary Court, where the Magistrates sit with lay assessors. There is no jury system in Tanzania.¹⁶⁵

Juvenile Courts were established under the Children and Young Persons Act (1937)¹⁶⁶ and Children Act of 2010.¹⁶⁷ This aligns with the provisions of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The jurisdiction of the Juvenile Court extends to any offence other than homicide.¹⁶⁸ The Chief Justice can designate any primary court ad hoc to serve as a Juvenile Court.

The Kadhi's Appeal Court hears all appeals from the Kadhi's court, which adjudicates on Islamic law. The Kadhi's Courts are the lowest courts in Zanzibar and adjudicate all Islamic family matters, including custody of children—but only for Muslim families. Primary Courts have the same rank as Khadhi's Courts, and they deal with criminal and civil cases of a customary nature.¹⁶⁹

It has been reported that Primary Courts tend to have a poor reputation among the population and are considered prone to corruption.¹⁷⁰ In addition, court cases can take an extremely long time.¹⁷¹

Initiating Prosecution

CSEA offences are prosecuted by the State through the office of the Director of Public Prosecution.¹⁷²

CSEA cases can be reported by the survivor, their guardians, parents, teacher or any other person who has knowledge of the offence.¹⁷³ Parents and legal guardians are obliged to report CSEA offences once their occurrence comes to their attention, as is any member of the community who is aware of any infringement of a child's rights, including teachers, craftsmen and trainers.¹⁷⁴ Offences can also be reported anonymously, if the reporting person wants to avoid disclosing their identity due to involvement in criminal activities.

Social welfare officers will often report cases to the police and investigate the matter in the company of a police officer, where they have reasonable grounds to suspect that a child is being abused.¹⁷⁵ Officers also have a mandate to visit the child and assess the situation.

Unfortunately, many cases of CSEA go unreported due to the fear of being stigmatised. An effort has been made by the Tanzania Police Force to establish Gender and Children's Desks so as to improve the way in which police handle such cases and to encourage increased reporting of CSEA.¹⁷⁶

The Gender and Children's Desks, first introduced in 2008, serve as confidential spaces in police stations where survivors of gender-based violence or child abuse can file their complaints to female officers. The Desks have officers who are trained to handle CSEA cases. Desk Officers are meant to ensure that cases are dealt with quickly and that survivors receive the appropriate medical and psychological support.¹⁷⁷

In 2019, a report by the Tanzania Police Force and the Open University Tanzania highlighted several challenges to the effectiveness of the Gender and Children's Desks, including an insufficient number of police officers, the allocation of Desk Officers to other police duties and the lack of a dedicated budget.¹⁷⁸ Furthermore, the widespread implementation of the Desks and their child-friendly justice measures have been questioned, as reports have suggested that they are only operational in Dar es Salaam.¹⁷⁹

In addition, bribery of judicial and governmental officials is a prevalent barrier to achieving justice for survivors through successful prosecutions.¹⁸⁰ For example, Desk Officers have reported that cases taken to court are often delayed or not completed because the accused had paid bribes to the magistrates to postpone or adjourn their case. The

delays often discourage the survivors and witnesses from continuing with the case.¹⁸¹

Investigation & Evidence

The UNCRC Committee drew attention to the lack of effective police investigation, frequent failure to prosecute and convict perpetrators, intimidation and discrimination.¹⁸² Furthermore, the Disrupting Harm research identified insufficient awareness, insufficient technical capacity, limited training, a lack of equipment and budgetary limitations as some of the key challenges facing law enforcement when investigating CSEA crimes, specifically online CSEA, in Tanzania. The UNCRC Committee also highlighted the limited access to psychological services for child survivors of sexual violence; the reluctance of girl survivors of sexual violence to report abuse and violence to the police because of the stigma surrounding child survivors of gender-based violence; and reports of cases of sexual, physical and emotional abuse by members of the police against girl survivors of sexual exploitation under their protection.¹⁸³

Presumption that Survivor is a Child

The laws concerning CSEA in Tanzania do not provide for the presumption that a survivor is a child. It is a requirement that the survivor's rightful age be established through birth certificates and is at the discretion of the magistrate or judge.

Procedure for Witness Testimony

The prosecution has the burden of proving its case on behalf of the survivor using their testimony. Before a child can testify, they must undergo a *voir dire* examination to ensure they are competent to testify and that their evidence will be reliable.¹⁸⁴ Reportedly, children often find the *voir dire* examination traumatising.¹⁸⁵

Corroboration

Most sexual offence cases in Tanzania require forensic evidence to corroborate the other evidence given in court. Although children can testify in their own case, their evidence requires corroboration from medical officers, police and parents, and other witnesses, as well as circumstantial evidence.¹⁸⁶

Section 127(7) of the Tanzania Evidence Act allows the court to convict a person charged with a sexual offence on uncorroborated evidence of a child, if the child is under 14,¹⁸⁷ and the court is satisfied that the child is telling nothing but the truth.¹⁸⁸ In practice, however, the Court will rarely convict on the basis of the uncorroborated evidence of a child alone, and will look for further evidence before convicting.

Survivors of sexual offences are advised to report the offence immediately so that a medical practitioner can examine them and complete a PF3 Form (which can then be used as forensic evidence). The medical practitioner will later need to testify in court regarding the form. Due to the importance of a medical practitioner's evidence, if significant time passes or a PF3 Form is not completed, the court process and the prosecution's case may be seriously hindered.

Furthermore, it has been reported that there are discriminatory evidentiary rules in Tanzania, such as allowing evidence of prior sexual conduct to be used to attack the credibility of a complainant.¹⁸⁹ This could impact the delivery of justice in CSEA cases.

DNA

Deoxyribonucleic acid (**DNA**) has been a useful tool adopted throughout the world in prosecuting CSEA offences. However, DNA evidence is not generally used in Tanzania due to a scarcity of the technology to evaluate DNA and the price of using the existing facilities.¹⁹⁰

Unwillingness to Proceed with 'Formal' Trial

The Disrupting Harm report has found that sexual abuse cases are sometimes settled out of court instead of being reported to the criminal justice system.¹⁹¹ The reasons for this reluctance to proceed with a 'formal' trial are varied, but can include a lack of trust in the criminal justice system, and benefiting financially from the case not going to court.

A lack of trust in the criminal justice system also influences survivors and their families' willingness to see their case prosecuted. There are widespread perceptions that the courts protect the interests of wealthy and influential people.¹⁹² Furthermore, there are significant constraints which limit the effective and timely application of justice, including a shortage of courts and qualified personnel, particularly in rural

areas. For the majority of Tanzanians, court fees are prohibitively high and legal aid is unaffordable. There is currently no government funded legal aid system, except in capital offence cases, such as murder and treason.¹⁹³ In rural areas, constitutional principles are frequently contradicted by customary laws which are usually applied and are often discriminatory against women.¹⁹⁴

Furthermore, corruption is also pervasive throughout Tanzanian society. The government has viewed efforts to counter corruption and the embezzlement of public funds as key to eradicating poverty and building inclusive growth, but corruption and poverty are deep-seated and mutually reinforcing.¹⁹⁵ Reportedly, 18 per cent of Tanzanians have paid a bribe for a public service in the previous 12 months. The police are perceived to be the most corrupt public institution (36 per cent), a factor for which is their very low salaries, followed by judges and magistrates (21 per cent).¹⁹⁶

Gaps in Prosecution

There are several gaps in the prosecution of CSEA in Tanzania:

- Access to justice is acknowledged in the National Plan of Action to End Violence Against Women and Children (2017–2022) to be hampered by cost, limited awareness of legal aid, corruption, and a lack of knowledge and awareness of human rights among law enforcers.¹⁹⁷

- There is poor investigation and evidence gathering, ineffective prosecution, and low sentences imposed for crimes of violence against children.¹⁹⁸

- Staff dealing with reports of CSEA, including law enforcement officials, are insufficiently trained on how to do so appropriately and sensitively, and lack technical knowledge on child rights and protection as well as sufficient resources to carry out their jobs.¹⁹⁹ This is despite the government affirming that training on child rights is offered to all Tanzanian Police Academies, and similar training is also offered by NGOs.²⁰⁰

- Child-friendly justice measures by the Gender and Children's Desks are reportedly only implemented in the capital of Tanzania, Dar es Salaam, and therefore child-friendly justice is often

not available to children living elsewhere, particularly in more rural areas.²⁰¹

- There are issues associated with the collection of evidence and the requirement for medical doctors to testify to PF3 forms. There is also the added problem that many sexual offences occur in locations where CSEA-trained doctors are absent or unavailable.

- All sexual offences are bailable.²⁰² This potentially places survivors at risk of sustaining further harm from the accused, particularly when the accused lives with the child, is a neighbour of the child or is someone who the child sees regularly.

- Political influence and corruption, especially in lower-level courts, limits the independence of the judiciary.²⁰³ This results in low levels of trust in the system, underreporting of offences and ultimately perpetrators avoiding prosecution.

- Law enforcement officers are not adequately equipped with the knowledge and training required to enforce anti-FGM laws.²⁰⁴

- Furthermore, the enforcement of FGM laws in Tanzania has been extremely variable.²⁰⁵ Prosecutions seem to be rare and there is no information on the number of cases brought to court or on the outcome of any prosecutions. Most police stations do not have sufficiently documented records of FGM cases, which undermines their ability to eradicate the practice. Cases of FGM are not promptly investigated and prosecuted, and survivors do not have access to social and medical services.

Protection

Protection of Survivors During Proceedings

Some measures have been introduced to protect survivors of CSEA during proceedings.

The Law of the Child Act (Tanzania) establishes Juvenile Courts that have to apply protection measures for child survivors, such as providing representation by an advocate.²⁰⁶ Furthermore, the Act provides that proceedings in Juvenile Courts must be held in camera and in the presence of a social welfare officer and the child's parent or caregiver. The Criminal Procedure Act 1985 (Tanzania), as amended by the SOPSA (Tanzania),

also stipulates that the evidence of all witnesses in sexual offences cases be received in camera.²⁰⁷

The ATIP Act, which is applicable in both Mainland Tanzania and Zanzibar, also provides for in-camera proceedings so as to protect survivors from further traumatisation.²⁰⁸

The Children's Act (Zanzibar) instructs Children's Courts to follow the principle of the best interest of the child.²⁰⁹ To assist the child during proceedings, a Children's Court can order the assistance of a medical practitioner, psychologist, education or developmental practitioner.²¹⁰ Furthermore, in 2013 the Revolutionary Government of Zanzibar, in collaboration with SIDA and Save the Children, established the first 'Child Friendly Court'.²¹¹ Whilst this was an incredibly positive move towards ensuring child-friendly justice in Zanzibar, it does not appear that any further such developments have been made since its establishment.

Regarding the protection of survivors' identities, Section 186(3) of the Criminal Procedure Act (Tanzania) stresses that witnesses involved in sexual offences should not be published by or in any newspapers or other media.²¹² Further to this, the Media Council of Tanzania's Professional Code of Ethics for Journalists provides guidelines for reporting on issues related to sexual violence against children, including avoiding identifying the child.²¹³ It is unclear, however, to what extent these guidelines have been implemented.

Overall, it does not seem as though measures to protect survivors during proceedings across the United Republic of Tanzania go far enough. Indeed, it has been reported that "work must be done towards establishing a comprehensive and structured codification of survivors' rights which secures the above rights of children" throughout the United Republic of Tanzania.²¹⁴

Protection of Children in General

The Ministry of Health, Community Development, Gender, Elderly and Children is responsible for CSEA issues in Tanzania.²¹⁵ The strategy setting out how CSEA issues are to be dealt with is contained in the National Plan of Action to End Violence against Women and Children 2017–2022 (**NPA-VAWC**).²¹⁶ The same national plan of action also exists for Zanzibar.²¹⁷ The NPA-VAWC represents a strategic

shift in thinking about how Tanzania will address the problem of violence against women and children. The emphasis is on building systems that both prevent violence in all its forms and respond to the needs of survivors in terms of accessing essential services.²¹⁸ However, there are reports that the plan has still not been launched or operationalised.²¹⁹ This has been attributed to a general lack of funding for the plan's implementation, and a deficit of social welfare officers and community development officers, which has led to slow progress in protecting children from CSEA.²²⁰

In Zanzibar, the Child Protection Unit under the Department of Social Welfare with the Ministry of Empowerment, Social Welfare, Youth, Women and Children is the coordinating agency at national level. The Ministry is responsible for implementing the national strategy, coordinating child protection efforts across governmental sectors, and involving other stakeholders in child protection, including civil society, international agencies, families and children themselves.²²¹

In both Mainland Tanzania and Zanzibar, national legislation does not provide for specific programmes for the support and reintegration of child survivors.²²²

A majority of the child protection activities in the United Republic of Tanzania are run by the government in partnership with international and national non-governmental organisations, such as the Tanzania Coalition against FGM, Network Against Female Genital Mutilation,²²³ by civil society organisations or NGOs by themselves. The Network Against Female Genital Mutilation operates shelters for girls escaping FGM and provides training for police services in the form of education on the laws surrounding FGM in an effort to provide justice to all communities.²²⁴ Another successful programme is the Programme for Withdrawal, Rehabilitation and Reintegration (**PWRR**) run by Kiota Women's Health and Development Organisation (**KIWOHEDE**). The PWRR has removed over 5,000 children and protected over 8,000 children from sexual exploitation.²²⁵ KIWOHEDE also runs a rehabilitation centre that houses survivors of child sexual abuse and vulnerable children.²²⁶

There are a few active advocacy civil society organisations (**CSOs**), located mainly in the big cities, working across a wide range of issues including human and women's rights. They frequently work together and form alliances to advocate for

specific areas of common concern.²²⁷ Faith-based organisations and religious leaders are more present in rural areas and enjoy a high degree of legitimacy. They have an important role in mobilising people and mediating among different interests.²²⁸ Under the Magufuli government, the space for CSOs to operate was more restricted. Amendments to the NGO Act of 2019 gave a government-appointed registrar wide-ranging discretionary powers to interfere in the activities of NGOs and to revoke their registration.²²⁹

The Law of the Child Act 2009 (Tanzania) gives local governments the authority to administer the affairs of children.²³⁰ This authority includes safeguarding the rights of the children when they are infringed and carrying out investigations in suspected cases of violations and abuse. It is hoped that this will ultimately lead to the increased reporting of CSEA cases and the successful prosecution of offenders.

There appear to have been recent developments including 'comprehensive child protection systems' in 51 local authorities.²³¹ Reportedly, however, whilst some communities in Tanzania have effective services in place to respond to cases of CSEA, services in most local authorities are described as inadequate and or incapable of handling the needs of a survivor.²³² It is clear that coordination needs to improve; UNICEF listed as one of its aims for 2021 to implement a 'resourced, functional, comprehensive and coordinated child protection service' in the United Republic of Tanzania.²³³

The 2009 Violence against Children Study (VACS) found that most children do not report their experience, and few seek services or receive care, treatment or support, but said that they would have liked additional services, including counselling and support from police or social welfare officers.²³⁴

A national Child Helpline (116) is operated by a local NGO and funded and promoted by the government.²³⁵ Through the Helpline, callers can report cases of child abuse and it is available across all networks in the United Republic of Tanzania.²³⁶ In 2020, the government expanded the hotline to receive calls on sexual exploitation and accommodated both Kiswahili and English. The hotline identified 35 survivors of human trafficking and 49 child forced labour cases.²³⁷ Furthermore, callers to the Helpline can also seek advice and information, whether they are survivors themselves, their families or community members.²³⁸

Regarding child marriage in particular, over the years, the government has introduced various action plans that have aimed to tackle this issue.²³⁹ For example, the Violence Against Women and Children National Plan of Action 2017–2022 explicitly states that it seeks to reduce child marriage from 47 per cent to 10 per cent.²⁴⁰ However, these plans have not reportedly been followed up by any comprehensive actions to address child marriage. The absence of any implementation of the action plans demonstrates an unwillingness to act to eradicate this form of CSEA that must be addressed.²⁴¹

Protection of Trafficked Children

The ATIP Act aims to provide care, assistance and treatment to persons who are trafficked.²⁴² The Law of the Child Act (Tanzania) also includes provisions aiming to protect children from trafficking.²⁴³

In its 2020 assessment, the US Department of Labor reported that there had been only minimal advancement in efforts to eliminate the worst forms of child labour.²⁴⁴ In 2021, Tanzania remained in Tier 2 of the Trafficking in Persons Watch List as it has for the past three years: it is assessed to not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so.²⁴⁵

Where child trafficking survivors are identified, the Tanzanian government places them in specialised shelters, which have separate accommodation for boys and girls, receive medical care, psycho-social counselling, family tracing and where they are then enrolled in government schools or given vocational training.²⁴⁶ Where survivors of trafficking are detained, the government reported that children and adults are frequently incarcerated in the same detention centres, which increases children's risk of further exploitation and abuse.²⁴⁷ The government should change this policy to better protect children.

The National Anti-Trafficking Committee (**ATC**) with the help of various international, regional, sub-regional and national non-profit organisations, implements the National Anti-Trafficking in Persons Action Plan of 2018–2021.²⁴⁸ The Action Plan focuses on four areas: prevention, protection, prosecution and partnership.²⁴⁹

As part of the prevention efforts, the ATC, in collaboration with the International Organization for

Migration, Lawyers without Border, Research Triangle Institute, United Nations Office on Drugs and Crime, Southern African Development Community Secretariat and Kiota Women's Health and Development, trained a total of 620 stakeholders including committee members, police officers, immigration officers, prosecutors, magistrates, social welfare officers, staff from non-government organisations, division and ward executive officers, school teachers and religious leaders on the issue of human trafficking.²⁵⁰ Although this specific training had a positive impact on the number of cases reported, survivors rescued and assisted, and the number of cases prosecuted and number of perpetrators convicted, there is still much to be done in this area to reach a greater part of society.²⁵¹

As part of anti-trafficking efforts, the government created and launched a National Guideline for Safe Houses.²⁵² It also officially authorised the adoption and implementation of the Anti-Trafficking Fund, which was approved in 2019 and which is to be overseen and managed by the Anti-Trafficking Secretariat (ATS) (the ATS is overseen by the ATC).²⁵³ However, it did not report how many survivors received support from the fund, amend its laws to remove sentencing provisions that allow fines in lieu of imprisonment, or distribute funds for the implementation of the National Guideline for Safe Houses.²⁵⁴ Reportedly, the government continues to rely on NGOs to provide the vast majority of assistance to survivors.²⁵⁵

Furthermore, Tanzania lacks formal identification and protection mechanisms for trafficking in persons, which compromises survivors' safety. It also failed to implement the witness protection programme for trafficking survivors initiated a year ago, deterring some from testifying in court.²⁵⁶ In general, the implementation of the Action Plan is hindered by a lack of resources.²⁵⁷ Although the government did increase funding from 100.5 million TZS (43,430 USD) in 2019 to 120.3 million TZS (51,990 USD) in 2020, this is considered to be insufficient to undertake all of the required anti-trafficking activities.²⁵⁸

Regarding the repatriation of children who have been trafficked, each local government authority, in collaboration with the police force, is obliged to make every effort to trace the parents, guardians or relatives of any lost or abandoned child, and to return the child to the place where he or she ordinarily

resides; where the authority does not succeed, it must refer the matter to the social welfare officer.²⁵⁹ The US Department of State has identified several instances of the Tanzanian Government repatriating survivors of trafficking, but it is unclear whether any of those survivors were children.²⁶⁰

Counselling

The Law of the Child Act 2009 (Tanzania) places a duty on the Local Government Authority to safeguard and promote the welfare of the child within their area of jurisdiction.²⁶¹ The Ministry of Health, Community Development, Gender, Elders and Children has a specific department on social welfare which deals with the overall welfare of children in Tanzania.

In 2011, Save the Children collaborated with the Child Protection Unit of the Department of Social Welfare to establish a One Stop Centre (OSC) in Zanzibar.²⁶² The purpose of the OSC is to provide health, legal and psychosocial services to survivors of violence 24 hours, seven days a week. Since 2011, five more OSCs have been established across Zanzibar.

ECPAT has noted that the provisions regarding the counselling and reintegration of child survivors of trafficking need to be consistently implemented across Tanzania, as these services are currently lacking in many areas.²⁶³

Protection of Children in Disaster Settings

Increasingly, climate is a driver of geographic inequalities and natural disasters have a major impact on the vulnerability of the poor. Previously highly productive areas, such as the southern and northern highlands, are experiencing increased pressures due to climate change. Drought is the most frequent natural disaster in high-poverty areas and has significantly aggravated food insecurity.²⁶⁴

The Disaster Management Act 2015 (Tanzania) sets out a comprehensive legal framework for disaster risk management in Tanzania.²⁶⁵ It provides for the establishment of a national focal point for the coordination of disaster risk reduction and management in the country through the Tanzania Disaster Management Agency (TDMA), acting as the central planning, coordinating and monitoring institution for the prevention, mitigation,

preparedness, response and post disaster recovery, considering all potential disaster risks.²⁶⁶ In addition to the Act, disaster risk management in the country is guided by the National Disaster Management Policy and the National Operational Guidelines for Disaster Management.

The Disaster Management Policy 2011 (Zanzibar) outlines Zanzibar's strategy for enhancing the use of and access to knowledge and resources in disaster prevention, mitigation, preparedness, response and recovery, and acknowledges the particular vulnerabilities of children during times of disaster.²⁶⁷ The Zanzibar Disaster Risk Reduction and Management Act 2015 establishes the legal framework for disaster risk reduction and management in Zanzibar.²⁶⁸

Presently, there are no specific disaster management policies or laws in the United Republic of Tanzania directed at the protection of children in disaster settings.

Other

Police Training

Reportedly, training on child rights is provided in all of Tanzania's police academies.²⁶⁹ Furthermore, a training manual created for Police Gender and Children Desk officers' sets standards on gender-based violence and child abuse.²⁷⁰

Government efforts to train police, as well as other criminal justice professionals, are often supplemented by NGOs. For example, between 2018 and 2020, C-SEMA, Child Helpline International and the ICMEC worked together to implement the 'Advocate, Collaborate and Train to End Violence Against Children' programme in Tanzania.²⁷¹

Collection and Dissemination of Data on Child Protection

Government-led data collection processes in the country are lacking, resulting in a substantial proportion of the data which does exist having been collected by non-governmental organisations, such as the LHRC.

There are acknowledged challenges with information and data collection due to a lack of baseline data and

reliable and consistent measurement systems.²⁷² According to the US Department of State, in cases related to trafficking in persons, the government's disparate and erratic usage of data collection and sharing systems impedes the efforts of law enforcement and protection of survivors.²⁷³

Under the VAWC-NPA, Tanzania is due to develop indicators and tools for measuring trends and to report on the SDG 16.2 (end abuse, exploitation, trafficking and all forms of violence against and torture of children) and target 5.2 (eliminate all forms of violence against all women and girls, including trafficking and sexual and other types of exploitation). However, it is unclear whether this has been implemented yet.

Registration of Births and Adoption

According to the Law of the Child Act 2009 (Tanzania), each parent or guardian is responsible for the registration of the birth of his or her child to the Registrar-General.²⁷⁴ This obligation to register a child's birth is intended to ensure that a child's age can be accurately tracked.

Tanzania has not acceded to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the **Adoption Convention**).²⁷⁵ The Adoption Convention aims to combat corruption, abuse and exploitation practices which sometimes occur in international adoption.

Adoption in Tanzania is governed by the Adoption of Children Act 1955 and the Court.²⁷⁶ Tanzanian law requires that individuals seeking adoption of a Tanzanian child are Tanzanian citizens or resident in Tanzania for three consecutive years before seeking adoption.²⁷⁷ Where the prospective parents are Tanzanian but residing abroad, the court shall, before granting an interim or complete adoption order, satisfy itself that there is enough information warranting the determination of the application from a recognised authority where the applicants presently reside and their country of origin.²⁷⁸

Zanzibar has similar provisions on the adoption of children by non-residents and non-citizens. In each situation, the court must satisfy itself that there is sufficient information from a recognised authority where the applicant resides and from the authorities in Zanzibar regarding the best interests of the child before making the adoption order.²⁷⁹

Prevention

Register of Offenders

In Tanzania, the Ministry of Home Affairs keeps a record of every citizen's criminal record. This list can be accessed through an application to the Ministry, which includes a fee. However, a specific mechanism for registering CSEA offenders has not been implemented.²⁸⁰

Anecdotal evidence suggests that the information held on record is not always accurate, given constraints on the Ministry's technology. This list also includes every person who is accused of a crime in Tanzania, rather than only those who are convicted. Currently, there is no process of removing those persons who have been exonerated from the list.

Employers in Tanzania typically ask potential employees to declare any criminal convictions before they are hired. However, most employers are reluctant to formally request a potential employee's criminal records from the Ministry, and it is not a mandatory requirement to provide a criminal record before starting any employment.²⁸¹

Tanzania does not currently prohibit those convicted of CSEA offences from travelling abroad, or prohibit those convicted of CSEA offences abroad from travelling to Tanzania.²⁸² However, the legislation of both Mainland Tanzania and Zanzibar stipulates that convicted sex offenders are prohibited from holding some positions involving or facilitating contact with children, specifically day-care centres and residential institutions.²⁸³

Child Online Safety & the Distribution of CSEA Content Online

The Council of Europe Convention on Cyber Crime (the **Budapest Convention**) is a benchmark for criminal law reform to protect children against online CSEA. Tanzania has implemented Article 9 of the Budapest Convention by incorporating it into its laws, namely, section 13 of the Cybercrimes Act.²⁸⁴ Section 13 prohibits possession of child pornography and section 138B of the Penal Code criminalises sexual exploitation of children in any way.²⁸⁵ However, Tanzania has not yet become a party to the Budapest Convention.

The government is taking steps to tackle the distribution of CSEA content online. However, it is difficult for the government to execute its duty effectively since technology has outpaced the law on cyber security. To prevent CSEA content being distributed online, the government has enacted and enforced several laws on the use of the internet and the criminalisation of CSEA content, as detailed above.²⁸⁶ However, some forms of online CSEA and CSAM remain un-criminalised. The law should be frequently amended to reflect the fast pace at which technology is developing. Furthermore, the laws that do exist are rarely used to prosecute online CSEA cases, according to the Disrupting Harm research.²⁸⁷

The Police Cyber Crime unit is tasked with investigating cyber related crimes in collaboration with the office of the Director for Public Prosecutions.²⁸⁸

In 2017, the Internet Watch Foundation, cooperated with the National Child Online Safety Task Force to set up a reporting portal in Tanzania. Accessible in two languages, Kiswahili and English, The portal allows internet users in Tanzania to anonymously report images or videos of children being sexually abused. Despite the successful introduction of the portal, reports remain low. Presently, the portal is little-known to the public, including children, and would benefit from increased resources dedicated to creating wider awareness.²⁸⁹

Awareness & Education

Gender and Children's Desk Officers conduct awareness-raising sessions around gender-based violence and child abuse being human rights violations.²⁹⁰ These awareness raising sessions take place in schools, communities, restaurants, bars and similar places.²⁹¹

Despite these educational efforts, it is clear that awareness of CSEA, including online CSEA, is low throughout Tanzania.²⁹² Further efforts are needed to engage with parents/caregivers, children themselves, professionals working with children, and the general public.

In addition, awareness of FGM needs to be better disseminated among all relevant ministries, police officers, law-enforcement officials, teachers, religious and traditional leaders. Many communities are unaware of the law criminalising FGM and a more

sustained and widespread public education campaign against FGM is needed, particularly in rural communities, to increase community awareness and discussion about the negative consequences of this and other harmful practices.²⁹³

Recommendations

There are several steps which should be taken as a matter of priority to help combat CSEA offences in Tanzania:

Legal

- Consider the consolidation of the legal regime governing CSEA protection and criminalisation to create one single concise and detailed piece of legislation.
- Ratify and domesticate relevant international and regional instruments relating to protecting the rights of children from violence, including the Lanzarote Convention.
- Implement an age of consent for boys equal to that of girls so as not to discriminate according to gender.
- Enact a defence for children and young persons engaged in consensual sexual activity, to prevent the further criminalisation of children.
- Replace outdated terminology currently present in legislation with preferred terms, notably 'child pornography' with child sexual abuse material (CSAM), and 'defilement' with 'rape of a child'.
- Decriminalise homosexual activity and address gaps in the criminalisation of CSEA that means boys cannot legally be 'victims' of rape and other CSEA offences.
- Fulfil Tanzania's obligations under the regional and international children rights treaties to end child marriage and through legislative action confirm the age of 18 as the minimum age for marriage. The Government, through the Ministry of Constitutional and Legal Affairs, should facilitate the amendment of the Law of Marriage Act of 1971 in line with the Court of Appeal decision of 2019 in the *Gyumi* case.

— Amend extraterritorial jurisdiction over CSEA offences to include resident, non-citizens of the United Republic of Tanzania.

— Conduct extensive research on the social realities of CSEA in the country and update CSEA legislation to reflect and tackle such realities.

— Rules and regulations should be developed to implement the Law of the Child Act 2009 (Tanzania) more effectively.

— The government should amend the 2008 Anti-trafficking Act to remove sentencing provisions allowing fines in lieu of imprisonment. The government should seek to align the procedural law pertaining to trafficking-related arrests within the Act with the requirements of other serious crimes.

— Criminalise the use of derogatory language against women who have not undergone FGM and their exclusion from community activities, and implement the EAC Act and remove provisions from existing local law which punish women and girls for undergoing FGM.

— Introduce measures requiring medical staff to report cases of CSEA and FGM.

Prosecution

— Ensure that the criminal justice system is sensitive and responsive to the needs of vulnerable groups such as children in contact or conflict with the law and women, children with disabilities and children with albinism.

— Create a special division of the police dedicated solely to CSEA investigations.

— Encourage children to come forward and report acts of violence committed against them. The government should emphasise that children who report crimes will receive appropriate assistance including legal and health services. This information should be made available to children in schools and community centres.

— Positive actions should be taken to encourage children to cooperate with the prosecution or CSEA offences, including by testifying in court, to ensure perpetrators can be brought to justice.

— Partnerships with neighbouring countries should be strengthened to better prosecute CSEA perpetrators who may be crossing borders to commit CSEA offences in countries with less stringent laws.

Protection

— The government, through the Ministry of Finance and Planning and the Ministry of Home Affairs, should increase funding for the police Gender and Children's Desks to enable them to effectively address violence against children.

— There should be increased efforts by the social welfare system to protect children in Tanzania, coordinated by the Department of Social Welfare.

— Robust processes should be established to improve reporting, referral and response to crimes.

— Regarding combatting trafficking, the government should continue its training activities in order to reach larger sections of society.

— The government should continue to develop and implement standard operating procedures for survivor identification and referral to services, and train officials on those procedures. Particular attention should be given to identifying vulnerable populations, including impoverished and orphaned children.

— The government should fully implement the protection provisions of the 2008 Anti-trafficking Act, as outlined in the implementing regulations and the national action plan, including allocating resources to the survivor assistance fund.

— Tanzania should institutionalise the use of the national centralised anti-trafficking data collection and reporting tool and consider increasing information sharing across areas of the civil service.

— Increase funding for the anti-trafficking committee to implement the National Action Plan to Combat Trafficking.

— Monitoring and data collection strategies, as well as reporting, for overseeing the prevalence of CSEA, human trafficking, child marriage and FGM should be improved upon.

Prevention

— Civil society organisations and social welfare departments in local governments should increase awareness of violence against children and encourage community members to report incidents to relevant authorities so that perpetrators can be brought to justice. Communities ought to be educated on how and where to report CSEA crimes to the respective authorities. Information on reporting CSEA offences should be made readily available in all community spaces.

— The government, in collaboration with civil society organisations, should raise awareness among communities about the negative consequences of child marriage and FGM and put in place an effective monitoring system to assess progress towards the eradication of those practices. Special care should be provided to rural communities where girls are more likely to be subjected to these practices and run away to seek shelter.

— Redirect substantive funds to both the private and the public sectors to raise awareness of all forms of CSEA.

— Civil society organisations should collaborate with the government to ensure the implementation of the Convention on the Rights of the Child in order to safeguard their rights.

— Community members should be encouraged to recognise their role in protecting and safeguarding children's rights. Community members should also be educated on what constitutes an act of abuse to a child as well as how to report any suspected incidents of abuse of which they are aware.

Cultural/Education

— Tanzanian culture and society's attitudes towards CSEA ought to be addressed. This could be achieved through the development and implementation of a communication strategy designed to raise awareness of the social and cultural norms that typically legitimise violence. This may include, e.g. large and extensive public awareness campaigns.

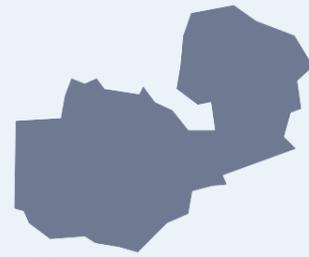
— The government should seek to involve community leaders in discussions on CSEA

prevention to ensure that accurate information and education is shared with communities by trusted and respected individuals.

— Awareness campaigns should be implemented for school-aged children on the warning signs of

CSEA and how to keep themselves safe. Children should also be provided with resources to ensure they understand how to report CSEA abuse and the support services available to them.

Zambia



Zambia has demonstrated a willingness to prosecute CSEA offences. To date, a number of studies reviewing Zambia's CSEA laws have been conducted and shortcomings have been addressed by the government enacting laws to eliminate the gaps in laws which criminalise CSEA.¹

Zambia introduced the Children's Code Bill and on 23 March 2021 enacted the Cyber Security and Cyber Crimes Act, which aim to meet the shortcomings of laws in force by, e.g. specifically defining penetrative and non-penetrative forms of CSEA and addressing the dark-web grooming of children online by paedophiles and human trafficking syndicates that entice children to participate in CSEA for reward or profit.² Although these bills are a positive development in addressing CSEA, more needs to be done to enact these bills (and others similar in nature) into law in a timely and efficient manner.

In terms of the legislative framework, more work needs to be done to implement the various national plans of action to fight CSEA in Zambia, and to consolidate into comprehensive legislation all existing and proposed provisions of the law, such as the aforementioned Children's Code Bill. In addition, there are many international agreements and protocols dealing with CSEA which Zambia has signed but not yet domesticated or implemented into local laws.

CSEA Profile

In terms of the most commonly committed CSEA offences in Zambia, rape (known as "defilement" in the law, which is defined as the unlawful "carnal knowledge" of a child under 16) is by far the most prolific. In only the third quarter of 2020, the Zambia Police Service recorded 714 defilement cases, of which 713 were committed against girls.³ Children made up 24 per cent of all survivors of gender-based violence in Zambia during this period.⁴ Regarding sexual abuse in general, which

comprises various offences such as defilement, rape and indecent assault, the Zambia Police Service recorded that 92 per cent of the survivors were children (of which 89 per cent were girls).⁵ Many instances of CSEA will not have been officially reported and are instead dealt with informally by the family, in the Traditional Courts, or Local Courts.⁶ A large number of CSEA crimes are never reported, as families, in the event of inter-familial CSEA, fear losing the financial support of the perpetrator or fear scorn from neighbours, and actively discourage child survivors from reporting CSEA.⁷ Where they are reported, families often prefer to settle out of court and accept monetary damages for the abuse.⁸

Major contributors to the prevalence of CSEA offences committed against children include traditional beliefs encouraging child marriages, sexual cleansing and female genital mutilation.⁹ Child marriages are still prevalent in Zambia and not actively discouraged by some traditional leaders, despite a commitment to do so.¹⁰ The legal age to marry for both males and females is 21, with the consent of a parent or guardian required for anyone who is under this age.¹¹ If one party is under 16 years old, the marriage is void, subject to a judge confirming that the dissolution of the marriage is in the public interest.¹² Despite this, Zambia reportedly has one of the highest rates of child marriage worldwide, with 31 per cent of women aged 20–24 years married by the age of 18.¹³

Child marriages are not actively discouraged by traditional leaders, and there is often pressure for children to marry due to financial concerns,

as families can be willing to marry off their female children to older men for a dowry.¹⁴

Due to the prevalence of child marriage in Zambia, the Government launched a five-year national action plan in 2016 to end the practice.¹⁵ Its efforts have been noted as contributing to major progress towards the global goal to end child, early, and forced marriage by 2030.¹⁶

An additional factor leading to CSEA in Zambia is widespread poverty, which has led to many children having to engage in child-labour to help provide food and shelter for their families. The most common forms of labour for children are street vending, house-keeping and gardening, all of which expose them to CSEA perpetrators.¹⁷ The pursuit of labour also exposes children to sex trafficking.¹⁸ Examples of sex trafficking in Zambia include truck drivers exploiting Zambian children in towns along the Zimbabwean and Tanzanian borders, miners exploiting children in Solwezi, and children being trafficked to Zimbabwe and South Africa.¹⁹

Criminalisation/Legislation

Before moving on to prosecution, it is worth noting how CSEA offences are criminalised in Zambia.

Classification of Sexual Offences with Children

There is no separate classification of sexual offences against children in Zambia. The different acts amounting to CSEA are covered by other offences included in the Penal Code. In addition to the typical offences one would expect to see covered, section 157 of the Penal Code criminalises harmful cultural practices against children, such as sexual cleansing, female genital mutilation, and initiation ceremonies that result in injury, the transmission of infections (as a consequence of

engaging in sexual activity by implication), life-threatening diseases or loss of life.

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA. Zambian law largely follows the provisions of the Lanzarote Convention. For example, the Penal Code recognises that a child is a person under the age of 18. At the same time, Part XV of the Penal Code, dealing with offences against morality, has implemented Articles 18 to 24 of the Lanzarote Convention into law, which provide the substantive criminal law for prosecuting CSEA offences in Zambia.

Articles 27 to 29 of the Lanzarote Convention, which provide guidelines on appropriate sanctions and measures to be taken against those guilty of committing criminal acts of sexual nature against children, have been implemented into law. Most CSEA offences attract the minimum penalty of imprisonment of 15 years, with the maximum being life imprisonment. Aggravating circumstances and previous convictions of an accused are taken into consideration when carrying out the sentencing.

One significant provision which has not been implemented into local laws is Article 26 of the Lanzarote Convention, which provides for the liability of corporate entities for criminal acts contained in the Convention, as all penalties for CSEA offences in Zambia are imposed against what appears to be an individual person acting in his or her own right.

Age of Consent & Definition of a Child

The age of consent in Zambia is 16. It is standardised across the country and does not differ between sexual acts. Therefore, a person

under 16 years cannot give consent to have sexual intercourse.

Section 5 of the Births and Deaths Registration Act provides that the birth of every child born in Zambia, after the commencement of the Act, must be registered, allowing for better monitoring of the children born and their ages.²⁰

Trafficking

The current law requires a demonstration of threats, force, intimidation, or other forms of coercion to constitute a child sex trafficking offence. There are forms of child sex trafficking which do not involve the above, and therefore are currently not criminalised in Zambia.

Extraterritoriality

Although there are no provisions specifically penalising engaging in sexual activities with a child outside Zambia, CSEA offences committed abroad by Zambian citizens are subject to prosecution in Zambia. Section 6(1) of the Penal Code provides that a citizen of Zambia can be prosecuted in Zambia if he or she commits any act outside or partly outside Zambia which if committed wholly in Zambia would constitute an offence under Zambian law. However, the provision omits residents of Zambia who are not citizens, providing for a gap in extraterritorial criminalisation of CSEA offences.

In addition, certain provisions of the Penal Code make specific references to CSEA offences with an international dimension.

Under Section 140 of the Penal Code, procuring a child to leave Zambia with the intent that the child becomes a sex worker, a sex prisoner, or frequents a brothel in Zambia or elsewhere, is an offence that attracts a sentence of imprisonment for a term of at least 20 years at a maximum security prison.

Extradition

Zambia considers CSEA offences such as rape, procuring or trafficking children or young persons for immoral purposes, kidnapping, abduction and dealing in slaves to be extraditable offences outright, due to their inclusion in the first schedule to the Extradition Act,²¹ which lists extraditable offences. In addition, under section 17 of the Extradition Act, any offence for which the maximum penalty is death or imprisonment for at least 12 months is also an extraditable offence.

Under section 18 of the Extradition Act, there is a pre-existing agreement for persons to be extradited to their countries of origin on such a request being made as long as the person is from a Commonwealth country.

For any other country outside the Commonwealth (which are called foreign countries), there must be an international agreement or convention to which Zambia is a party, for the law of extradition to apply.

Section 4 of the Extradition Act contains a double criminality element requiring the offence for which a person is to be extradited to be an offence in Zambia and in the other country, punishable by imprisonment for a maximum period of at least 12 months. There are however exceptions to this, such as where the person to be extradited has already been convicted and sentenced to imprisonment for at least four months, or where they commit a combination of an offence attracting a minimum of 12 months' imprisonment and another that may not meet that condition.

The double criminality rule hinders the prosecution of sexual offences as the age of consent in Zambia is lower than that recommended by international conventions and, as a result, a perpetrator of CSEA may commit an offence in Zambia with a child between the ages of 16 and 18. Since 16 is the age of consent to sexual activity in Zambia, the

perpetrator will not have technically committed an offence even if the perpetrator's home country provides a higher age of consent.

Statutes of Limitation

There is no express limitation in legislation criminalising CSEA offences in Zambia.

Outdated Terminology

Terms such as “defilement”, “deflowering” and “carnal knowledge” are referenced in Zambia’s legislation. These terms could be considered harmful as they reinforce gender-stereotypical views about sexuality and who can be a ‘victim’ of sexual abuse, and emphasise the importance placed on a female child’s virginity.²² “The effect of using the term ‘defilement’ in law is that the child is punished twice: first by being sexually abused and second by being labelled unclean,” Dr Lungowe Matakala argues.²³

Other

Juvenile Offenders

According to section 2 of the Juveniles Act, Chapter 53 of the Laws of Zambia, a child is any person under the age of 16 and a juvenile is a person under 19 and includes a child. Where the perpetrator of a crime is a juvenile, only a Juvenile Court can preside over such matter, regardless of the crime committed and who the victim is. Where a juvenile is found guilty of an offence, they cannot be sentenced to prison unless it is proved that they cannot be suitably dealt with otherwise.²⁴ The general rule however is that instead of imprisonment, juveniles are detained in reformatory schools such as Katombora Reformatory School in Livingstone. The only types of punishment that can be meted out are putting the child on probation, sending them to a reformatory school, or by ordering the parent or guardian to pay a fine for damages.

A child under eight years cannot commit a crime. A child between eight and 12 can only be held criminally responsible if it is proved that he

or she had the capacity to know what they were doing at the time of committing the offence (section 14 of the Penal Code).

There is a need to create a separate regime for underage perpetrators of child sexual exploitation and abuse to ensure justice is served, even when the perpetrator happens to be a juvenile. The same applies to criminal liability for using the dark web or social media to manipulate, extort or circulate sexual content of a criminal nature.

Sentencing

Generally, the penalty for any CSEA offence in Zambia is imprisonment with hard labour. However, different sections of the law can carry different lengths of custodial sentences.

Treatment of Children of Different Genders

Some of the provisions criminalising CSEA offences treat children who have been abused or exploited differently depending on their gender. For example:

— The offence of indecent assault applies differently to boys and girls. The indecent assault of a woman or a girl carries a sentence of 14 years’ imprisonment, while the indecent assault of a boy, and only a boy under the age of 14, is liable to a sentence of seven years.

— In the Penal Code, it is an offence to kidnap in order to remove a minor from the keeping of a legal guardian, without the legal guardian’s consent, with a minor being under 14 years if male and 16 years if female.²⁵

Gaps in Criminalisation

It is clear therefore that there are certain gaps which Zambia should address to better criminalise CSEA offences. These include:

— The current definition of CSEA in the law is lacking in breadth.

— Certain sexual acts concerning children under the age of 18 are not clearly criminalised in line with the Lanzarote Convention.

— A number of International Child Welfare Protocols and Agreements have been signed but are yet to be domesticated or implemented, such as the United Nations Convention on the Rights of the Child (UNCRC).

— There is a discrepancy in the prosecution of child sexual exploitation and abuse, as the law sometimes differs in its approach, depending on the gender of the child, as in section 252 of the Penal Code described above.

— The approach to various sexual offences against children is not standardised to provide adequate punishment (which is harsh enough to act as a deterrent) for perpetrators regardless of the gender of the child.

— Offences for under-age perpetrators of child sexual exploitation and abuse do not exist in current legislation.

— Offences that bestow criminal liability on under-age children that use the dark web or social media to manipulate, extort or circulate sexual content of a criminal nature are not present in current legislation.

— Provisions that currently enable child marriage, such as section 17 of the Marriage Act, which allows a person under the age of 21 to marry if the parents or guardians give their consent.

— Provisions which distinguish offences based on whether a female child is married or not. For example, section 136 of the Penal Code criminalises the abduction of a girl under 16 only if she is unmarried.

— Laws that regulate information technology, such as the ECT Act, do not adequately criminalise CSEA offences, especially in the increased presence of children on social media platforms.

— There are inadequate legal instruments to encourage other stakeholders to participate in the promotion of child online protection programmes, e.g. currently the ECT Act defines

pornography to mean material that visually depicts images of a person engaging in explicit sexual conduct. This definition is not adequate. The Cyber Security and Cyber Crimes Act 2021, however, has made provision for more offences relating to child sexual abuse material (CSAM), such as producing, selling, storing, distributing, possessing, accessing etc. It also protects children by criminalising the selling or making available of pornographic material to a child.²⁶

— The issue of extradition where the offence must be recognised both in Zambia and in the perpetrators’ country of origin in order for a request to be made for a CSEA perpetrator to be extradited to Zambia.

— Residents of Zambia are not included in the extraterritorial laws relating to CSEA offences which are committed abroad, but are prosecutable in Zambia.

Prosecution

Initiating Prosecution

A child who has been abused or exploited can initiate the prosecution of the perpetrator by lodging a complaint with the police. Lodging a complaint is not restricted to coming directly from the survivor, however, and any person can lodge a complaint concerning CSEA which can then be prosecuted by the police.

There is no express time limit in the law by which this must be done.

In addition, the Cyber-Crimes Unit of the Zambia Police Service (the department of Police Service mandated to monitor cyberspace under Section 94 of the Electronic Communications and Transactions Act, No. 21 of 2009 (the **ECT**)), together with cyber inspectors appointed by the Zambia Information Communications Authority (the **ZICTA**) pursuant to section 8 of the Cyber Security and Cyber Crimes Act 2021, monitor online platforms and where suspicious behaviour is

noticed, they have the authority to summon the survivor or perpetrator for questioning.

Investigation & Evidence

Presumption Survivor is a Child

The laws concerning child abuse and exploitation in Zambia do not expressly provide for the presumption that a survivor of CSEA is a child. However, in practice the courts will presume that a survivor who has no birth record/certificate or record of enrolment in pre-primary school, is a child, based on the court's examination of the appearance of the child.

Further, in deciphering the age of the survivor, the court usually receives evidence from the child's guardians or documents relating to the child's enrolment at pre-or primary school to ascertain the child's date of birth. In the *People v Clifford Dimba Kanene*,²⁷ the accused argued that the Court should have demanded a Magnetic Resonance Imaging (MRI) scan to ascertain the age of the child. The High Court rejected this argument on the basis that sufficient evidence was given by the child's parents to prove her age.

Procedure for a Child to Give Evidence

In Zambia, a trial commences with the State calling evidence to prove the charge. Normally, the complainant is called to give evidence first. In CSEA cases, the complainant is usually a child and, as such, the court must first order a *voir dire* for the proper admittance of the evidence. The reason for conducting a *voir dire* is to ascertain whether a child can tell the truth and appreciates the value of telling the truth and the consequence of lying. In short, the Court's role is to assess whether the child understands the nature of the oath and their duty to speak the truth. However, the Court should try to make the child comfortable and give consideration to the fear and discomfort a child may experience when giving evidence, and bear that in mind to ensure the Court

makes a fair and appropriate assessment of the reliability of the child's evidence.

If the court is satisfied that the child can testify, the court receives the evidence. If not, the child's evidence is not admissible. This is an important aspect of the prosecution procedure and decisions are appealed against and overturned on this point. In the case of *Richard Daka v The People*,²⁸ the Supreme Court overturned the High Court decision that sentenced the appellant to 30 years' imprisonment partly because the trial Judge did not conduct a *voir dire* before receiving the alleged victim's evidence.

Corroboration

Section 140 of the Penal Code, which creates the offence of procuring a girl or woman under the age of 21 years for the purposes of sexual intercourse (described in the legislation as carnal knowledge), prostitution or to work in a brothel, provides that a person will not be convicted on the evidence of one witness only, unless such witness can be corroborated by evidence implicating the accused. This section has been applied in all sexual offences, meaning there must be more evidence corroborating the evidence of a person accusing another of a sexual offence. It is a strict requirement of the law, and not at the discretion of the judge. This has led to the acquittal of some accused persons, but it is widely understood that this is ultimately contained in the law to protect society from wrongful convictions based on vendettas with no corroboration. The case of *Emmanuel Phiri v The People*²⁹ was one of the earliest cases which brought about the need for corroboration evidence of both the commission of the offence and the identity of the accused in sexual offences, in order to eliminate the dangers of false complaint and false implication.

In the previously mentioned case of *Richard Daka v The People*, another reason the Supreme Court overturned the decision was

because there was no corroborating evidence of the alleged rape; other inferences could be drawn from the evidence presented, which left doubt in the opinion of the Court. The need for corroboration has sometimes led to the acquittal of an accused even when it is clear, based on evidence at hand, that the child had been sexually abused. The legislature should clarify and limit this principle especially in the Penal Code so as to not disadvantage survivors with genuine cases, but whose evidence may not be corroborated.

Pieces of evidence, such as an eyewitness testimony, a medical report, DNA test results or even documentary evidence such as text messages, can be another way to corroborate a child's testimony. In the case of *Issac Musadabwe v The People*,³⁰ the Court accepted a medical report proving the child was raped, and the accused's confirmation he knew the survivor and gave her a ride in his car at the time she claimed to have been sexually abused, as corroborating evidence and confirmed the conviction of the accused.

In the case of *Kabwita v The People*,³¹ the Supreme Court applied the need for corroborative evidence lightly in that it held that an accused may be convicted on uncorroborated evidence if there are special and compelling reasons to do so. In the case, the appellant had been charged and convicted of indecently assaulting a 13-year-old girl. The medical report confirmed that there had not been penetration, but evidence revealed that the survivor had been undressed and the accused had touched her vagina. The Court therefore convicted the accused based on the fact that there was no motive for her witnesses to falsely implicate the appellant out of all the men in the area where the survivor and the appellant lived. Further, when the survivor's uncle confronted the appellant telling him he wanted to take him to the police. He ran away but was apprehended. All of these pieces of

evidence amounted to special compelling reasons which, although they did not corroborate the testimony, did support the survivor's accusations. The Supreme Court confirmed the conviction of indecent assault but substituted the sentence of 15 years simple imprisonment with 15 years with hard labour.

This case and others demonstrate that there is a need to have an exception to the general principle of corroboration evidence in CSEA offences, and that the exception should be clearly legislated for in the Penal Code, so that when there is evidence that can compel the Court to convict an accused even where the evidence is not corroborated, this is deemed to be sufficient.

DNA

Deoxyribonucleic acid (**DNA**) has been a useful tool adopted throughout the world in prosecuting CSEA offences. However, in Zambia there is currently no mandatory requirement to carry out DNA tests to cross reference foreign DNA on a child's person with that of a suspected offender's DNA sample. It is costly for the Police Service and Ministry of Health who have minimal financial resources allocated for testing for CSEA survivors. It is generally up to the individual investigator whether to collect and test DNA evidence. An investigator can request DNA swabs from the survivor and perpetrator for comparison if he/she wishes. Survivors have access to DNA labs but are constricted from using them for the aforementioned financial reasons and due to the fact that the majority of survivors come from families who face social and economic challenges and cannot meet the costs of DNA processes.³² A 2017 study found that only 1.2 per cent of sexual assault cases involved a DNA swab being collected to be used as forensic evidence, and in no single case was a biological sample sent for DNA profiling to aid in suspect identification.³³

There is also no sexual offender registry with offenders' DNA profiles uploaded into a database. The lack of DNA testing as a mandatory tool to prosecute CSEA offences, together with the requirement that a survivor's statement be corroborated by an eyewitness as noted above, causes a great injustice to CSEA survivors in Zambia and results in perpetrators, who would have otherwise been identified by DNA, not being convicted.

Defences

It has been noted that defences are often abused by the accused individuals as they plead insanity or intoxication to diminish their responsibility. The Court was able to prevent a misuse of the defence of insanity in the case of *Chitalo v The People*,³⁴ where the appellant had been convicted of committing sexual abuse of a two-year-and-nine-month old child and sentenced to 25 years' imprisonment with hard labour. At the trial, evidence was presented to show that the appellant had been seen putting his penis in the mouth of the survivor. The appellant alleged that he had a disease of the mind as he had been treated at Chainama Hospital for cerebral malaria the previous day. The Court stated that the receipts showing that the appellant had received treatment from Chainama Hospital did not constitute conclusive evidence that the appellant was insane; this could only have been sustained if a medical examination report to that effect had been submitted in evidence including testimonies of relatives or members of the community showing that the appellant's behaviour was like that of an insane person. The Court upheld the conviction and sentence.

Another common defence is that the accused thought the survivor was of the age of maturity. In the already mentioned case of *People v Clifford Dimba Kanene*, the accused argued that the Court should have required an MRI scan of the survivor to prove their age as he contended the survivor was not underage at the

time. The court held that it was insufficient for someone to claim that the child he had sexual intercourse with was over the legal age; the accused person making such an allegation must present evidence to compel the Court of the child's age, otherwise the testimony of the child's guardians must be taken as being true.

In another case looking at this defence, *Whiteson Tembo v The People*,³⁵ the accused appealed his conviction based on the fact that the Court had not taken into consideration his testimony when he denied having had sexual intercourse with the survivor and that he thought she was 17 years old. The Court stated that the statutory defence of reasonable belief of the child's age could not be raised when the accused denied the charge of "defilement" (rape of a child), and affirmed that it could only be resorted to if the sexual act was admitted with the qualification that the accused was under the reasonable belief that the child was over the age of 16.

In addition to defences having been abused by those accused of committing CSEA, it is important to note that there is a lack of clarity on when they can be used. The Penal Code should be amended to properly and clearly define the circumstances when certain statutory defences can be raised by an accused.

Unwillingness to Proceed with 'Formal' Trial

Due to the lack of concrete evidence that can corroborate survivors' testimony, survivors of CSEA are, in most cases, encouraged by family members to forget the ordeal, not to testify or to recant testimonies. Anecdotal evidence suggests that family members prefer to conceal the abuse and avoid losing the financial support of the perpetrator or attract the scorn of neighbours.³⁶

Where proceedings are started, the families of survivors often opt to receive financial compensation to remedy the abuse and withdraw their action.³⁷

The local courts usually deal with CSEA cases and merely charge the perpetrators damages for "deflowering" (taking away virginity) or impregnating the survivor instead of carrying out a full prosecution, adjudication and sentencing the perpetrator to imprisonment for the committed sexual abuse.³⁸

There is no assessment per se which is conducted to ascertain the damages payable for abuse. Where such case is brought before the local court and it is noted that the perpetrator and survivor's family have agreed that the survivor's family should be compensated for the raping of the survivor (or taking the survivor's virginity), the local court clerks put this agreement into written form, which is signed by each party's representative. No trial is therefore held as there is already an admission of the act by the perpetrator and a mutual intention by the families for money to be paid. The damages paid are usually between USD 454.54 to USD 681.81, which can be agreed to be paid in instalments failing which a fine of ZMK 125 (around GBP 4.19) is imposed on the perpetrator.

Gaps in Prosecution

Although Zambia has made great efforts to improve the prosecution of CSEA offences, there still remain gaps which need to be addressed.

These include:

- Limited collaboration between law enforcement, medical personnel, child welfare services and child advocacy centres to assist prosecutors and seasoned investigators in securing a conviction.
- Lack of DNA evidence to tie the abuser to the offence. Whilst DNA samples can be taken by medical personnel at the investigative stage, samples of the accused's DNA are rarely taken for the purposes of comparison.

— Unwillingness of the families to proceed with the prosecution of CSEA offenders, due to financial or societal concerns.

Protection

Protection of Survivors During Proceedings

In Zambia, survivors of CSEA are required to receive prompt assistance from the Victim Support Unit (the **VSU**) or Child Protection Unit (the **CPU**) which operates under the Zambian Police. There is also a Chaplain Department of the Police, which is an initiative that helps counsel perpetrators and survivors of crimes. Assistance provided by these organisations is available throughout the investigation, trial and after conviction, depending on the child's recovery and need for continued assistance.

Proceedings relating to CSEA are held in-camera. There are six Gender-Based violence courts countrywide with infrastructure that has a witness room and video conference facilities to protect the survivor from coming into contact with the perpetrator during the trial. The rest of the courts in the court system lack this infrastructure, as only one courtroom at the Subordinate Court in Lusaka has a video conferencing facility, meaning that child survivors must face the perpetrator during the trial. To combat this, the courts try to make the proceedings as child-friendly as possible, such as by clearing the courtroom of any persons who have no role in the proceedings and allowing the child to sit outside the witness dock in the presence of a parent or guardian. The Magistrate also moves away from the bench and sits at the bar as the examination of the child witness proceeds. All participants in the proceedings, including the prosecutor and defence attorney, are encouraged to use a child friendly tone to avoid trauma and intimidation of the child.

Although efforts are being made to protect survivors during this process, research and anecdotal evidence suggests that there is

insufficient training for judges and magistrates, police officers, medical personnel and other stakeholders on how to safeguard CSEA survivors during proceedings.

Protection of Survivors in General

Various provisions of the Penal Code and Anti-Gender Based Violence Act No.1 of 2011 set out protections for survivors of CSEA. For example, an offender convicted of any incestuous offence on a child has to be divested of all authority over the survivor and another person has to be appointed as the child's guardian. In addition, where a person is suspected of abusing a child in any way, a protective order can be obtained to forbid the person from seeing the child. Such an order can be sought by a parent, guardian, any person who normally resides with the child, or social workers, police officers, medical officers, representatives of NGOs or other organisations with information on gender-based violence. When survivors of Gender Based Violence (**GBV**) are identified, they should receive immediate protection from the police, who are required to retrieve them from the violent environment and place them in contact with the social welfare department through the Victim Support Unit (the **VSU**).

The VSU, which assists survivors of CSEA, has trained its staff to counsel and properly assist child survivors of CSEA. The VSU and Social Welfare officers are required to have an academic qualification in psychosocial counselling. Any further training in safeguarding or similar type of training mostly depends on the respective institutions, which may or may not provide these in the form of workshop sessions.

The Minister of Community Development and Social Welfare has a mandate to create shelters for both children and adults who are survivors of gender-based violence and abuse. Child protection shelters are available in all provincial headquarters throughout Zambia. However, these shelters are not available in rural and

remote areas that practice early child marriages.

Some provinces in Zambia have centres where CSEA survivors can report offences and undergo immediate medical examination. The examiner has immediate access to a police form in which they can record the nature of the alleged offence, appearance of the survivor, and outcome of the examination. The personnel in these centres are trained to avoid re-traumatising the child and can provide the child with psychological assistance. However, as noted, not all provinces have these CSEA centres, forcing children to report to hospitals for examination, where personnel are not adequately trained to ensure privacy during their examination or provide psychological assistance.

The Zambian Government has committed to helping survivors of CSEA and informing its citizens of issues of violence against children, including partnering with various non-governmental organisations.³⁹ It has also been campaigning to raise awareness against CSEA in the form of early marriages, which has led to a number of traditional leaders denouncing the cultural practice in their villages.⁴⁰

Where the person informing the authorities of CSEA offences has committed crimes themselves (such as prostitution or being in the country illegally), the only way for them to be protected from penalisation for those crimes is under the Plea Negotiations Agreement Act No. 20 of 2010 (the **PNA**). Under the PNA, the State can agree to lessen or withdraw criminal charges against an accused person on agreement that that person will testify in another case which may include CSEA offences. It is unknown whether this applies to children who are survivors of commercial sexual exploitation or trafficking.

Protection of Trafficked Children

Section 36 of the Anti-Human Trafficking Act No.11 of 2008 (the **AHT Act**) allows to some extent for the repatriation of children back to their country of origin but, before repatriation, places a mandate on the Ministry of Community Development and Social Welfare to ensure the safety of the child by mitigating the possibility that the child might be harmed or trafficked again, or killed.

Counselling

In terms of psychological care, survivors are assisted by trained counsellors in hospitals who provide the first line of counselling to help survivors elaborate on the facts that led to their abuse and exploitation, which assists with police investigations.

Non-governmental organisations such as the Young Women's Christian Association (the **YWCA**) give shelter to child survivors of CSEA in a safe environment that offers one-to-one counselling and group counselling to assist the child to overcome the trauma and potential damage of the CSEA. Mental health and psychological services are also made available in safe homes (child survivor homes) to offer post-trauma counselling, support groups and re-integration services to re-introduce the child back into their community.

Further, non-governmental organisations offer safety away from perpetrators that threaten and intimidate the child from testifying against them in court.

In instances where the crime is first reported to the police, the VSU has trained counsellors that are experienced in counselling survivors of CSEA.

Protection of Children in Disaster Settings

Zambia does not currently have any legislation enacted addressing CSEA in times of disaster, though it is worth mentioning that the Disaster Management Act (Section 38) provides for

measures that reduce the vulnerability of persons living in disaster-prone areas, communities and households by providing food and shelter.

Section 8 of the Disaster Management Act also established the National Disaster Management Council, which consists of certain ministries with an interest in the care and wellbeing of children, such as the Ministry for Community Development and Social Welfare, Education, Health and Home Affairs. However, the Act does not specifically address CSEA.

Other

Protection of Adopted Children

Adoption is regulated by the Adoption Act,⁴¹ which specifies that regarding domestic adoptions, the courts may make an order authorising an applicant to adopt a child, on the applicant making an application in the prescribed form. It also sets out that an adoption order will not be made for a child who is female, in favour of a sole applicant who is male, unless there are special circumstances which justify making such an order as an exceptional measure.

Regarding adoptions by a person who resides outside Zambia, section 33 of the Adoption Act gives the Commissioner of Juvenile Welfare (the **Commissioner**) the power to grant a licence authorising the care and possession of a child to a person resident abroad, subject to such conditions as he or she sees fit, and on being satisfied that the application is made with the consent of every person or body of persons who is a parent or guardian of the child in question, or anyone who has actual custody of the child or is liable to contribute to the support of the child. This consent requirement can be dispensed with if the persons mentioned above have neglected, abandoned or deserted the child, refused to contribute to the support of the child, cannot be found, are incapable of giving such consent, or are a person whose consent

ought, in the opinion of the Commissioner, to be dispensed with. The Commissioner must also be satisfied by a report of a Zambian consular officer, or any other trustworthy person, that the person to whom care is to be given is a suitable person who can be trusted, and that the transfer abroad is likely to benefit the welfare of the child, with due consideration given to the wishes of the child (having regard to their age and understanding).

Prevention

Register of Offenders

Zambia does not currently maintain a list of sexual offenders, prohibit those convicted of CSEA offences from travelling abroad, or prohibit those convicted of CSEA offences abroad to travel to Zambia.

Child Online Safety

There are currently inadequate technical procedures, standards and solutions regarding the safety of children online. The reporting systems and mechanisms meant to capture and keep statistical data on child online protection incidents and trending risks are not integrated, and there is a lack of nationwide filtering of threats to the safety of children online by Internet Service Providers (ISPs), and no portal for reporting any such threats exists.

Zambia is taking positive steps to tackle these and other safety issues in cyberspace. It aims to safeguard the safety of children online by introducing a Child Online Protection Strategy through the Ministry of Transport and Communications, which will collaborate with other ministries and agencies on this project. It has also enacted the Cyber Security and Cyber Crimes Act 2021, which defines the forms of CSEA that are not adequately defined in other legislation.

Zambia also plans to enact the Draft Children's Code Bill, which will define a child and guarantee more rights in the best interests of a

child currently not contained in existing legislation.

The Zambia Police service is currently conducting training for its officers to roll out cybercrime inspectors in every provincial centre to combat online CSEA and human trafficking.

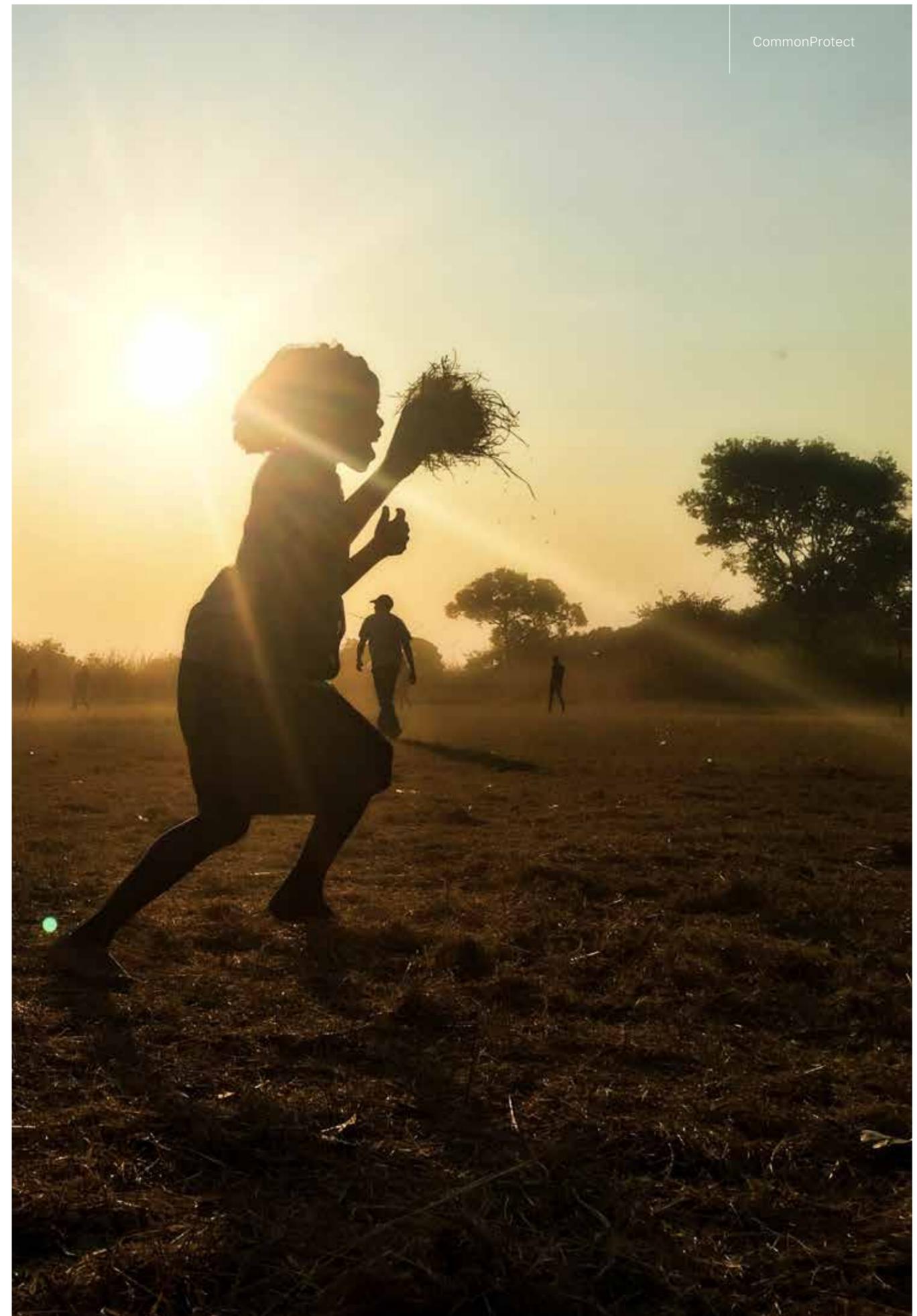
Distribution of CSEA Content Online

Sections 94 and 95 of the Electronic Communications and Transactions Act No. 21 of 2009 (the **ECT Act**) authorises police officers (referred to as cyber inspectors) with the mandate to monitor, investigate and perform any act necessary in curbing unlawful activity on online platforms. This law is not specifically meant to curb CSEA but by implication can be relied on by the authorities to monitor CSEA activities online.

Once the cyber inspectors identify a page with suspicious CSEA activity, they start monitoring it to trace its administrators and any other accessories. Thereafter, the inspectors work in conjunction with the Zambia Information, Communication and Technology Agency (the **ZICTA**) to trace the numbers of the registered administrators of the pages and possibly arrest them. Unfortunately, the inspectors cannot single-handedly take down the pages as these are usually regulated by institutions outside Zambia, such as Facebook. The Inspectors can therefore only report these pages to such institutions.

Section 8 of the AHT Act compels ISPs operating in Zambia to report to the police any websites that advertise, broadcast or distribute information about trafficking people.

In addition, section 102 of the ECT Act comprehensively covers the provisions of Article 9 of the Convention on Cybercrime of the Council of Europe (the **Budapest Convention**), regarding the production, procuring, distribution, offering and possession of pornographic material.



SPOTLIGHT

Commonwealth sexual offences legislation: Wholesale reform to protect children and other marginalised groups

Across the Commonwealth, sexual offence laws fail to properly protect children from sexual exploitation and abuse. However, in many cases this is just one of a litany of deficiencies within the legislation, which often also actively discriminates against women, LGBT people, people with disabilities, and other marginalised groups. This pattern of discriminatory laws, which time and again finds its origins in a Victorian-era British legislative framework, exists in every region of the Commonwealth.

The most effective response to both provide better legal protection for children, and at the same time tackle the scale of the shortcomings of these laws, is the wholesale reform and modernisation of sexual offence legislation, providing an opportunity to tackle a range of problematic provisions in one sweep.

Research such as that featured in this report is an essential tool for drawing attention to the prevalence of these laws, demonstrating their discriminatory effect, and making the case for reform. The Human Dignity Trust (the **Trust**), a London-based charity working globally to change laws which discriminate against LGBT people and other marginalised groups, has itself developed a range of resources that identify how sexual offence laws that fail to protect children often fail to protect other vulnerable communities as well. Furthermore, our research suggests that tackling these shortcomings together can be the best way to bring legislation into line with twenty-first century standards, benefiting children, women, LGBT people and people with disabilities.

Since 2015, the Trust has been analysing Commonwealth sexual offences legislation and developing tools to address their deficiencies. An ever-present theme in our research is the extent to which laws that fail to protect children and adults from sexual violence also discriminate against other marginalised groups. To better understand the flaws in sexual offences' legislation, the Trust has developed a set of good practice indicators based on established international human rights standards, against which national sexual offences' laws can be assessed and reforms can be guided.²⁵⁶

We must bring legislation into line with twenty-first century standards.

The Trust has applied an adapted and streamlined version of these good practice criteria to the sexual offence laws of every country in the Commonwealth. This research reveals that in a majority of Commonwealth countries, outdated provisions remain on the books—many dating back to the nineteenth and early twentieth centuries—and leave major gaps in rights-based protection against discrimination and violence.²⁵⁷ These include significant gaps in the protection of children, such as:

- 28 Commonwealth countries fail to properly criminalise the array of sexual offences that are committed against children, including all acts of penetration as well as non-penetrative sexual acts, and offences often carried out online, such as grooming and sexual communication with a child;
- 20 Commonwealth countries limit child sexual offences to girls and exclude boys from being victims under the law, failing to properly protect boys and leading to unequal sentencing regimes based on the sex of the victim rather than the nature of the crime;
- 21 Commonwealth countries also fail to expressly exclude consent being raised as a defence against child sexual offences, or include in the legislation the defence of consent in certain circumstances such as where the parties are married, opening the door for offenders to claim that the child agreed to the sexual activity despite being under the age of consent.

Elliot Hatt
Programme Officer,
Human Dignity Trust

This research also forms the basis of an interactive online tool, which translates the data first developed in the *Next Steps* reports into an accessible format, providing activists, advocates and policy makers with a visual comparison between the laws in their country and those of their regional and Commonwealth counterparts.²⁵⁸

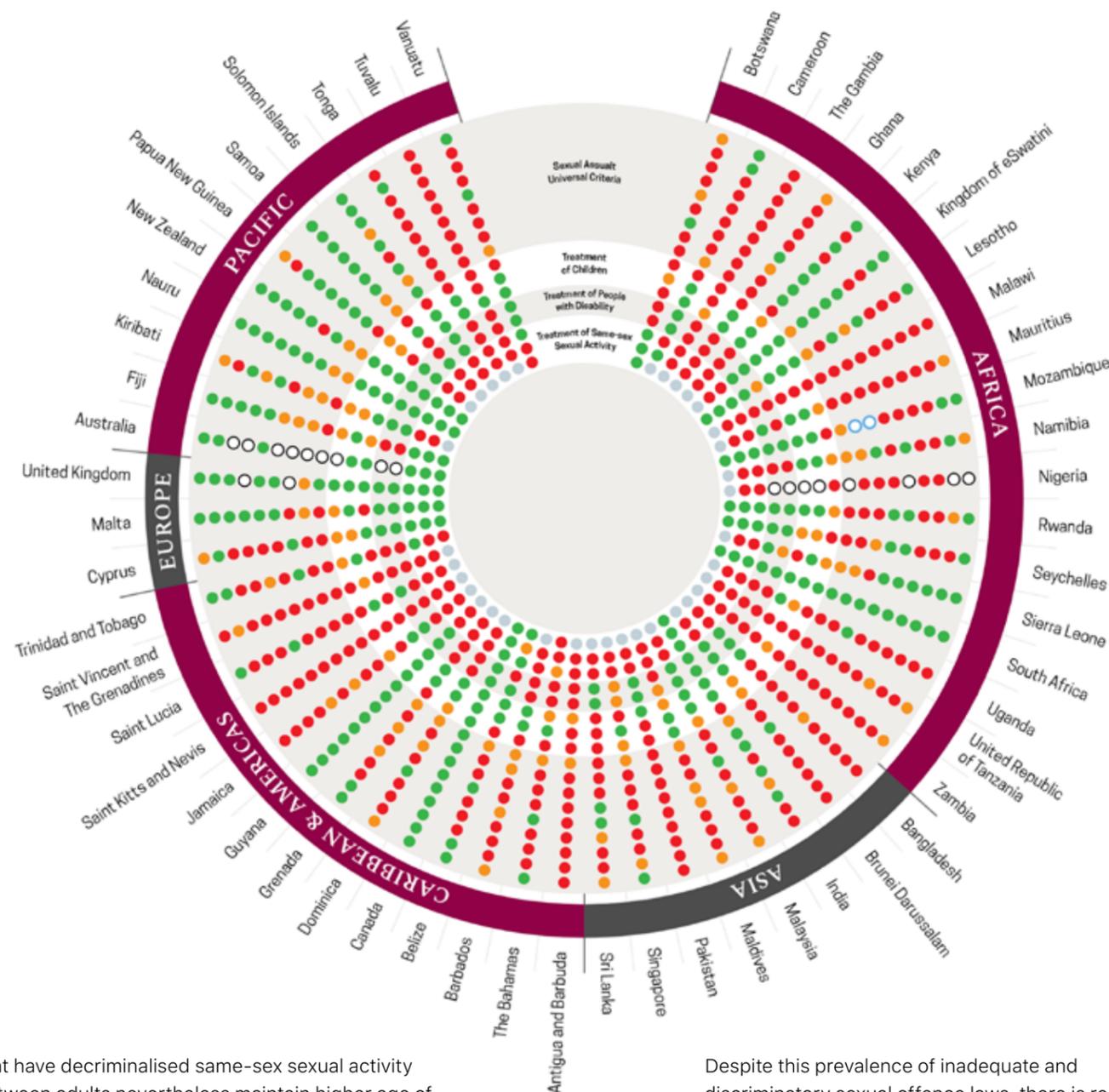
The data collected during this research and presented in the *Next Steps* reports shows that where countries fail to properly protect children from exploitation and abuse, they often also inadequately criminalise sexual offences committed against adults, demonstrating the need for a wholesale updating of legislation. For example, our research shows that:

- of the 28 Commonwealth countries which criminalise only very limited specific child sexual offences, 17 also conceptualise universal sexual assault laws in limited terms, inadequately criminalising the range of non-consensual penetrative sexual acts;
- of the 20 Commonwealth countries which limit child sexual offences to girls, 19 also broadly limit universal sexual assault laws to women, failing to properly protect other adults from sexual assault and restricting criminal liability based on the sex of the victim;
- of the 21 Commonwealth countries which permit or do not expressly exclude the defence of consent to child sexual offences, all but five also permit or do not expressly exclude the defence of marriage to rape and sexual assault offences.

Another area in which sexual offences' legislation often falls short of human rights standards is through the treatment of marginalised groups. As at August 2021, 35 of 54 Commonwealth countries criminalise sexual activity between people of the same sex. These discriminatory provisions deny LGBT people their right to dignity and privacy, and have significant, negative impacts on their ability to access healthcare, employment and education. All 35 of these countries criminalise sexual activity between men, while 16 also explicitly criminalise sexual activity between women, following a trend in recent decades whereby some Commonwealth nations have expanded their criminalising provisions to include lesbian and bisexual women. A small number of countries

that have decriminalised same-sex sexual activity between adults nevertheless maintain higher age of consent laws for sex between people of the same-sex, criminalising young LGBT people for activity that is legal for opposite-sex couples.

Sexual offence laws also all too frequently maintain discriminatory provisions relating to people with disabilities, with 28 Commonwealth countries criminalising sexual activity with a person who has a disability regardless of their capacity to consent. Laws that assume people with disabilities are always incapable of freely and voluntarily agreeing to sexual activity, regardless of their ability to consent, are discriminatory, paternalistic and limit the autonomy of people with a disability to govern their own sex lives. Many countries compound this discriminatory effect with degrading language to describe people with disabilities, such as 'imbecile', 'idiot', and 'mentally subnormal'.



Despite this prevalence of inadequate and discriminatory sexual offence laws, there is reason to be hopeful. In recent decades, more and more Commonwealth countries have taken the necessary steps to reform their outdated legislation to better protect children against the breadth of sexual abuse and exploitation to which they may be vulnerable.

Many such reforms have been through a wholesale updating of sexual offence laws or the entire penal code, providing protection at the same time for children, women, LGBT people and people with disabilities. The Trust's *Reform of Discriminatory Sexual Offences Laws in the Commonwealth and Other Jurisdictions* series spotlight several countries that have taken this wholesale approach to sexual offence reform in the last decade, including Belize, Northern Cyprus, and the Seychelles.²⁵⁹

Reforms are made more credible and more likely to succeed when part of a broad legislative package.

While each country needs to determine its own course based on the status of its existing legislation and the resources available to it, the Trust's research suggests that updating the law in this holistic manner provides substantive and strategic benefits. For example, a wholesale approach to reform allows multiple deficiencies to be addressed simultaneously, providing better protection for the community at large while also limiting the amount of time and resources needed to achieve reform.

Secondly, a holistic approach to reform means that a range of communities, and the civil society actors that represent them, can put their collective weight behind the reforms. The chances of success greatly increase when the case for reform is made from multiple angles, and in order to respect the rights of and provide better legal protection for more than one marginalised group.

Finally, often more contentious but equally necessary aspects of reform, such as the decriminalisation of same-sex sexual activity or the criminalisation of marital rape, are more likely to be achieved when part of a package of reforms, as the sensitivities around these issues can be diffused by the necessity of increasing protections more generally. Governments can feel more empowered to support reforms where opponents cannot easily reduce them to one potentially politically damaging issue.

For these reasons and more, reforms are made more credible and more likely to succeed when part of a broad legislative package, and the legislature is more inclined to coalesce behind legal change with the largest potential impact. Therefore, in many cases a wholesale updating and modernisation of sexual offence laws is the most effective and impactful way to provide better protection for children from sexual exploitation and abuse, while at the same time tackling laws which discriminate against other vulnerable sections of society.

Country Reports: The Americas



REGIONAL SNAPSHOT

The Americas

Areas of concern

Terminology and societal stigma

Legislation criminalising CSEA across the Americas tends to use dated terminology such as “child pornography”, “child prostitution”, “buggery”, “defilement” and “carnal knowledge”.²⁶⁰ Many of these terms do not place the emphasis on the perpetrator’s actions, and instead emphasise the survivor as having been “damaged” in a moral sense, or even “legitimise” some CSEA offences by implying consent, especially in the use of “child pornography” and “child prostitution”.

Factors including poverty, domestic violence, gender-based violence and societal attitudes towards CSEA are embedded in the region and serve as deep-rooted barriers to the effective mitigation of CSEA.²⁶¹ The true extent of CSEA in the Americas is difficult to determine, as data collection is limited and under-reporting is widespread.²⁶² As well as impacting survivors’ willingness to report, societal stigma is reflected in police attitudes towards survivors, which limit the effectiveness of the investigation and prosecution of CSEA offences.

“Officers and prosecutors display varying attitudes of the wider societal attitudes that affect how they may or may not engage with the process.”

Researcher for Belize

Treatment of children of different genders

Societal and cultural attitudes towards gender further contribute to CSEA throughout the region. There is a widespread lack of empathy towards female survivors of CSEA due to the societal belief that girls are submissive, promiscuous and sexually aware.²⁶³ Furthermore, the criminalisation of homosexuality in some countries leads to the exclusion of male child survivors (in particular) from protection and recourse.²⁶⁴ Crimes committed against boys are often overlooked due to homophobia.

“Strong societal perceptions of male gender norms have reinforced the belief that males are not legitimate survivors of sexual abuse.”
Researcher for Grenada

The difference in how the criminal justice system treats female and male survivors is a common theme amongst countries in the Americas. There has been some progress on the gender-neutralisation of CSEA offence laws, however there are still large gaps. “Gender bias” in the judicial system results in those convicted of CSEA against males being given lighter sentences than those convicted of CSEA against females.

Inaccessible & under-resourced justice systems

Across the Americas region, frameworks are in place for the protection of children. However, in practice these frameworks are largely inaccessible and ineffective, and fail to comprehensively protect children from CSEA in these countries.

A key factor contributing to the inaccessibility of justice for CSEA survivors across the Americas is the difficulties with collecting sufficient evidence against the perpetrator for a CSEA conviction. In these cases, perpetrators are rarely prosecuted as a conviction cannot be obtained. Evidence suggests that law enforcement struggle to complete efficient investigations of CSEA offences due to a lack of skills or resources in evidence-gathering.²⁶⁵ As DNA and forensic evidence is not available in most circumstances, a witness or other people to whom the child has reported the incident of abuse are expected to corroborate the child’s story. Witnesses can be subject to intimidation from a variety of sources, including members of the perpetrator’s family, members of the survivor’s family, and at times from the wider community.

Regional trends

- Sexual exploitation of children in travel and tourism (SECTT)
- Child trafficking for sexual exploitation and forced labour
- Harmful cultural and societal attitudes
- Online CSEA
- Limited collection and sharing of data
- Familial abuse

Risk factors

- Widespread poverty
- Increasing accessibility to technology
- Pervasive gender norms
- Under-reporting
- Increasing accessibility to technology



Under-resourcing of state investigative and judicial departments limits the investigation and prosecution of CSEA offences in the Americas region.

“For decades now, child care professionals have expressed concern over the length of time it can take to have the alleged perpetrator prosecuted for the crime of CSEA.”

Researcher for Barbados

Cases can often be left in the criminal justice system for years and can take an inordinately long time to come to trial. CSEA survivors become exhausted with the process and discontinue their case, leading to an undermining of faith in the justice system. The time commitment needed to pursue cases also leads to economic pressure on witnesses and families that need to take time off work to attend court.²⁶⁶

Barbados

Child sexual exploitation and abuse (CSEA) is a cause for concern for child care professionals, the general public, law enforcement and the judiciary in Barbados. Internationally it has been found that the causes of CSEA are multi-dimensional and this also holds true for Barbados, where sociocultural, economic, environmental and psychological factors are usually involved in its perpetration. Thus, any approach to its prevention by the government of Barbados and other organisations must be multifactorial and collaborative.

The government of Barbados has made children's rights a priority and has signed and ratified the 1990 Convention on the Rights of the Child (CRC) and its optional protocols.¹ To this end, it has voiced its concern about child maltreatment in all its forms as outlined in Articles 33, 34, 36 and 37 of the CRC. Since its ratification of the Convention, the Barbados government has passed or amended legislation to try to ensure that children are protected and offenders are brought to justice. The government passed the Protection of Children Act 1990² and the Sexual Offences Act 1992³ (which replaced the old Punishment of Incest Act 148), and The Offences against the Person (Amendment) Act 2019⁴ to help deal with the problem. It has also made provisions for the survivors of all types of abuse to receive psychosocial support and counselling to aid in their "physical and psychological recovery and reintegration" because these adverse childhood experiences impact the physical, and psychological wellbeing of children as they grow into adulthood.⁵

However, there is still more that can be done to ensure that survivors of CSEA and their families receive ongoing support. UNICEF and other NGOs provide support to the government in its various initiatives designed to prevent this crime against children and rehabilitate survivors.

CSEA Profile

Child abuse and domestic violence are pervasive in Barbados, as they are throughout the Caribbean as a whole.⁶ Limitations in available data, however, make it challenging to provide an up-to-date picture of the scale of CSEA in Barbados. In an oft-cited study of adult survivors in Latin America and the Caribbean, 30% of female participants in Barbados were found to have been sexually abused as children. However, the original source for this study cannot be found.

Cases of CSEA are reported to the Child Care Board (Child Welfare Agency) on a weekly and daily basis. Between 2006 and 2012, over 5,000 cases of child abuse were reported to the Child Care Board.⁷ Between 2010 and 2017, reported cases of child sexual abuse averaged 160 annually. In 2017, 55% of survivors were aged 12–16 years, 30% were 5–11 year olds, and 15% under 5 years old.⁸

In December 2021, the Child Care Board reported that they had seen a dramatic drop in reports of CSEA throughout the previous year. The social agency said cases decreased from 1,446 during the 2015–2016 period, to 611 at the end of the 2019–2020 period.⁹ Senior Child Care Officer Roxanne Sanderson explained that this could be due to the lockdown measures introduced in 2020 in response to the COVID-19 pandemic, which resulted in people not being able to make reports. Once the lockdown was lifted, cases gradually began to rise.

The latest statistics show that the majority of survivors of CSEA in Barbados are girls.¹⁰ However, it must be noted that male survivors are less likely to report experiences of sexual abuse than their female counterparts, perhaps because of the perceived loss of masculinity associated with this form of victimisation, social ostracism that may follow such a disclosure, or the fear of their sexuality being questioned.¹¹ Furthermore, a 2018 study found that boys in the Eastern Caribbean, including Barbados, experience a higher rate of physical and sexual abuse than girls overall.¹² Despite this, it appears that cases involving girls are investigated more thoroughly than those of male survivors, which may also contribute to boys' unwillingness to come forward.¹³

The available evidence also shows that the main perpetrators of CSEA offences in Barbados are family members or trusted family friends. In a landmark study by Jones and Trotman Jemmott, it

was found that most CSEA survivors are girls, that the child is generally abused before the age of 10, and that offenders are mainly adults - stepfathers, mother's boyfriends, and biological fathers. In some households, more than one child may be at risk for abuse. The abuse also tends to be intergenerational.¹⁴ Anecdotal evidence also shows that the mothers of many survivors also experienced sexual abuse and exploitation as children.

Several factors of a socio-cultural nature contribute to the perpetration of CSEA. Efforts to address many of these socio-cultural factors are indeed difficult as they are endemic in society. These include (1) the family structure and household, with many single-parent households characterised by a lack of financial support, inadequate child care and social support; (2) child-rearing practices which allow men and boys more privilege than girls and encourage females to be submissive; (3) the patriarchal nature of Caribbean society, which allows men power and control over women and children that results in patriarchal exploitation; (4) societal attitudes towards children's rights and parents' rights; (5) poverty, which increases incidences of transactional sex, whereby mothers from poor families encourage the sexual exploitation of their daughters by older men for material gain.¹⁵ According to anecdotal evidence, some step-fathers tend to believe that they 'should get something for their trouble' of having to rear another man's child.¹⁶ Furthermore, (6) research also shows that the presence of a stepfather in the home places young female children at risk of sexual abuse; (7) children are often at risk of abuse when placed in informal foster and adoptive situations with relatives or friends, as is often done in the Caribbean when parents migrate; and (8) it is common for men to view women and girls as sexual objects. LeFranc states that 'many men genuinely believed that sexual familiarity with, and possession of a female - any female, often times regardless of age and relationship between perpetrator and survivor - was normal, and their right.'¹⁷

Several studies have found that levels of CSEA in Barbados, as well as isolation of survivors, are exacerbated by a high tolerance for violence against girls and the acceptance of the early sexualisation of children.¹⁸ Furthermore, experiencing sexual abuse or exploitation at a young age can often lead to a survivor experiencing further violence, particularly intimate partner violence (IPV) later in life.¹⁹

The sensitive nature of the topic had resulted in the establishment of a 'private and secretive' domain around the topic, where stigma and a lack of adequate societal response contributed to and exacerbated the problem. Given the level of under-reporting associated with CSEA, it was generally considered that the true extent of CSEA in Barbados is difficult to determine.²⁰

Barbados is mainly a Judeo-Christian society. Children over the age of 16 but under 18 can get married in special circumstances but only with the written consent of their parent(s).²¹ Child marriage is prohibited under the Marriage Act Chap. 218 A, S.4 (1) and therefore the statistics on child marriage are virtually non-existent. However, this lack of statistics has been accredited to a general lack of data on the issue of child marriage, and therefore may not be indicative of no child marriages occurring in Barbados.²²

According to a recent report by UNICEF, 29% of women aged 20 to 24 were first married or in union before they were 18.²³ Furthermore, there is a common practice throughout Barbados where young girls engage in 'visiting relationships', which are social and sexual relationships without cohabitation.²⁴ It remains unclear, however, whether these visiting relationships are with people of the same age or older, and whether such relationships increase the risk of sexual abuse as formal marriage to older partners might.

Criminalisation/Legislation

The legislation which seeks to protect children from CSEA in Barbados and under which alleged offenders are brought to justice is:

- the Child Care Board Act 1981 (the **Child Care Board Act**) which provides for the care and protection of children.²⁵
- the Sexual Offences Act 1992 (the **SOA**) which provides for the protection of persons from sexual crimes.²⁶
- the Offences against the Person (Amendment) Act 2019 (the **OPA**). This Act deals with murder, manslaughter, causing danger to life or bodily harm, assaults, offences against liberty, child stealing, bigamy, abortion and concealment of birth, offences of indecency among others.²⁷

- the Protection of Children Act 1990 (the **PCA**) which provides "for the protection of children from exploitation by preventing the making of indecent photographs of them and matters related thereto."²⁸

- the Computer Misuse Act 2005 (the **CMA**) which provides "for the protection of computer systems and the information contained in those systems from unauthorised access, from abuse by persons authorised to have access and related matters".²⁹

- the Trafficking in Persons Prevention Act 2016 (the **TPA**) which makes "provision for the prevention of the trafficking in persons and the implementation of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime".³⁰

- the Domestic Violence (Protection Orders) Amendment Act 2016 (the **DVAA**). This Act offers protection to children who are abused in a domestic setting, and offers protection non-offending parents.³¹

Classification of Sexual Offences with Children

Sexual offences with children are classified as violent and non-violent molestation of children below the statutory age of consent, and includes all forms of inappropriate touching, seduction, sexual intercourse/rape, child trafficking, involving a child in commercial sexual exploitation, involving a child in child sexual abuse materials/images.

A social survey conducted by the Caribbean Development Research Services Inc. (CADRES) in 2019 reported that "nearly all adults in the 2019 social survey recognised child sexual abuse as:

- Engaging in sexual activities with a child (91%).
- Physical contact of a sexual nature with a child, such as touching or stroking a child's private parts (88%).
- Indecent exposure/showing private parts to a child under the age of 16 (85%).
- Showing pornography to children (83%).
- Asking to see a child's private parts (82%).

- Voyeurism, e.g. peeping/looking at a child's private parts for adult sexual gratification (76%)."³²

Despite several pieces of legislation which address CSEA, the child law system in Barbados remains unharmonized.³³ Experts claim that there is a great need for reform, including a consolidation of all relevant legislative provisions relating to children, amendment of provisions which are inadequate, and repeal of provisions which are not aligned with international standards.³⁴ Since the publication of this report, several efforts have been undertaken by the government of Barbados to introduce reform, for which they were commended by the UN Committee on the Rights of the Child in its 2017 report.³⁵ However, it is clear that there is still a long way to go until the system is fully harmonised and children are comprehensively protected.

Lanzarote Convention

In considering the Lanzarote Convention, Barbados has implemented the key articles 3, 18–24, and 26–29, through the various pieces of child protection legislation and its child-protection and child-friendly policies. The government of Barbados, through its commitment to the implementation of the UNCRC, also seeks to promote national, regional and international co-operation against sexual exploitation and sexual abuse of children.³⁶

Age of Consent & Definition of a Child

The age of sexual consent in Barbados is 16, pursuant to the Sexual Offences Act 1992, Section 5.³⁷ A child is defined in the Child Care Board Act 1981, Cap 381 Section 2 as anyone under the age 18 in line with the provisions of the CRC.³⁸

However, the Juvenile Offenders Act, Chapter 138 defines a child as a person under the age of 14 years.³⁹ Furthermore, the age of criminal responsibility in Barbados is currently 11 years old. Despite recommendations from the UN that this be raised to the minimum standard of 14 years, there are currently no reported plans to raise the age of criminal responsibility further.⁴⁰

Furthermore, there are several anomalies in the legislation which can disadvantage children. Children can leave school and be gainfully employed from the age of 16, leave their parents' home and live with

whomever they choose from 16, and vote from the age of 18. Furthermore, they can marry at 16 with parental consent, however, they cannot access contraceptives under 16 without parental consent. With the age of 16 being the age of sexual consent, there are implications for children who are raped or sexually abused in any form between the ages of 16–18. These young people usually have to make a complaint of rape or sexual assault, not child abuse.

This divergence in the law of Barbados on who is considered a child is also reflected in society. For example, research conducted by Jones and Trotman Jemcott in 2009 revealed a widespread belief that people between the ages of 14 and 16 were not children.⁴¹ In their research, they found that two groups of men that they interviewed did not consider girls over 14 years old to be ‘children’ and therefore did not believe that sexual activity with a girl aged 14 and above could be considered CSEA.⁴²

Trafficking

Barbados has ratified into law some of the articles of the Palermo Convention 2000, which deals with Child Trafficking.⁴³ Barbados signed the Convention in 2001 and ratified it in 2014. Barbados passed The Trafficking in Persons Prevention Act 2016 which “repeals the Transnational Organized Crime (Prevention and Control) Act, 2011 (Act 2011-3) to make fuller provision for the prevention of the trafficking in persons and the implementation of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime”⁴⁴

The Act broadens the scope of the offences by creating an offence where trafficking in persons takes place within the country and creates a special offence with heavier penalties for the trafficking of children.⁴⁵

The Trafficking in Persons Prevention Act 2016 states that:

4 (1) “A person who for exploitation

(a) recruits, transports, transfers, harbours or receives a child into or within Barbados;

(b) receives or harbours a child from Barbados in another jurisdiction; or

(c) recruits, transports or transfers a child from Barbados to another jurisdiction, is guilty of the offence of trafficking in children and is liable on conviction on indictment to a fine of 2 million BBD or to imprisonment for life or to both.

(2) The recruitment, transportation, transfer, harbouring or receipt of a child for exploitation is sufficient to establish the offence of trafficking in children.

(3) A person who incites or directs another person to traffic in children is guilty of the offence of trafficking in children and is liable on conviction on indictment, to a fine of 2 million BBD or to imprisonment for life or to both.”⁴⁶

Extraterritoriality

The Trafficking in Persons Prevention Act, 2016 states that a court in Barbados has the jurisdiction to try an offence under this Act where the act constituting the offence has been carried out:

— wholly or partly in Barbados;

— by a national of Barbados, whether in Barbados or elsewhere; or

— by a person on board a vessel or aircraft that is registered in Barbados.⁴⁷

The Trafficking in Persons Prevention Act, 2016 further states that implementing any provision of this Act, special consideration must be given to a survivor of trafficking who is a child in a manner that is in the child’s best interests and appropriate to the situation.⁴⁸

The Computer Misuse Act, 2005 applies to an act done or an omission made (a) in Barbados; (b) on a ship or aircraft registered in Barbados; or by a national of Barbados outside the territory of Barbados, if the person’s conduct would also constitute an offence under the law of a country where the offence was committed.⁴⁹

Under the Trafficking in Persons Prevention Act, 2016 a person found guilty of trafficking in children is guilty of the offence of trafficking in children and is

liable on conviction on indictment to a fine of 2 million BBD or to imprisonment for life or to both.⁵⁰

There are penalties for engaging in sexual activity with a child outside of the home country. A person who breaches section 13 of the Computer Misuse Act, is guilty of an offence and is liable on conviction on indictment, (i) in the case of an individual, to a fine of 50,000 BBD or to imprisonment for a term of five years or both; or (ii) in the case of a corporation, to a fine of 200,000 BBD.⁵¹

There are no travel restrictions placed on individuals who have committed CSEA offences, outside of the general restrictions applied to persons who are on remand, or bail or imprisoned. In practice, if the alleged perpetrator has been charged and the case is ongoing, that is, being heard in court then the person is not allowed to travel out of the country. When an accused is placed on bail by the court, the court may order the accused to surrender his/her travel documents and prohibit the accused from travelling outside the country. If the person has served their sentence or if charges regarding the case have been dropped, then the person is free to travel outside the country.

One issue when it comes to extraterritorial laws addressing CSEA is that there is no register containing the names and identification information of CSEA offenders that can be presented to immigration officials at foreign states borders to ensure a swift capture and prosecution of these offenders if the situation arises. Furthermore, there needs to be a proper outline of the investigation or the procedure of extraterritorial crimes, which is currently lacking in Barbados.

Extradition

Under the laws of Barbados, it is not a prerequisite that there be an extradition treaty with the destination country. Section 40 of the Extradition Act 1985 states that where there is no treaty between Her Majesty, and by extension Barbados, the Attorney General may, on the application of the foreign state, issue his warrant for surrender of a fugitive to the foreign state.⁵²

Section 23 (1) of the Trafficking in Persons Prevention Act 2016 states that “where a person who has committed or is alleged to have committed an offence under this Act is present in Barbados and it is

not intended to extradite that person, the Director of Public Prosecutions will prosecute the offender for the offence where the direction of the Attorney-General to do so is given under paragraph (b) of section 79A(2) of the Constitution.”⁵³

Section 23 (2) states that “notwithstanding the provisions of this Act, no person will be extradited pursuant to this Act where the government of Barbados has substantial grounds for believing that a request for extradition for an offence under this Act has been made for prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion or that compliance with the request would be prejudicial to that person’s rank or status for any of those reasons.”⁵⁴

Statutes of Limitation

The laws of Barbados do not include a limitation period regarding any sexual offence involving a minor. Once the survivor reaches the age of 18, however, it becomes difficult for them to report CSEA to the authorities. There is no duty to report past incidents of child abuse when the survivor has reached the age of 18 years. However, a reporter may, at his or her discretion, report incidents of past abuse that occurred before the child reached 18 years. Such reports are encouraged particularly when the abuser has current access to children.⁵⁵

For example, researchers are aware of a case where a survivor, now adult, was sexually assaulted while in foster-care but did not disclose this until she was an adult. Unfortunately, the survivor had no recourse for the crimes committed against her as she was an adult at the time of report. This anecdotal evidence is particularly concerning as it indicates that CSEA cases are only investigated or prosecuted when a child comes forward about abuse they are currently experiencing, or have very recently experienced. As evidence shows that it often takes many years for survivors to be able to disclose what has happened to them—most notably, an ICSA report which found that 67% of CSEA survivors did not tell anyone at the time about their abuse⁵⁶—this flaw in the Barbados justice system is significant, as survivors are often adults by the time they come forward.

Outdated Terminology

For the most part, Barbados has modernised its legislation and so it contains very few references to

outdated terms. However, the current use of the term “child pornography” in the Compute Misuse Act, 2005 implies that children are complicit in the sexual abuse, and should therefore be replaced by the term “child sexual abuse images or materials” with further descriptions regarding specific offences in legislation (e.g. the publication and distribution of child sexual abuse images). Furthermore, the terms “buggery” and “indecent assault” are present in the Sexual Offences Act 1992 (Cap. 154) and should be replaced with less moralistic and more clearly defined terms.

Other

Juvenile Offenders

According to the UN Committee on the Rights of the Child, the juvenile justice system in Barbados is focused on punishment rather than prevention, and there are no legal provisions that ensure that imprisonment is only a final resort for juvenile offenders.⁵⁷ However, in practice Judicial Officers strive to use alternative sentences under the Penal System Reform Act (for example community service) for offenders aged 16 years and below. The Penal System Reform Act 1998 Chap 139 provides for suspended sentencing, curfew orders, mediation and community service sentences for criminal offenders.⁵⁸

The cases of juveniles who rape minors are usually heard in the juvenile court. If a juvenile is found guilty of rape, they are usually placed at the Juvenile Detention Centre/Government Industrial Schools for up to five years. Depending on the severity of the crime and their age at the time, they can be placed in the adult prison to complete their sentence after attaining an age of 18 years.

Treatment of Children of Different Genders

In their 2009 report, Jones and Trotman Jemmott highlighted the difference in how the judicial system in Barbados, as with many Caribbean countries, treats female and male survivors.⁵⁹ This difference is most apparent in the sentencing structure for CSEA offences; often, those convicted of CSEA against males were given lighter sentences than those convicted of CSEA against females. They concluded that there was a defined ‘gender bias’ in the judicial system which negatively impacted male survivors.

Protection of Survivors or others who report CSEA Offences from Personal Liability

In Barbados, persons can report CSEA and remain anonymous. However, “any person including mandated reporters who make a report of suspected child abuse or neglect to the Child Care Board is immune from prosecution both civilly and criminally provided that the report was made in good faith. A reporting person can be charged if the report is malicious or without reasonable grounds.”⁶⁰

Gaps in Criminalisation

Evidently, there remain several gaps in Barbados’ criminalisation of CSEA offences, including:

- Generally, child protection legislation in Barbados lacks harmony, which can negatively impact the effectiveness of the criminalisation, as well as investigation and prosecution, of CSEA offences.

- There is a severe lack of clarity and consistency in Barbados’ definition of a child.

- Limited support available for children who are sexually abused or exploited between the ages of 16 and 18, as they are no longer considered children according to Barbados legislation, but have also not yet attained the status of adults.

- Barbados’ current age of criminal responsibility (11) is significantly lower than the universal minimum standard of 14, leaving children vulnerable to being prosecuted.

- Barbados’ legislation is not yet fully aligned with all articles of the Lanzarote Convention.

- No travel restrictions are currently placed on CSEA offenders.

- It is difficult for survivors over the age of 18 who have previously experienced abuse or exploitation as children, to report and seek justice for the crimes committed against them.

- Certain outdated terminology, most notably “child pornography” and “buggery”, still exists in Barbados legislation.

- There is a significant difference in how survivors of CSEA are treated according to their gender. For example, weaker sentencing is evident when

offences are committed against male survivors in comparison to those committed against females.

Prosecution

The Child Care Board (Child Welfare Agency) in collaboration with the Royal Barbados Police Force (RBPF) intervene in cases of CSEA once the cases are reported.

Initiating Prosecution

Under local legislation, a complaint must first be made to pursue prosecution for a CSEA case.

Recently, following many years of child protection experts advocating for its introduction, a mandatory reporting protocol on child abuse was introduced by the government of Barbados and a wide range of professionals who work with children are expected to comply by reporting suspected cases of abuse.⁶¹ Under Section 19A of the DVAA, “a person who is aware or has reasonable cause to suspect that a child is a victim of domestic violence and fails to notify the Child Care Board or a member of the Police Force; or knowingly and maliciously makes a false, inaccurate or misleading statement to the Child Care Board or a member of the Police Force, alleging that a child is a victim of domestic violence, is guilty of an offence and liable on summary conviction to a fine of 5,000 BBD or imprisonment for a term of 12 months or to both.”⁶²

These mandatory reporters are immune from civil and criminal liability if it is established that the report is made in “good faith.”⁶³ However, the mandated reporting protocol has been adopted by the Child Care Board as agency policy.

Prosecution Process

The process for having CSEA cases addressed in the court system lies with the Police and the Director of Public Prosecutions. The following outlines the process:

- A reasonable notice in writing must be given to the prosecution by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and a copy of the notice has been filed with the clerk of the Court.

- No evidence is admissible unless the Court after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the evidence is admissible and the procedure mentioned above is met.

- The notice given and the evidence taken, the information given or the representations made at a hearing must not be published in any newspaper or broadcast.

- After a person is accused of an offence under the Sexual Offences Act 1992,⁶⁴ no matter likely to lead members of the public to identify a person as the complainant regarding that accusation will either be published in Barbados in a written publication available to the public or be broadcast in Barbados except where, on the application of the complainant or the accused, the Court directs that the effect of the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to remove the restriction regarding the applicant.

- If, on the trial of any indictment for the offence of rape the jury is satisfied that the accused is guilty of a lesser offence under this Act, but is not satisfied that the accused person is guilty of the offence charged in the indictment or of an attempt to commit the same, then and in every such case the jury may acquit the accused of that offence and find him guilty of a lesser offence under this Act; and the accused is liable to be punished in the same manner as if he had been convicted on an indictment for the lesser offence or for the offence of indecent assault.

Oath by a Minor

- Where on the hearing of a complaint under this Act a minor regarding whom the offence is alleged to have been committed or any other minor of tender years who is tendered as a witness does not in the opinion of the court understand the nature of an oath, the evidence of the minor may be received though not given on oath, if, in the opinion of the court:

- the minor is possessed of sufficient intelligence to justify the reception of the evidence; and
- the minor understands the duty to speak the truth.

— No person will be liable to be convicted of an offence under this section unless the testimony admitted by virtue of subsection (l) regarding a minor of 16 years or under and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused.

— Any witness whose evidence has been admitted as indicated above, will be liable to be convicted on indictment and punished for perjury in all respects as if the witness had been sworn.⁶⁵

Presently, there is no clause in the legislation of Barbados that dictates the length of time a case can be brought to trial and so cases can be left hanging in the criminal justice system for years. According to Life in Leggings: Caribbean Alliance Against Gender—based Violence, there is a significant backlog in the courts handling cases relating to violence against women and girls, including CSEA.⁶⁶ 'It was customary for cases to be adjourned and held up in court, sometimes as long as seven to 10 years,' reported Jones and Trotman Jemmott in their 2009 study.⁶⁷ The delay in bringing cases before the courts can often result in survivors being re-traumatized as they have to recount their experiences many years later, as well as undermining their faith in the justice system.

Some experts and members of the judiciary have argued that Barbados should implement a separate court to deal solely with sexual offences to accelerate justice for survivors, as well as reduce the number of perpetrators not being prosecuted.⁶⁸

Investigation & Evidence

The Child Care Board investigates CSEA cases,⁶⁹ the Sex Crimes and Trafficking Unit of the Royal Barbados Police Force (RBPF) investigates all potential trafficking cases, while the Department of the Director of Public Prosecutions (DPP) is responsible for prosecuting these cases.

Some members of the Royal Barbados Police Force receive some training in the investigation and the adjudication of cases of CSEA.⁷⁰ However, anecdotal evidence suggests that this training is not done on an ongoing basis.

Anecdotal evidence suggests that girls who are survivors of CSEA and who have been assaulted by a male, are usually interviewed by female police

officers and female social workers to avoid re-traumatization.

There are no courts solely dedicated to hearing CSEA or human trafficking cases; any such cases can be heard in one of the five criminal courts. Law enforcement contacts reported that serious criminal cases, including trafficking cases, required in-person jury trials unless the defendant was pleading guilty or in rare instances where the case involved no witnesses.⁷¹

Presumption Survivor is a Child

On investigation and during the court hearing the child or parent is responsible for declaring the age of the child.

Procedure for Witness Testimony

Although a child cannot give consent to sexual activity under the age of 16 years, the child has to be willing to give evidence in order for a case to be pursued in court.

The Royal Barbados Police Force has a mandate for the procedure for witness testimony. A copy of the child's statement is obtained from the police by the Child Care Board or the parent; whichever of these two parties was present when the statement was taken. The witness to the statement signs the statement.

Corroboration

In cases where CSEA offences have been committed, the parent, other adult, witness or persons to whom the child has reported the incident of abuse is expected to corroborate the child's story. This does not always happen. To protect the offender, some parents dissuade the child survivor from giving evidence.

DNA

At present, in Barbados there is no clause in legislation dealing with sexual abuse cases or sexual exploitation allowing DNA as evidence in forensic investigations, except to prove paternity of the child resulting from alleged abuse. In these cases, if the survivor has been impregnated, then DNA testing can be used to prove that a crime has been

committed and secure a conviction.⁷² Therefore, DNA evidence remains significantly under-utilised in Barbados.

Due to this limited use of DNA evidence, witness testimony remains the most important form of evidence used in CSEA cases. In fact, reports show that cases are at a risk of being thrown out if the survivor cannot remember specific details that relate to her attack.⁷³

Defences

Consent to sexual activity is not a defence regarding a child under the age of 16 years.

Unwillingness to Proceed with 'Formal' Trial

Due to the reliance on witness testimony, which in many cases survivors are resistant to provide, CSEA cases often take inordinately long to come to trial. For example, the Daily Nation News, a Barbadian newspaper, carried a story on 16 September 2021 pertaining to a case which was then being heard in court but in which the survivor, now 21 years old, was raped when she was 11.⁷⁴ This length of time can result in parents of survivors withdrawing cases from the justice system.

Further adding to many families' resistance to formal justice is the time commitment needed to pursue cases in court, meaning that many parents have to take time off from work to attend court and support their child.

It should also be noted that in the Caribbean, the situation can arise where a parent is pressured by the accused/offender, who might be a boyfriend or family member, to discontinue the case.

Gaps in Prosecution

There are several gaps and factors that impact prosecution of CSEA in Barbados. These include:

— There is a considerable backlog in the Barbados justice system for cases of violence against women and girls, including CSEA.

— Police officers dealing with CSEA and human trafficking cases have only been provided with limited training.

— There is no court solely dedicated to hearing CSEA or human trafficking cases, which if introduced could accelerate the justice process for these cases.

— The requirement for children to testify or provide evidence in order for a CSEA case to be brought forward is severely limiting.

— Measures introduced to protect against re-traumatization for survivors of CSEA when giving evidence or testifying in court could be significantly improved.

— The justice system's apparent reliance on survivor testimony can result in cases being dropped if the survivor is pressured by others (including family, the perpetrator, and police) to withdraw their statement.

— DNA evidence is currently considerably under-utilised in CSEA cases in Barbados, unless to establish paternity if a survivor has been made pregnant as a result of their abuse.

Protection

Protection of Survivors During Proceedings

Barbados has implemented measures to safeguard children from further traumatization during the legal process. However, experts have argued that more could be done to fully protect survivors during proceedings.⁷⁵ For example, Section 30 of the Sexual Offences Act 1992 makes provision for a minor to give evidence in-camera.⁷⁶ However, this does not appear to be mandatory for every CSEA case and implementation varies on a case-by-case basis. Anecdotal evidence reports that the identity of children who have been abused or exploited is protected even once a perpetrator is charged and the case is published in the media. However, it appears that there are no laws protecting survivors' identity currently in place.⁷⁷

Reportedly, survivors of CSEA are often treated with a lack of empathy by lawyers during proceedings, with no special consideration being afforded to them even though they are children.⁷⁸ This can lead to children being intimidated by the justice system and court process, which is only exacerbated when they have to face their abuser in court.⁷⁹

Treatment of Children of Different Genders

Female survivors are offered the support of female social workers, female counsellors/psychologists and female police officers where possible. It is not known whether similar consideration is given to male survivors.

Protection of Children in General

In Barbados, children who have been reported as survivors of CSEA or are at imminent risk of CSEA usually receive prompt assistance from the Police and the Child Care Board.⁸⁰ In most cases, the child is removed from the home if the perpetrator is a member of the household or visits the home. The child is removed and placed in a "place of safety", i.e. a state-owned centre for children or placed with a relative who is capable of protecting the child.⁸¹ The steps are outlined below:

There is the emergency removal of children from families. Social workers contact the Police Department to explain the situation and assist in the removal. The police officers usually wear plainclothes, and female officers intervene in cases involving female children. Children are usually interviewed in the school, with the assistance of the school principal. If there are suspicions of physical or sexual abuse, the child is sent to the hospital to obtain medical assistance. The Childcare Board has a psychologist on staff, who provides counselling to children removed from families and placed in residential care.⁸² There is a shortage of foster families, but residential care is the last resort and all efforts are employed to ensure family reunification. Sometimes, the abused child(ren) remains with the extended family if these relatives can provide care and safety for the child. Once the Child Care Board becomes aware of the situation of a child needing placement, it tries to formalise a foster care placement and monitors the situation of children in such families.⁸³

Researchers have identified some gaps in the child protection procedure. For example, if the house where a child lives is owned by the alleged perpetrator and the child and non-offending parent (usually the mother) have to leave the house, there is no provision for guaranteed safe housing for both child and parent.

Reportedly, the effectiveness of the Child Care Board in protecting children from these forms of violence is severely undermined due to limited financial and human resources.⁸⁴ Staff have complained of being overburdened and overworked, with additional trained personnel desperately needed to improve the service provided and follow-up of cases.⁸⁵

Protection of Trafficked Children

In 2012, the government of Barbados established a National Taskforce for the prevention of trafficking in persons.⁸⁶ In the 2021 US State Department Trafficking in Persons Report for Barbados, however, the referral process for potential survivors from the Sex Crimes and Trafficking Unit to the Taskforce is described as 'informal' which indicates a lack of structure in place to ensure the Taskforce's effectiveness.⁸⁷

The government of Barbados has designated the Gender Affairs Bureau as the government coordinator for local NGO assistance to human trafficking survivors.⁸⁸

Under the TIPPA, all survivors, including those with disabilities, have to be provided safe shelter, counselling, health care, and information regarding their rights.⁸⁹ The Sex Crimes and Trafficking Unit is able to place survivors in protective care and refer them to an NGO-operated safe house, however this did not take place in the 2020–21 period according to the US State Department.⁹⁰

A foreign survivor of trafficking and their accompanying dependent children can receive, for the duration of their stay and at the relevant minister's discretion, support that included housing or safe shelter, education and training opportunities, psychological counselling, legal assistance, help with obtaining documents, living expenses, and medical assistance.⁹¹ Authorities can interview survivors to ascertain their housing and general health care needs. Female trafficking survivors and their dependents could reside at an NGO-operated women's domestic shelter; however, this shelter does not have the resources for, and previously struggled to assist, those who have been trafficked.⁹²

The NGO-operated safe house has inadequate accommodation for all survivors of human trafficking and their dependents, since this shelter also accommodates women who have experienced

domestic violence.⁹³ There is also no secure safe house for male survivors of trafficking.

The TIPPA authorises the government to protect the identities of human trafficking survivors', including children, and those of their families, issue work permits, and provide transportation and security during legal proceedings.⁹⁴

The Minister of National Security can authorise survivors, on a case-by-case basis, to remain and work in Barbados; however, according to the US Department of State, the government did not report granting this status during the reporting period, as it identified no survivors. Government policy permitted survivors of human trafficking to leave the country and return for hearings, but the government did not report any such instances during the reporting period.⁹⁵

Counselling

There is counselling available to survivors of CSEA through the Child Care Board.⁹⁶ However, there needs to be provision in the legislation for counselling by other agencies and professionals in addition to the Child Care Board. Barbados also has a Victims Protection Unit (VPU) within its Police Department. The VPU was formed in 1998 and provides counselling and support to survivors, particularly female survivors of violent crimes. However, the VPU is not staffed with sufficient psychosocial professionals to ensure its effectiveness.⁹⁷ According to Jones and Trotman Jemmott's study which consulted with childcare professionals in Barbados, there is a 'dire lack' of psychiatric care available to survivors due to under-resourcing.⁹⁸ This means there are not enough staff to counsel the ever-increasing number of child survivors that need help.

In their 2017 observations on Barbados, the UN Committee on the Rights of the Child raised concerns about the lack of a free-of-charge helpline service accessible to child survivors throughout Barbados for advice and counselling.⁹⁹

Protection of Children in Disaster Settings

The Caribbean is an area prone to natural disasters. There needs to be legislation outlining the measures

to be taken to protect children in both manmade and natural disasters.

Currently, the Emergency Management Act 2006 does not make provisions to ensure that decisions specifically related to children in disaster settings are made in the best interest of the child and are age, gender and disability responsive.¹⁰⁰ The local laws and regulations do not have measures that guard against CSEA against children in a disaster setting. They also do not highlight the need for CSEA survivor-centred response services and making them accessible, establishing safe spaces and training responders on CSEA prevention and response, in a disaster setting. Furthermore, these laws and regulations do not ensure that mental health and psychological services are available to children in a disaster setting. It must also be noted that the Trafficking in Persons Prevention Act, 2016, does not set out specific measures to combat heightened risks of child trafficking and exploitation in a disaster setting.¹⁰¹

Other

Police Training

Over the years, the Child Care Board in collaboration with UNICEF have instituted child abuse training programmes that involved police officers.¹⁰² However, this training needs to be done on an annual basis and also include modules in CSEA in the curriculum for the training of new police officers.

Protection of Adopted Children

In Barbados, children who are being adopted are protected under the Child Care Board Act 1981,¹⁰³ and the Adoption Act 1955,¹⁰⁴ and its Regulations 1985.¹⁰⁵ However, once the child has been adopted and the High Court has issued the Adoption Order, any matter involving the child is dealt with similarly to that of any other child.

Collection and Dissemination of Data on Child Protection

Research into child abuse experiences and violent behaviour is scarce in the Eastern Caribbean context, which significantly impedes the development of an effective and efficient child protection system.¹⁰⁶

There are gaps in the collection and dissemination of data collection on children's rights in Barbados, including in the areas of education, human trafficking and juvenile justice.¹⁰⁷ If data is collected by the CCB and the Police Department, it is not always in a format that can be used effectively to inform policy development and programme planning, and does not allow for disaggregation and analysis.

Prevention

In the most recent report of the UN Committee on the Rights of the Child, concern was expressed by the Committee at the government of Barbados' lack of a 'comprehensive policy' to prevent child sexual exploitation and abuse.¹⁰⁸

Register of Offenders

Currently, there is no provision in the legislation for a register of persons who perpetrate child abuse, including those who perpetrate CSEA. In 2020, it was announced that the Caribbean Committee Against Sex Crimes (CCASC) launched a partnership with US-based organisation OffenderWatch with an aim of monitoring sex offenders across the Caribbean.¹⁰⁹ However, it is unclear whether much action has been taken since the partnership was announced. According to researchers, this is a matter that government needs to pursue particularly in a small society where sex-offenders can easily gain access to children or the alleged survivors.

Distribution of CSEA Content Online

Under Section 13 of the Computer Misuse Act, 2005, a person who, knowingly, (a) publishes 'child pornography' through a computer system; or (b) produces 'child pornography' for its publication through a computer system; or (c) possesses 'child pornography' in a computer system or on a computer data storage medium for publication is guilty of an offence and is liable on conviction on indictment, (i) in the case of an individual, to a fine of 50,000 BBD or to imprisonment for a term of five years or both; or (ii) in the case of a corporation, to a fine of 200,000 BBD.

Beyond this legislation, little to no information can be found on government-led programmes to address child online safety that have been implemented in recent years in Barbados.

Awareness & Education

The Child Care Board, together with the Ministry, endeavour to provide a group of services designed to promote the well-being of children by ensuring safety and strengthening families to successfully care for their children.¹¹⁰ These include educational and awareness-raising activities on CSEA and steps parents and caregivers can take to prevent these forms of violence. However, researchers indicate these educational programmes are not consistent enough to keep the public informed about CSEA and able to act.

According to the UN Committee on the Rights of the Child, limited efforts have been taken by the government of Barbados to disseminate information on children's rights.¹¹¹

Recommendations

Legal

— There is a need for a clear and standard definition of a child in the legislation in Barbados. The current lack of clarity severely undermines child protection efforts.

— Efforts must be made specifically to support children who are sexually abused or exploited between the ages of 16 and 18, who are not currently protected by legislation.

— The age of criminal responsibility should be raised to at least the universal minimum standard of 14 years.

— There needs to be the creation of a Comprehensive Children's Act that can easily guide law enforcement and child care professionals when investigating and prosecuting reported cases of CSEA. The legislation needs to include penalties for offenders that match the seriousness of the crime.

— Existing legislation should be reviewed to include mandatory reporting of child abuse, including CSEA, by parents. Provision must also be made in the legislation to protect mandated reporters; that is, to ensure that mandated reporters are protected from any liability.

— Barbados should review its legislation to ensure it is fully aligned with all articles of the Lanzarote Convention.

— Outdated terminology present in Barbados' child protection legislation should be replaced by less moralistic or inappropriate terms, in line with the Luxembourg Guidelines.

— The government of Barbados needs to introduce legislation that will provide therapeutic programmes for offenders concurrent with their sentencing.

— The difference in how male and female survivors are treated in the justice system must be addressed. Most notably, investigations and sentencing for CSEA cases involving male survivors must be equal to those involving female survivors.

— Legislation outlining the measures to be taken to protect children from harm, including CSEA, in both man-made and natural disasters should be introduced.

— The process for recommendations (e.g. recommendation for the mandated report of CSEA) to become law following the identification of gaps in current legislation should be accelerated, as the current process for reform is lengthy.

Prosecution

— The government of Barbados needs to urgently address the delays in prosecuting CSEA cases in the court system because very young children are liable to forget some details of the incident with time. These delays also compound the victimisation as the survivors have to wait for long periods for justice to be delivered.

— The possibility for a court dedicated to hearing CSEA or human trafficking cases to be introduced, to help with existing backlog and accelerate the justice process for survivors, should be explored.

— The use of video recorded statements as evidence to reduce the re-traumatisation of the survivor should be introduced. If the child is capable and of an age that they can write, they should be allowed to document the events which would become admissible and be evidence in the investigative process. Additional efforts should be also made to ensure limited re-traumatisation for survivors.

— There is an outstanding need for the finalisation of the Memorandum of Understanding between the Child Care Board and the Royal Barbados police Force.

— A process for survivors over the age of 18 to report abuse they experienced when they were children must be implemented.

— The justice system's reliance on survivor testimony should be lessened in CSEA cases. The use of other forms of evidence, such as DNA, should be explored.

— Consistent training should be implemented for all police officers and professionals in the justice system to ensure their sensitivity to CSEA survivors and skills to deal with CSEA cases.

— Increased resources should be dedicated to the Child Care Board and the Victims Protection Unit to support survivors during the legal process, and make the justice system less intimidating for children.

Protection

— The government of Barbados should ensure that sufficient funding is allocated to the Child Care Board to enable the agency to carry out its mandate of child protection.

— Social workers should be trained in forensic interviewing to be equipped to comprehensively assess risks and cases of CSEA.

— There needs to be "research on the socio-economic difficulties faced by single-parent households and the impacts on children to determine what is happening in families."¹¹²

— More measures should be introduced to protect children from further harm once they have reported abuse or exploitation to the authorities.

— The Child Care Board collects statistics on child abuse on a monthly basis, and these should be utilised as part of the data gathering process on matters of child sexual abuse and child statistics.

— The support provided to female survivors of CSEA should also be provided to males who have been abused or exploited.

— Adoptive children should be offered special protections post adoption until they reach the age of adulthood.

— The government of Barbados should act to ensure that survivors of human trafficking, including children, are protected and provided with sufficient support. This includes enhancing the structure and

effectiveness of the National Taskforce, and dedicating further resources to shelters/safe houses for survivors of all genders.

— A free-of-charge helpline for child survivors should be enacted by the government of Barbados to provide children who have been abused or exploited with advice and counselling.

Prevention

— The government of Barbados must draft and implement a comprehensive policy to prevent child sexual exploitation and abuse.

— Parent education programmes to give parents the knowledge and skills to care for and protect their children need to be organised and sustained.

— Therapeutic interventions for abused children and their families need to be included as a recommendation in legislation to protect children.

— The government of Barbados should introduce legislation that provides for a register of sex offenders, as well as introduce travel restrictions for CSEA offenders.

Cultural/Education

— Ongoing public education around CSEA matters should be effected so that members of the public and

parents and other sub-groups would have access to information.

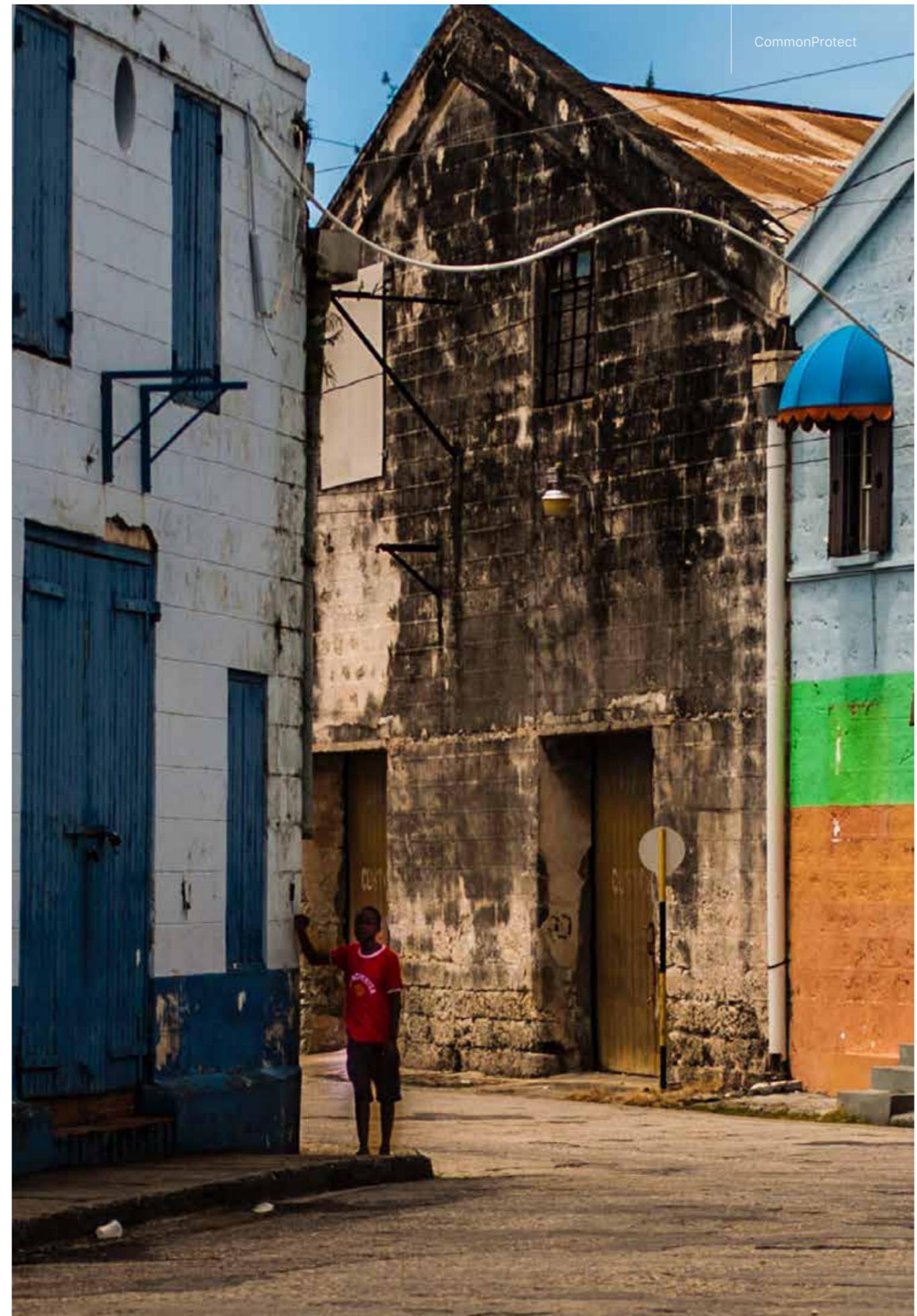
— Child online safety must be a priority for the government of Barbados, and several education and awareness-raising programmes should be implemented.

— Research needs to be conducted that can provide an understanding of the various factors, including the cultural factors that contribute to CSEA.

— There needs to be interventions to address “the gender ideologies and disparities, values, social norms, attitudes and perceptions” which pervade society.”¹¹³

— There needs to be research on the services and programmes provided by the government and other NGOs to address CSEA. The research also needs to investigate the outcomes for children and their families.¹¹⁴

— There needs to be research that “identifies the factors in the socio-cultural context that place girls at risk.”¹¹⁵



Belize



The government of Belize has demonstrated that it is determined to combat CSEA. The enactment of the Commercial Sexual Exploitation of Children (Prohibition) Act 2013 (the CSEC Act) has brought Belize in line with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), a benchmark for criminal law reform to protect children against CSEA. The Cybercrime Act was introduced in 2020 (the Cybercrime Act) to tackle new forms of CSEA committed online, while the Criminal Code (the Criminal Code)¹ was amended in 2014 to improve legal protection for children who have been abused or exploited.²

Legislative reform is underpinned by the growing recognition of the severity of CSEA in Belize and the prevailing view that practices once deemed socially or culturally acceptable should no longer be so. However, amendments to the Criminal Code in 2014 show that the government has stopped short of criminalising offences involving children aged between 16 to 18. As a result, there are inconsistencies in the interpretation of CSEA offences across various legislations.

Furthermore, the government's efforts are stymied by weak enforcement. Allegations of complicity by government officials who turn a blind eye to CSEA in exchange for bribes are a contributing factor,³ and have the broader effect of dissuading CSEA survivors, their families and other persons with knowledge of CSEA from coming forward. An overarching issue is the lack of resources, which pervades every aspect of CSEA investigation and prosecution from funding implementation and monitoring mechanisms to survivor protection.

Overall, Belize has made good progress in putting in place a robust legislative framework and in stepping up efforts to educate and inform potential victims, as well as the wider public. Children are to be treated as competent witnesses whose evidence need not be corroborated by an adult (section 27, CSEC Act). Protecting the child's testimony is even more important considering the limited resources for the collection of other evidence (e.g. DNA). The primary challenge facing Belize is now to push ahead with the enforcement of these laws and to safeguard the investigation and prosecution processes.

CSEA Profile

Poverty is seen as the primary driver of CSEA offences in Belize, providing a supply of children for child labour and sexual exploitation in the context of travel and tourism.⁴ The rising cost of living, high unemployment and low levels of education mean that many families struggle to make ends meet. Coupled with the widespread belief within Belizean culture that children are the "property" of their parents, it is relatively common that the trafficking and exploitation of children, in particular girls, is facilitated by their family members.⁵ Sex traffickers exploit girls in bars, nightclubs, hotels and brothels.⁶

Traditional practices of child marriage in certain ethnic groups (e.g. the Maya ethnic group) and rural areas such as Stann Creek and Toledo are additional causes of CSEA.⁷

Belize has ratified the UN Convention on the Rights of the Child, which defines a "child" as every person under the age of 18.⁸ However, the age of consent in Belize is 16 years (see below) and children are allowed to cohabit from the age of 14 with parental consent.⁹ Cohabitation with a future spouse with a view to transitioning to marriage or union is a particularly common practice in poorer regions. More than one-third of women in Belize are married or in a common law union before their 18th birthday.¹⁰ It can therefore be difficult to identify and prove when CSEA has occurred in such circumstances.

Criminalisation/Legislation

Classification of Sexual Offences with Children

The protection of children is enshrined in the Belize Constitution,¹¹ which states that “equal protection should be given to children regardless of their social status”. The UN Convention on the Rights of the Child (UNCRC) is incorporated into the Families and Children Act, Cap 173 (the **Families and Children Act**),¹² which was confirmed by the Supreme Court of Belize.¹³ The Families and Children Act further specifies children’s rights and protections as well as the responsibilities of parents, guardians, and the Belize government. The Belize government is in particular given the primary responsibility for ensuring that children are protected at all times.¹⁴

Against this background of strong constitutional protections for children, Belize has a comprehensive legislative framework in place to criminalise CSEA offences.

In particular, the CSEC Act has strengthened the legal protections offered to children. Commercial sexual exploitation is defined broadly in the CSEC Act to include the “persuasion, inducement, coercion or enticement of a child to engage in” sexual activities. The offences are wide-ranging, encompassing the sexual exploitation of children below the age of 18 as well as any act to encourage, facilitate or procure a child for commercial sexual exploitation, and knowingly permit any child to remain on premises for the purpose of causing such child to participate in sexual activity or any obscene or indecent exhibition, dance or show. The sexual exploitation of children in the context of travel and tourism is expressly prohibited, and persons who are involved in the commercial exploitation of children for this industry can be prosecuted under the CSEC Act.

The CSEC Act also tackles “child pornography”, the exploitation of children in “pornographic performances” and the corruption of children (intentionally causing a child to watch sexual activities or abuse, even if the child is not coerced into participating). It is an offence to procure a child for sexual exploitation and to be involved in any manner or form in the production of “child pornography”.¹⁵ Section 8(1) of the CSEC Act criminalises the organisation, promotion or production of performances by children intended to provide sexual gratification for another person with

the intent to profit, while section 8(4) criminalises causing a child to engage in sexual activity with another person in the presence of a third person to provide sexual gratification to any person. These provisions appear to directly address the issue of young girls working in nightspots.

Keeping up with the changing ways in which CSEA offences are committed online, section 11 of the Cybercrime Act criminalises “child luring”, which is defined as the use of “a computer system to communicate with a child with the intent to (a) induce the child to engage in a sexual conversation or sexual activity; or (b) encourage the child to produce child pornography; or (c) arrange a meeting with a child for the purpose of abusing or engaging in sexual activity with the child, or producing child pornography, whether or not the person takes any steps to facilitate the meeting.”

Offences associated with child sexual abuse are contained in the Criminal Code, which was amended in 2014 to address certain legislative gaps. New provisions have been included to criminalise sexual assault, assault by penetration using an object, and the rape of a child under 16 years. Engaging in sexual activity in the presence of a child under 16 years is another new offence under section 47C.

Lanzarote Convention

Through the enactment of the CSEC Act, Belize has aligned its domestic legislation with Articles 18 to 24 of the Lanzarote Convention. The Trafficking in Persons (Prohibition) Act, 2013 (the **TIPS Act**) and Cybercrime Act supplement the CSEC Act by criminalising CSEA offences.

Tougher measures to penalise offenders have also been introduced through reforms to the Criminal Code. For example, the consideration of aggravating circumstances in determining sanctions, as outlined in Article 28 of the Lanzarote Convention, has been implemented in sections 47E, 47F and 47G of the Criminal Code. Furthermore, section 14 of the CSEC Act provides for a sentence to be increased by five years if aggravating factors are deemed to have been present. These factors include the presence of a relationship of trust, the fact that a child was exploited with the intent to profit the offender or the offender is part of an organised criminal group or network, that the act endangered or was likely to endanger the child’s life and safety, and that the act

entailed circumstances that constitute inhuman or degrading treatment. Section 28 of the TIPS Act also enables the court to impose higher sentences if there are aggravating circumstances, including by providing for an additional term of up to 25 years where a dangerous weapon was used, the survivor suffered serious bodily injury, the survivor was exposed to life threatening illness and where the offender was part of an organised criminal network.

Article 27 of the Lanzarote Convention, which provides guidelines on appropriate sanctions and measures to be taken against those guilty of committing criminal acts of a sexual nature against children, has also been implemented into domestic law. Most CSEA offences attract a penalty of imprisonment for ten years, with a maximum term of life imprisonment taking into account aggravating circumstances.

However, several key principles of the Lanzarote Convention have either not been implemented at all or have been implemented in an inconsistent manner across the law in Belize. Domestic law does not expressly recognise that laws governing sexual activities with children are not intended to apply to consensual sexual activities between minors, as in Article 18 of the Lanzarote Convention. Further, Article 26 of the Lanzarote Convention, which provides for the liability of corporate bodies for criminal acts, has not been implemented in the Criminal Code or the CSEC Act. On the other hand, section 2 of the Cybercrime Act extends liability beyond a natural person by defining a “person” broadly to include a “legal person, an educational or financial institution or any legal or other entity”. Section 42 of the Cybercrime Act specifically provides that a body corporate and its officers can be held liable. The TIPS Act (section 20) imposes additional penalties on a body corporate for its involvement in human trafficking.

Moreover, the CSEC Act adopts the recommendation in Article 29 of the Lanzarote Convention on taking account of previous convictions in sentencing. Section 15 of the CSEC Act states that a subsequent conviction could carry a life sentence. In contrast, other legislation does not expressly provide that repeat offenders will face harsher penalties.

Age of Consent & Definition of a Child

While the CSEC Act, TIPS Act, Cybercrime Act, and the Families and Children Act define a child as a person under the age of 18 in accordance with Article 3 of the Lanzarote Convention, the age of consent in Belize is 16 years. This is standardised across the country and does not differ between sexual acts. Therefore, a person below the age of 16 cannot give consent to have sexual intercourse.

A potential legislative loophole is that the offences related to children in the Criminal Code (including rape of a child, sexual assault, and sexual assault by penetration of a child), impose criminal liability only if the child is under the age of 16. Children under 18 can also be liable for committing sexual offences.¹⁶ Although section 21 of the CSEC Act attempts to address this gap by stipulating that the legal age of consent cannot operate as a defence to any CSEA offences under this legislation, this does not address the loophole regarding child sexual abuse offences under the Criminal Code.

Trafficking

Facilitating the trafficking of a child for prostitution is an offence both under the CSEC Act¹⁷ and the TIPS Act¹⁸, ensuring that under-aged trafficking survivors receive additional protection. In 2016, a 65-year-old woman was convicted of sex trafficking a 15-year-old Honduran girl.¹⁹ The accused was charged with luring the child into Belize by promising her that she would be working in a beauty salon. On her arrival, the child found that she had to work in a bar and was coerced into having sexual intercourse with several men for a fee. The accused was spared a custodial sentence and ordered to pay a fine of thirty thousand dollars, restitution in an amount of approximately twenty-eight thousand dollars to the Department of Human Services, and compensation to the survivor of fifteen thousand dollars for her suffering and approximately six hundred dollars for her loss of income.

The TIPS Act also expressly addresses the trafficking of children by adoption, with supporting rules governing adoption set out in the Families and Children Act. In Belize, only Belizean children can be adopted. International adoptions of Belizean children are not prohibited but a social inquiry must be carried out, and a report provided to the authorities.

Belize has implemented procedures to screen and identify trafficking survivors. As part of Belize's 2018–2020 National Anti-Trafficking Action Plan, the National Anti-Trafficking Council has introduced procedures to screen vulnerable groups for trafficking survivors. A new policy has also been adopted for labour inspectors to conduct joint inspections with immigration and social security officers who are trained in survivor identification and referral. These are positive initiatives but focussed on trafficking survivors rather than CSEA, which has its own set of complexities.

Extraterritoriality

CSEA offences committed abroad are subject to prosecution in Belize if certain criteria are met. For example, section 13 of the CSEC Act and section 4 of the TIPS Act give the Belize authorities the power to convict a person who is a citizen or who habitually resides in Belize for related offences committed overseas, whether or not that act is an offence in the territory in which it is committed. The same penalties apply to an offender who commits CSEA domestically or in another jurisdiction.

The Cybercrime Act gives the courts of Belize jurisdiction for offences carried out wholly or in substantial part within its territory or where the offence is committed outside its territory but has substantial effect within Belize.²⁰

Sexual offences under the Criminal Code do not currently have an extraterritorial effect. To align the Criminal Code with Article 25 of the Lanzarote Convention on jurisdiction, this legislation should be amended to address gaps in the extraterritorial prosecution of CSEA.

Extradition

The extradition of offenders, whether nationals or foreigners, requires Belize to have an extradition treaty (ET) with the country concerned. CSEA offences are generally extraditable offences if an ET is in place. However, the list of offences and their description vary from one ET to another. For example, under the Belize-US ET signed in 2000, offences of a sexual nature, including rape, sexual assault and unlawful sex acts with children, kidnapping or false imprisonment, and those specifically relating to children, whether or not of a sexual nature, such as neglecting, ill-treating,

exposing or exploiting a child, are listed as extraditable offences in the Schedule to the ET. Article 2(2) of the Belize-US ET further states that an attempt to commit, aid or abet or procure the commission of a listed offence will also be extraditable. In comparison, slightly different language is employed in describing the list of extraditable offences in the Belize-Mexico ET 1988. In addition to rape, indecent assault, "carnal knowledge" and illicit sexual acts committed with a child, abandoning or stealing a child and pimping or procuring a young person for immoral purposes are among the CSEA offences that would be considered extraditable.

Even if the CSEA offence falls within the scope of an extraditable offence within an ET, Belize will only extradite a suspect to stand trial in that country if a similar law exists in Belize.

Statutes of Limitation

There are no statutes of limitations on the offences under the Criminal Code or the CSEC Act.

Outdated Terminology

The continued use of the term "child pornography" and "child prostitution" in Belizean legislation implies that children are complicit in the sexual abuse, which serves to legitimise CSEA. For the most part, Belize has modernised its legislation and so it contains very few references to outdated terms such as these. Nonetheless, it is recommended that "child pornography" be replaced by the term "child sexual abuse materials" or "child sexual abuse images" with further descriptions regarding specific offences in legislation (e.g. the publication and distribution of child sexual abuse images), and "child prostitution" be replaced with "commercial sexual exploitation of children".

Sentencing

Generally, the penalties for CSEA offences in Belize are sufficiently severe, carrying sentences of ten years or more. If the CSEA offence involves a child trafficking survivor, section 9 of the CSEC Act provides for additional imprisonment terms to be added to the sentence for the CSEA offence. For example, if the trafficked child is caused to be exposed to a life-threatening illness or drug abuse

during trafficking or subsequent sexual exploitation, five years will be added to the convicted person's sentence.²¹

Harsher penalties are also imposed for offences under the Criminal Code for younger children. For example, the imprisonment term for rape of a child aged over 14 but under 16 years is from 12 years to life. The rape of a child under 14 years carries a sentence of a minimum of 15 years and can go up to life imprisonment.²²

Most CSEA offences are indictable, meaning that the accused is tried before the Supreme Court and can expect to face stiff penalties. However, certain "hybrid" offences can be tried summarily before the Magistrates' Court. Examples of such offences include sexual assault,²³ sexual offences committed by children²⁴ and "child luring".²⁵ The legislation does not set out with any specificity the instances in which an offence can be tried summarily. The Director of Public Prosecution will consider factors such as the age of the parties concerned, the seriousness of the surrounding circumstances, the likely length of the trial and risk of the witness leaving the jurisdiction or dropping charges if there is undue delay in obtaining a trial before the Supreme Court.

Other

Juvenile Offenders

Where the perpetrator of a crime is a juvenile, imprisonment is imposed only for serious offences and only for which any other form of punishment would be inadequate. According to the Government of Belize, courts favour community service as punishment for juvenile offenders over correctional facilities.

Treatment of Children of Different Genders

The Criminal Code was amended in 2014 to reflect gender-neutral language. The previous wording related to sexual offences in legislation envisaged that only females could be subjected to sexual crimes and males were the perpetrators. As an example of the legislative amendments, the reference to "male child or any female" in the previous section 45 offence of sexual assault was substituted with "person".²⁶ The use of "person" is continued throughout the Criminal Code, effectively reducing

disparities in the treatment of male and female survivors in law. The new section 45A of the Criminal Code also expressly lists both male and female anatomy in describing unwanted touching that results in sexual assault.

Gaps in Criminalisation

Despite the comprehensive laws in place, there remain some gaps which Belize should address to better criminalise CSEA offences. These include:

- There is room for greater clarity and particularity in existing legislation. For example, the definition of "commercial sexual exploitation" in the CSEC Act, while broad, is exhaustive rather than inclusive.
- Definitions of offences within the existing framework are also limited. For example, while the facilitation of "child prostitution"²⁷ and "child luring"²⁸ are criminalised, there is no offence of child grooming in Belize. This does not currently prohibit a person from building a relationship, trust and emotional connection with a child (and potentially his or her friends and family) to manipulate, exploit or abuse the child. Without a broader definition, offenders cannot be investigated and prosecuted at an earlier stage, before potentially more harmful CSEA acts are committed.
- Offences related to children in the Criminal Code (including rape of a child, sexual assault, and sexual assault by penetration of a child) impose criminal liability only if the child is under the age of 16. Children under 18 can also be liable for committing sexual offences.
- Sexual offences under the Criminal Code do not currently have extraterritorial jurisdiction.
- Current Belize legislation does not fully align with the Lanzarote Convention, notably on consensual sexual activities between minors and criminal liability of corporate bodies for CSEA offences.
- The condition of double criminality placed on extraterritorial and extraditable offences limits the Government of Belize's ability to prosecute offenders of CSEA.
- Certain outdated terminology, most notably "child pornography", still exists in Belize legislation.

Prosecution

Initiating Prosecution

To initiate the prosecution of a perpetrator, the survivor or an eyewitness of CSEA must make a statement and file a complaint with the police. Section 22 of the CSEC Act encourages survivors to come forward by providing immunity from prosecution.

A complaint may not only be lodged by the survivor. Any person who reasonably believes that CSEA is occurring must report these circumstances to the police and the department responsible for children. Family members, teachers, social workers, school counsellors and others who become aware of a CSEA survivor are likewise under a legal obligation to make a report. A failure to do so could result in a fine, imprisonment of six months or both.^{29,30} Parents and legal guardians are also bound by the Families and Children Act³¹ and Families and Children (Child Abuse) (Reporting) Regulations³² to report CSEA offences without delay or face imprisonment for up to six months, a fine or both.

Significantly, section 27(4) of the CSEC Act states that a spouse is a competent and compellable witness for the prosecution of CSEA. Removing spousal privilege is an important step in encouraging and facilitating family members to report CSEA despite objections or obstacles from within the family network or community.

As the statute of limitations does not apply to offences under the Criminal Code, the CSEC Act, the TIPS Act or the Cybercrime Act, survivors may come forward to report CSEA offences at any time.

Investigation & Evidence

Reportedly, the investigation and prosecution of CSEA is hindered where unhelpful cultural attitudes are held by police officers and prosecutors. Biases against children around the age of 14 or 15 who appear much older, negative views about the lack of the credibility of children, and personal biases against survivors may deny children justice. For example, the trial of a former police constable who sexually assaulted an eight-year-old girl was delayed by four years. More than two years lapsed between

the accused's indictment and sentencing, even though the jury's verdict was unanimous.³³

Evidence suggests that law enforcement in Belize struggles to complete efficient investigations of CSEA offences due to a lack of resources in evidence-gathering, causing delays and frustration with the investigation process.³⁴

Presumption Survivor is a Child

If there is doubt concerning the child's age, there is no legal provision that allows for the presumption that the survivor is a child. However, section 21 of the CSEC Act, which states that the legal age of consent is not a defence, may be of assistance to children aged between 16 and 18 regarding offences under this legislation.

Procedure for Witness Testimony

The Belize Judiciary has reported that there is a need to adapt current procedure for witness testimony in order to accommodate the special needs of the survivors in sexual offence cases.³⁵ Currently, the absence of a survivor-centred approach means children may sometimes have to repeat their statement on numerous occasions, which can add to the psychological and emotional trauma. Furthermore, many court officials have not received sensitisation training and therefore do not treat complainants with the special care they require.³⁶

The lack of support for survivors, whether psychological, social, or financial, or simply in guiding them through various procedures, can mean that children may be inclined to give up mid-way.

Corroboration

Despite reporting obligations placed on witnesses or those with knowledge of CSEA (as described above), the police generally only initiate investigations after the child survivor or an eyewitness makes a full statement. One important safeguard provided in the CSEC Act is that a child survivor will be treated as a competent witness and that the child's unsworn evidence need not be corroborated.³⁷

Unwillingness to Proceed with 'Formal' Trial

Belize's Women's Department reports that there is a critical situation of under-reporting in Belize, resulting in few offenders being charged and convicted.³⁸

Prevailing cultural attitudes in Belize where children are seen as an extension of their parents can add to the challenge in prosecuting perpetrators. In certain communities, an additional obstacle is that CSEA is not seen as a crime but as a culturally accepted practice, particularly in rural and poor regions.³⁹ Family members of child survivors may in fact encourage and promote CSEA in those areas.

Apart from stopping the child from making a report at the outset, parents of child survivors are known to have withdrawn their child's case in exchange for economic or other incentives.⁴⁰ Fear of reprisal, the status or social position of the suspected perpetrator, and a lack of socio-economic alternatives available to children and families, who may be plunged deeper into poverty by reporting CSEA, are very real concerns for many survivors and their families.⁴¹

Anecdotal evidence suggests that there remains a perception that reporting CSEA will not result in an adequate institutional response regarding conviction of the perpetrators and the rehabilitation of survivors, particularly given that persons in positions of power, including police officers and social workers, are sometimes perceived as complicit. Furthermore, the substantial backlog of cases pending before the criminal courts means that children, even if willing and able to prosecute, become exhausted with the process or succumb to pressures to abandon their case.⁴²

Gaps in Prosecution

Evidently, there are gaps and factors that impact prosecution of CSEA in Belize.

These include:

- Law enforcement and prosecutors in Belize exhibit bias against some survivors of CSEA, which limits their ability to secure justice for the crimes committed against them.

- Under-resourcing of law enforcement in the gathering of evidence limits investigation efforts and successful prosecutions.

- The potential for re-traumatisation of survivors during witness testimony procedure due to a lack of sensitisation by those in the justice system.

- Resistance from families of survivors to proceed with prosecuting CSEA offenders due to cultural attitudes, financial incentives or social stigma.

- Under-reporting of CSEA cases, which contributes to low prosecution rates.

- The existence of widespread scepticism in the justice system and its effectiveness in convicting perpetrators and delivering justice to survivors, exacerbated by the perceived complicity of authority figures in some CSEA cases. This can either lead to survivors never pursuing justice for the crimes committed against them or giving up before their case concludes.

Protection

Protection of Survivors During Proceedings

To protect the survivor's privacy and personal security, all proceedings for CSEA and related trafficking offences are held *in camera* (under section 25 of the CSEC Act). The survivor is allowed to give testimony from behind a screen or via video or other electronic means so as not to be face to face with the perpetrator. Arrangements can also be made for the child survivor to give evidence and attend court proceedings in the presence of a parent, legal guardian, or social worker to ensure that the survivor receives the necessary emotional support. In CSEA proceedings, the identity of the child and family members must be kept confidential and must not be released to the press or public by court order. A breach of a confidentiality order carries serious consequences of a fine or six months' imprisonment. In addition, the court must not grant bail in any matter relating to the prosecution of an offence under the CSEC Act.⁴³ This further ensures that CSEA survivors and their families will be shielded from reprisal. While section 30 of the TIPS Act has an equivalent provision ensuring the protection of survivors' identities, the Cybercrime Act and the Criminal Code do not.

UNICEF Belize is working with the national government to establish child-friendly interview units and protocols for their use. In January 2021, UNICEF Belize established a new child-friendly interview room at the San Ignacio Police Station. It has also supplied equipment and provided training on the conduct of interviews with children to law enforcement, social workers, and legal aid.

Protection of Children in General

In both the CSEC Act and the TIPS Act, the protection and rights of a child survivor is a guiding principle in the investigation and prosecution of offences. Section 29 of the CSEC Act specifically recognises that the best interests of the child survivor must be secured in the process. Further, both the CSEC Act and TIPS Act provide for reasonable protection to be given to child survivors and their families to prevent reprisals from the perpetrator or organised criminal networks, and from witness intimidation. This protection extends throughout the investigation and prosecution of CSEA offences, not just for the duration of proceedings. A coordinated inter-agency response can also be mounted to reduce the risk of re-victimisation.⁴⁴

Special treatment is accorded to survivors, given the highly sensitive nature of CSEA offences. CSEA survivors must not be placed in detention or other facilities where they may encounter CSEA offenders. Survivors must also be informed of their right to seek compensation in civil proceedings. In determining the quantum of restitution to survivors, the court may consider factors including the costs associated with medical and psychological treatment, physical and occupational therapy, transport, housing and childcare, on top of emotional distress and any other losses.

Although these measures are in place within the legislative framework, there is a lack of resource allocation to support CSEA survivors.⁴⁵ For example, there is no dedicated facility for CSEA survivors who are currently housed in shelters for survivors of domestic abuse and trafficking. CSEA survivors therefore do not receive any specialised attention. This is although the nature of CSEA offences is vastly different from domestic abuse and trafficking. The young age of CSEA survivors also demands specialised attention and care that is not currently

available. Additionally, the options for survivor placement are limited.

Protection of Trafficked Children

CSEA survivors who have been illegally trafficked into Belize receive extra support such as access to an interpreter and temporary residence in the country during proceedings.

A CSEA survivor who has been trafficked into Belize must be given the option to return to his or her country of citizenship or offered permanent residency status or citizenship, if he or she habitually resides in Belize.

Anecdotal evidence suggests that limited resources referenced in the above section similarly inhibit the protection of child trafficking survivors and the response to their specific needs.

Protection of Children in Disaster Settings

There is currently no domestic legislation specifically dealing with the protection of vulnerable children or the prevention of CSEA offences in a disaster setting. Nonetheless, to address the heightened vulnerability of children in disasters, Belize adopted a National Protocol for the Integrated Protection of Children and Adolescents in Emergency and Disaster Situations in Belize (the **Protocol**) in 2020.⁴⁶

The Protocol was developed by the National Emergency Management Organization in Belize and UNICEF Belize, in collaboration with the Caribbean Disaster Emergency Management Agency (**CDEMA**, the regional inter-governmental agency for disaster management in the Caribbean Community or CARICOM). The plan is for the Protocol to be used as a guide for government agencies, members of civil society, the private sector and international cooperation agencies in the stages of prevention, preparation, response, and recovery in disaster situations in CDEMA participating countries if the pilot in Belize is successful.

The Protocol notes that children face many risks in emergency and disaster situations, including sexual abuse and violence, gender-based violence and child labour. To address these risks, the Protocol lists actions to ensure the protection of children in emergency and disaster situations across areas

encompassing preparedness, shelters, communication and awareness-building, and child monitoring and evaluation. With detailed implementation lists under each item, the Protocol seeks to drive a coordinated, multi-sectoral response across social services, the justice system, law enforcement and health and education sectors, among others, led by a coordinating body within the Belize government (the **Coordinating Body**).

For CSEA offences in particular, the Protocol contains recommendations for the Coordinating Body to identify the required sector expertise, and recruit and train staff to this end. In addition, the Coordinating Body should observe the distribution of aid during disaster and emergency situations, and establish a complaints mechanism. The Protocol also features a Code of Conduct for individuals engaging in humanitarian assistance or reconstruction activities in Belize.⁴⁷ By signing this Code of Conduct, humanitarian workers acknowledge certain core principles to be respected in preventing CSEA and commit to creating and maintaining an environment to prevent CSEA. They also agree that any CSEA committed by them will be grounds for termination of employment and they are obliged to report any suspected CSEA committed by fellow humanitarian workers (whether or not in the same agency).

If the Protocol is successfully implemented in Belize, it would serve as a valuable example of the importance of regional collaboration in tackling a problem that is global in nature, in particular in protecting children from CSEA.

Prevention

Register of Offenders

As part of the amendments made to the Criminal Code in 2014, the Belize government mandated the establishment of a National Sex Offenders Database (the **Database**), which is yet to be implemented. If implemented, the Database will contain the personal particulars (name, age, and address), occupation and place of work, criminal convictions and sentences of convicted sex offenders. Sex offender details must be maintained in the Database for ten years, or longer if specified by the Minister of National Security or Commissioner of Police. Convicted sex offenders who fail to notify the authorities of updated personal details will face stiff penalties of a fine, five years' imprisonment or both.

There is no date set for the implementation of the Database, and although it would be a step in the right direction once implemented, it is questionable whether its maintenance is sufficient to keep repeat CSEA offenders in check. There is no law in Belize that prevents convicted CSEA offenders from engaging in activities that may involve interacting with children.

A prohibition contact order may be made by the court in response to a complaint lodged against a suspected perpetrator of CSEA, pending the outcome of investigations. However, the court order would only be binding on the alleged 'victim' and suspect for a limited period.

Moreover, the planned Database will only be able to be accessed by school principals, school administrators, childcare facilities and other entities responsible for the care and education of children. It will not be made mandatory for schools to conduct a search of the Database when hiring, which is a considerable limitation. The onus is on these institutions to access the Database ahead of making any hiring decisions. Any other person who wishes to access the Database must make a written application accompanied with reasons to the Ministry of Home Affairs & New Growth Initiatives or the Commissioner of Police, a process that appears unduly onerous.

Finally, it is unclear if the sexual offences for which reporting is mandatory comprehensively covers all the CSEA offences. Examples for which reporting is required include rape, incest, procurement, and unlawful sexual intercourse.

In addition, the government of Belize works with foreign governments to prevent registered sex offenders from entering the country. In 2020, Belize reported cooperating with the US to deny or otherwise prevent entry to 12 convicted sex offenders.⁴⁸

Child Online Safety

As described earlier, the relevant provisions on child sexual abuse images and materials ("child pornography") and taking, organising or producing indecent exhibitions (sections 7 and 8 of the CSEC Act) are sufficiently broadly worded to capture the commission of these offences online. Belize has also implemented Article 9 of the Council of Europe Convention on Cybercrime (the **Budapest**

Convention) through the Cybercrime Act passed in 2020. The Cybercrime Act further safeguards children from CSEA online, with the offence of “child luring”.⁴⁹ Inducing a child to engage in sexual conversation or activity, encouraging the child to produce “pornographic material” or even arranging a meeting for the purposes of CSEA, are captured under this offence. The penalties for the offence of child luring are significant, carrying a fine and a jail term of up to ten years. The offender may also be prohibited from using the internet or any computer system.⁵⁰

Distribution of CSEA Content Online

The Cybercrime Act also empowers law enforcement to locate and prosecute those responsible for the distribution of CSEA content online. Section 19 of the Cybercrime Act enables the Director of Public Prosecutions or Head of the Prosecution Branch to make an *ex parte* application to the courts for a “Storage Direction”, which is an order requiring that a service provider keep records of traffic data, subscriber information, and any communication during data transmission. A person or service provider in Belize may also be issued with a “Production Order”, requiring that computer data, traffic data or other information reasonably required in a criminal investigation be produced and handed over to the police.

Section 21 of the Cybercrime Act provides that prosecutors may make an *ex parte* application for a search and seize warrant if there are reasonable grounds to suspect that an offence under the Cybercrime Act or any other law has been or is about to be committed in a specified location. In addition to entering the premises and accessing, seizing and securing any evidence, the police officer executing the search may activate an onsite computer, inspect and check the operation of a computer system and computer data, and impound or secure a computer system or render it inaccessible.

Awareness & Education

The government of Belize has stepped up efforts to raise awareness of CSEA and ensure that those on the frontline handling CSEA cases deal with survivors with sensitivity.⁵¹ Training is conducted by the Office of the Special Envoy of Belize and the Ministry of Human Development, in collaboration with the National Committee on Families and Children. When

the CSEC Act, TIPS Act and amendments to the Criminal Code were enacted, the Ministry of Human Development, together with UNICEF Belize, also conducted nationwide training sessions with labour officers, social workers, police officers and other stakeholders on issues specific to CSEA offences and survivors. The CSEC Act and TIPS Act have included requirements for CSEA public awareness programmes to be conducted to educate potential survivors.

Under its 2018–2020 National Anti-Trafficking Action Plan, the government of Belize has funded initiatives to raise awareness of trafficking in persons, including using social media, press releases, media appearances, billboards, and signage to raise awareness of trafficking for migrants, other vulnerable groups, and the general public, together with a “crime stoppers” hotline number.⁵² The inter-agency National Anti-Trafficking Council was initially set up in 2003 as a task force and was elevated to the status of council pursuant to section 5 of the TIPS Act. Its mandate is to coordinate the efforts of the Belize government in preventing and combating trafficking in persons, and to provide support and protection to trafficking survivors. To this end, the National Anti-Trafficking Council has established a trafficking information kiosk at the Philip S. W. Goldson International Airport in Belize City, with resources for potential survivors in multiple languages. These efforts will go towards addressing the nexus between CSEA and trafficking in persons offences.

Specific to the sexual exploitation of children in the context of travel and tourism, the government of Belize has made public service announcements on the penalties for sex with minors and the links between tourism and the demand for commercial sex.⁵³

Generally, public information campaigns tend to focus more on trafficking in persons than CSEA. The uptake of initiatives also remains low. For example, the non-governmental organisation (NGO) which operated the “crimestoppers” hotline did not receive any trafficking-related calls in the reporting period of the US Department of State’s 2021 Trafficking in Persons Report.⁵⁴

Recommendations

There are several steps which should be taken as a matter of priority in order to help combat CSEA offences in Belize:

Legal

- Harmonise the Criminal Code with the CSEC Act and TIPS Act to define a child as a person under 18 years.
- Enact legislation or amend the Criminal Code to provide for extraterritorial jurisdiction of CSEA offences.
- Align Belize legislation to all articles laid out in the Lanzarote Convention.
- Pass subsidiary legislation to the CSEC Act to set out details on the operationalisation of protections and support for survivors.
- Establish a regional inter-governmental agency dedicated to combatting CSEA in the region.
- Replace outdated terminology currently present in legislation with preferred terms, notably ‘child pornography’ with “child sexual abuse material (CSAM)” and “child prostitution” with “exploitation of children in/for prostitution”.

Prosecution

- Address the biases of those in the justice system that may exist against some survivors of CSEA.
- Actively investigate and prosecute the sexual exploitation of children in the context of travel and tourism.
- Ensure better resources for law enforcement in order to be able to conduct in-depth investigations and evidence-gathering for CSEA offences.
- Fully investigate complaints about persons in positions of authority who are complicit in CSEA offences, and ensure that they are punished accordingly.

— Address resistance from families and scepticism towards the justice system, which can lead to survivors not reporting offences or having their case prosecuted.

Protection

- Improve witness protection and measures to shield CSEA survivors and their families from reprisal from the perpetrator or organised crime networks.
- Implement the National Sex Offenders Database (the Database) so sex offenders can be monitored and prevented from engaging in activities involving children.
- Strengthen support for survivors, in particular psychological and social support, so they remain motivated to participate in the arduous investigation and prosecution process. Engage and support CSEA survivors’ families.
- Adopt and implement protocols for survivor identification, the protection of child rights, maintaining confidentiality and handling confidentiality breaches, especially breaches that end up jeopardising an investigation.
- Allow survivors of trafficking who are of legal age to seek gainful employment pending the legal proceedings, especially given the limited government resources dedicated to survivor support and protection.
- Increase efforts to identify forced labour through recruiter participation in the National Labour Recruiter Registry and prevention programmes with migrant child workers.
- Partner with NGOs and civil society actors that are on the ground working with survivors and experiencing the process with them.
- Ensure that there are CSEA shelters and housing options tailored to the needs of CSEA survivors.
- Implement the National Protocol for the Integrated Protection of Children and Adolescents in Emergency and Disaster Situations in Belize, and consider the potential for future international cooperation in CDEMA participating countries in the

stages of prevention, preparation, response and recovery in disaster situations.

— A regional inter-governmental agency similar to CDEMA should be established to effectively combat CSEA in the region. Its mandate should include adopting a regional protocol on CSEA, harmonising domestic legislation to ensure consistency, and enabling cooperation and sharing of information between countries to aid in the prevention and prosecution of CSEA.

Prevention

- Conduct training and adopt a protocol for clamping down on the sexual exploitation of children in the context of travel and tourism.
- Continue to train those on the frontline (social workers, teachers and healthcare professionals) in trauma-informed approaches, in the legislative frameworks and their professional and ethical duties.
- Continue to train investigators and prosecutors on dealing sensitively with CSEA survivors.



Grenada

Grenada has generally wide-reaching legislation that criminalises CSEA offences. Grenada has also identified and attempted to address the shortcomings in protecting survivors of CSEA offences through the creation of the Protection of Witnesses Act 2014, which aims to grant witnesses anonymity orders to protect their names and other identifying details; and the National Sex Offenders Registry Bill 2020, which provides for the creation of a national sex offender registry with retroactive registration of offenders, including those convicted outside Grenada. However, the Protection of Witnesses Act 2014 is still under consideration to come into force and the National Sex Offenders Registry Bill is yet to be enacted—no date has been fixed in this regard. Greater efforts are needed to push this legislation through, as both may directly impact the protection of CSEA survivors by making it more likely that CSEA offences will be reported and prosecuted, and contribute to the prevention of CSEA offences.

It is felt that the Royal Grenada Police Force (**RGPF**), through its Special Victims Unit, is effectively combating CSEA offences and apprehending perpetrators once reports are made. According to the Special Victims Unit, nine out of 10 investigations lead to the perpetrators being apprehended and questioned by the police. Once the complaint is made and the investigation is completed, the evidence gathered by the RGPF is passed on to other relevant sectors/agencies (such as Police Prosecution or the Director of Public Prosecution's Office) for the next steps of charging and prosecuting the offence.

Challenges seem to arise during prevention and prosecution of CSEA offences. For example, according to the January 2021 Criminal Assizes list, out of the 188 matters listed for the session, 38 of the persons tried were charged with the offence of sexual intercourse with a minor; four for unlawful "carnal knowledge"; five for incest; one for the offence of sexual intercourse with a step-child, and one person was standing trial for the offence of cultivating an online relationship with a child. Further, of the 38 persons charged with the offence of sexual intercourse with a minor, only 11 were charged with a single count of this offence, whereas the other persons had previous charges of either multiple counts of this offence or other sexual offences such as rape or sexual assault. There are therefore repeat offenders of CSEA crimes.

CSEA Profile

The sexual exploitation and abuse of children in Grenada is a prevalent issue. A 2017 study by the University of Huddersfield found that, amongst Grenadian children between nine to 17 years old, 18 per cent had experienced sexual abuse outside the family and 13 per cent had experienced sexual abuse in the family.¹

The main contributing factors that have facilitated the perpetuation of CSEA offences in Grenada include poverty and social inequities, gender inequality and cultural acceptance of child sexual abuse.² The impact of natural disasters has exacerbated the poverty and socio-economic challenges faced by families.

There is a widely held perception amongst Grenadians that female minors are promiscuous and sexually aware as a result of their depiction in increasingly sexualised media.³ This has led to practitioners in Grenada, including legal professionals, child protection officers, teachers, police officers and other policy advisers, offering less empathy to young girls involved in relationships with older men because of the perception that such relationships are self-serving, and sometimes actively encouraged by the young girls themselves.⁴

Abuse is common in a variety of interpersonal forms. There is a notable perception that intra-familial sexual abuse is carried out by stepfathers, fathers, uncles and brothers.⁵ Mothers are seen as enablers and accomplices in some cases. This is exacerbated by poverty, whereby mothers who are dependent economically on men ignore abuse within their home to ensure the family's economic survival.⁶

While most known or recorded survivors are girls, the extent of the sexual abuse of boys seems to have been largely overlooked despite evidence that this is also a serious problem and, according to public perception, is on the rise.⁷ This growing phenomenon (both in and outside home) is a major issue and is influenced by the deeply buried problem of homophobia, since male homosexuality is illegal in Grenada.⁸ Strong societal perceptions of male gender norms have reinforced the belief that males are not legitimate survivors of sexual abuse. Particularly regarding abuse from a man, there is a fear of becoming emasculated and potentially homosexual from the assault.⁹ These beliefs create significant barriers for boys in disclosing sexual abuse.¹⁰

A 2014 survey by UNICEF concluded that the underreporting of CSEA offences is a serious issue in Grenada due to a culture of silence.¹¹ CSEA offences are generally perpetuated due to complicity, silence, denial and failure to take appropriate action by those with knowledge of such offences. In particular:

- In small societies, anonymity and confidentiality cannot be assured.
- The perpetrator may be in a position of power or is likely to know someone who is, and may be able to influence the outcome of a report.
- The procedures for dealing with reports, systems for monitoring abuse and services to deal with the impact of disclosure are underdeveloped.
- Cultural values about the status of children means that they are not always believed.
- Poverty and the economic and social reliance of many women on men mean that action which may affect the main breadwinner (such as reporting abuse) is often undermined by women themselves.¹²

The legal age for marriage in Grenada is 18 years old for both women and men, so in theory child marriage is not permitted. However, Section 20 of the Marriage Act dictates that persons under the age of 18 may marry with written parental consent. There is currently no publicly available government data on child marriage in Grenada.¹³

Criminalisation/Legislation

Under the laws of Grenada, the sexual offences which constitute CSEA are either specifically enacted as offences against children or as offences against male or female persons, which would by implication include offences against children. The majority of CSEA offences are set out in the Criminal Code.

Lanzarote Convention

The laws of Grenada do not strictly comply with Article 3 of the Lanzarote Convention on Definitions due to the lack of harmonisation of the legal definition of a child. According to Section 183D(4) of the Criminal Code, a child is a person under 18 years for the purpose of mandatory reporting, while under Grenada law, the age of consent to sexual activities is 16 years. The Prevention of Trafficking in Persons Act No. 34 of 2014 (the **Prevention of Trafficking in Persons Act 2014**), Domestic Violence Act Cap 84 of the 2010 Continuous Revised Edition of the Laws of Grenada (the **Domestic Violence Act 2010**), the Electronic Crimes Act No. 23 of 2013 as amended (the **Electronic Crimes Act 2013**), and the Child (Protection and Adoption) Act Cap 44A of the 2010 Continuous Revised Edition of the Laws of Grenada (the **Child (Protection and Adoption) Act 2010**) also provide that a child is a person under 18 years.

Grenada does have laws which to an extent implement Articles 18–24 and 26–29 of the Lanzarote Convention. In particular, the child sexual abuse material provision (referred to as “child pornography” in the legislation of Grenada) in the Electronic Crimes Act 2013 is in line with Article 20 of the Lanzarote Convention. However, there are still grounds for improvement in other Articles, as many CSEA offences which are criminalised are not specific to children or child survivors.

The “child pornography” law in Grenada appears to meet the benchmark provisions of Article 9 of the Convention on Cybercrime of the Council of Europe

(the **Budapest Convention**). Section 2 of the Electronic Crimes Act 2013 defines “child pornography” as pornographic material that depicts, presents or represents a child engaged in sexually explicit conduct or an image however so created representing a child engaged in sexually explicit conduct.

Age of Consent & Definition of a Child

As noted, the age of consent to any form of sexual activity in Grenada is 16. Therefore, a person under the age of 16 cannot give consent to any sexual act. Under Section 197 of the Criminal Code, the purported consent of a person under the age of 13 to an act of “indecenty” (i.e. inappropriate touching and fondling of a child) is not a defence.

Section 181 of the Code provides for the offence of sexual intercourse with a person between the ages of 13 and 16 (i.e. statutory rape). However, Section 181(2) provides the accused with a statutory defence if the accused is not more than 19 years at the time the offence is committed, has not been previously charged with the same or a similar offence, and had reasonable cause to believe and did believe that the other person was 16 years or older.

There is a gap in the law in terms of certain offences committed against persons between the ages of 16 and 18. As the age of consent in Grenada is 16 years, this leads to certain protections under the law only being available to children under the age of 16.

For example, if a child between the ages of 16 and 18 is raped, the perpetrator can raise the defence of consent (which is obviously not available for statutory rape) and thereby use the child's age against him or her. In addition, under Section 202 of the Criminal Code, the court is empowered to make custody orders only of females under the age of 16 for the offence of “seduction” or exploitation for “prostitution” if this was caused, encouraged or favoured by her parent, guardian, or “master or mistress”.

Another inconsistency regarding age is a reference in Section 202 of the Criminal Code to the court divesting such persons of all authority over a female under 16 years and appointing another person to take charge of her or become her guardian until she reaches 21 years. This reference is to a prior age of majority under Grenadian law that does not align with the updated age of civil legal responsibility, which is

18 years.¹⁴ Section 188 of the Code also refers to ‘victims’ as being 21 years or under for the offence of procurement. While this captures a wider group of survivors, it leads to further inconsistencies regarding the definition of a child and a lack of clarity as to who will ultimately require a greater degree of protection.

Section 187 of the Criminal Code (the offence of permitting or aiding the “defilement” of a young female or male) is another provision in which there is a gap regarding children between the ages of 16 and 18. Under Subsection (2), the accused has a defence if they are able to prove that they had reasonable cause to believe that the child was of or over the age of 16. This in effect means that the accused must adduce evidence that may relate to the child's appearance and character, and could lead to an impression that the child is in some way complicit. This could create a barrier to the child reporting abuse, as they may fear being disbelieved or having aspersions cast on their character.

It is clear that there are inconsistencies in the law in terms of the definition of a child and the treatment of CSEA offenders depending on the age of the child, leading to certain protections not being afforded to children between the ages of 16 and 18. This creates unnecessary dissonance when determining a child's capacity to consent and in sentencing.

Trafficking

The Prevention of Trafficking in Persons Act 2014 in effect ratifies and implements the United Nations Convention against Transnational Organized Crime. Section 10 of the Act sets out harsher penalties where the trafficked person is a child and where the trafficking is committed for the purpose of sexual exploitation of a child. The penalties include a fine of 1,000,000 XCD, imprisonment for 25 years, or both if the offender is convicted on indictment. The Act also includes the offences of: (i) sexually exploiting a child whom the offender knows or ought reasonably to know is a trafficked child; and (ii) taking, detaining or restricting the personal liberty of a child for sexual exploitation. The penalties for these crimes are also a fine of one million dollars, 25 years' imprisonment, or both for conviction on indictment. Aggravating circumstances under the Act include cases where the trafficked person was a child adopted for trafficking and where the child sex offender is in a position of authority concerning the trafficked person who is a child.

In addition to the Prevention of Trafficking in Persons Act 2014, the Criminal Code criminalises kidnapping (Section 198), abduction (Section 199), child-stealing (Section 200), human trafficking (Section 176C) and migrant smuggling (Section 176B).

Extraterritoriality

Section 3 of the Electronic Crimes Act 2013 creates extraterritorial jurisdiction where an offence under the Act is committed by: (i) a Grenadian national or a person resident or carrying out business in Grenada, visiting Grenada, or staying in transit in Grenada; or (ii) where an offence is committed by any person, of any nationality or citizenship or in any place outside Grenada, having an effect on the security of Grenada or its nationals, or having universal application under international law, custom or usage.

Section 3 of the Prevention of Trafficking in Persons Act 2014 creates extraterritorial jurisdiction for offences committed under this Act outside Grenada by Grenadian nationals and stateless persons who ordinarily reside in Grenada, but not by permanent residents of Grenada. An offence can be prosecuted in Grenada if committed against a national of Grenada even if committed outside Grenada. The penalty for engaging in actions which amount to sexual exploitation of a trafficked child outside Grenada is, on conviction and on indictment, a fine of 1,000,000 XCD, a term of imprisonment for 25 years, or both.

Section 9 of the Criminal Code provides that once an offence is partially committed within Grenada, it may be prosecuted in Grenada as if the entire offence had been committed there. Only conspiracy offences under Section 45(8) of the Code have full extraterritorial effect. Section 45(8) of the Code provides that whoever, within the jurisdiction of the courts, abets the doing beyond the jurisdiction of an act which, if done within the jurisdiction, would be a crime, is punishable as if he or she had abetted that crime. Any CSEA offences under the Code committed by Grenada nationals wholly outside Grenada therefore cannot be prosecuted in Grenada.

There are currently no restrictions that prevent persons who have committed CSEA offences from travelling overseas. However, if enacted, Section 15 of the National Sex Offenders Registry Bill 2020 will place travel restrictions on registered offenders. Although this is a promising development, its

enactment should be prioritised so that relevant restrictions can be put in place and enforced.

There are instances (usually when an accused is on bail pending trial) where the court may order the accused to surrender their travel documents and prohibit travel outside Grenada until the hearing and determination of the matter.

Despite such laws in place, Grenada has generally not engaged in the extraterritorial prosecution of CSEA offences.

Extradition

A suspect can be extradited to another country to stand trial for breaking the CSEA laws of that country only if the extradition offence constitutes an indictable offence under the laws of Grenada and there currently exists between the requesting State and the requested (Home) State an extradition treaty, under Section 4 of the Extradition Act Cap 98 of the 2010 Continuous Revised Edition of the Laws of Grenada as amended by section 2 of the Extradition Amendment Act, No. 7 of 2020. An offender who is at large after conviction for an extraditable offence by the requesting State may also be liable to be extradited by the Requested (Home) State.

Under Section 30 of the Electronic Crimes Act 2013, “child pornography” is an extraditable offence, as well as all offences listed in Part II of the Act. Pursuant to section 10 of the PTPA, if any offence specified in section 9 of the Act is committed against a child, that offence is an indictable offence carrying a punishment of more than one year’s imprisonment, and an extraditable offence.

Grenada has signed and since ratified the CARICOM Arrest Warrant Treaty. This treaty provides special arrangements for the extradition of persons between CARICOM Member States.

For the Commonwealth countries specified under Schedule 1 of the Extradition Act 2010, no extradition treaty is required.

Regarding non-Commonwealth countries, a treaty is required. Grenada has concluded extradition treaties with two non-Commonwealth countries, between:

— Grenada and the US under the Extradition Act (United States of America) Order 2018, where any offence punishable by more than one year of deprivation of liberty is an extraditable offence;¹⁵ and

— Grenada and the People’s Republic of China under the Extradition Treaty (Government of Grenada and the Government of the People’s Republic of China) Act No. 11 of 2018, where the offence is extraditable if it is either: (i) punishable by at least one year of imprisonment or by any heavier penalty, where the request for extradition is made for the purpose of conducting criminal proceedings; or (ii) where a period for a sentence that remains to be served by the person sought to be extradited is at least six months when the request for extradition is made, where the request for extradition is made for the purpose of executing a sentence of imprisonment.¹⁶

Statutes of Limitation

There is no limitation period for making complaints of indictable offences.

However, Section 69 of the Criminal Procedure Code Cap 72B of the 2010 Continuous Revised Edition of the Laws of Grenada as amended provides a limitation period for making a complaint of a summary offence. A survivor must make a complaint within three months from the time when the matter of the complaint arose (or if it arose upon the high seas, within three months after the arrival of the vessel at its port of discharge in Grenada), unless otherwise specified for a specific offence.

All CSEA offences are indictable only, except for indecent assault which is triable as either a summary or indictable offence. If an incident of indecent assault is tried as a summary offence, a complaint must be made within three months. As the most common form of CSEA in Grenada, this could mean that most CSEA offences will go unreported and unresolved if tried as summary offences, given the significantly limited period within which a claim must be brought.

Outdated Terminology

The terms “carnal knowledge”, “child pornography”, “child prostitution”, “defilement”, “immoral purpose”,

“indecenty” and “prostitute” are used in Grenada’s legislation.

Section 187 of the Criminal Code Cap 72A of the 2010 Continuous Revised Edition of the Laws of Grenada as amended (the **Criminal Code**) continues to use the term “defilement” regarding a person being the owner or occupier of any premises permitting or aiding the offence of sexual intercourse with a child. The legislation provides sufficient detail as to what “defilement” means, but still uses this term in the heading of the offence.

Grenada legislation uses the terms “indecent” and “indecenty”. A definition of “indecent assault” is included under Section 20(1a) of the Criminal Code (Amendment) Act 2012 as an assault committed in circumstances of indecenty. This does not clarify what constitutes “indecent assault” and raises a question as to who has the authority to determine what are “indecent circumstances” and which are not. It is generally understood in Grenada that “indecent assault” refers to inappropriate touching and fondling of a person, but this should be expressly set out to avoid any misinterpretation.

Rape was previously defined in the Criminal Code as the carnal knowledge of a female of any age without her consent,¹⁷ but this definition has now been updated to remove reference to “carnal knowledge” and is gender neutral.¹⁸ This demonstrates a recognition of the need to adopt more appropriate language in Grenada’s legislation.

The term “child pornography” is also still present in Grenada’s legislation. The offence of the procurement of males and females under the age of 21 under Section 188(1)(a) of the Criminal Code is defined differently to that regarding males and females over the age of 21 years,¹⁹ in that it does not use the terms “common prostitute” or “inmate of ... a brothel”. This avoids any suggestion that sexual exploitation of children for prostitution is a legitimate form of sex work or that the child has given their informed consent.

Other

Sentencing

Certain offences impose harsher sentences when committed against a child of “tender years” (under 14

years). Furthermore, the Compendium of Sentencing Guidelines of the Eastern Caribbean Supreme Court for Sexual Offences (reissued in April 2021) considers sexual offences against children to be an aggravating factor that will result in a harsher sentence being imposed on offenders found guilty for a sexual offence against a child. Under Section 203A of the Criminal Code, where the imprisonment for any crime under the relevant part of the Code involving “indecent” or unlawful sexual intercourse is less than 10 years’ imprisonment, and if that crime has been committed against a person who is a child of tender years, the penalty must be at least 10 years’ imprisonment.

In addition, sexual intercourse with a person under 13 years is punishable with a term of imprisonment up to 30 years, whereas sexual intercourse with a person who is between the ages of 13 and 16 is punishable with a term of imprisonment up to 15 years.²⁰ However, if the accused has reasonable cause to believe and actually believes that the child is over 13 years, the sentence is reduced to a maximum of 20 years. There is no objective or subjective standard against which this defence is measured under the Criminal Code. This potentially enables abusers to benefit from a reduced sentence.

The offence of rape under Section 177 of the Criminal Code, which would apply to children between the ages of 16 and 18, importantly includes spousal rape (relevant to child marriages). However, spousal rape carries a significantly lower sentence: up to 14 years’ imprisonment, versus up to 30 years’ imprisonment for rape by any other person.

This shows that sentencing varies considerably depending on the age of the survivor, which is a common practice. However, the potential for the survivor’s perceived age—or the age that the offender says they thought the child was—as well as the child’s marriage status, present significant potential obstacles to successful prosecution.

Gaps in Criminalisation

It is clear therefore that there are certain gaps that Grenada should address in order to better criminalise CSEA offences. These include:

- The Protection of Witnesses Act 2014, which needs to be enforced, and the National Sex Offenders Registry Bill, which should be enacted, as

they would both strengthen the protection of children from abuse and exploitation.

- Outdated terminology in legislation, particularly ‘indecent assault’, which is currently not clearly defined, and ‘child pornography’, which is accepted as outdated.

- A lack of harmonisation in the legal definition of a child, including the lack of protections for survivors of CSEA offences between 16 and 18, and inconsistencies between the age of consent and age of majority.

- No full extraterritorial jurisdiction over all CSEA offences, and limitations on extradition.

- No provisions are currently in place to restrict those who have committed CSEA offences from travelling overseas, leaving children in other countries vulnerable to abuse and exploitation.

- The potential for indecent assault to be tried as a summary offence, which would mean a statute of limitations of three months would be applied.

- Reduced sentences for those who commit abuse against children that they believe to be over a certain age, or to whom they are married.

Prosecution

Initiating Prosecution

There are no restrictions on who can file a complaint of a CSEA offence. In fact, under Section 70 of the Criminal Procedure Code 2010, a complaint can be made by the complainant in person or by his or her counsel or other person authorised in writing on his or her behalf. There are mandatory reporting provisions in the Criminal Code, the Child (Protection and Adoption) Act 2010, and the Domestic Violence Act 2010, and it is an offence if any person specified in those Acts fails to report a crime. Section 183(D)(2) of the Criminal Code provides that any person who is the parent or guardian of a child or has actual custody, charge or control of the child and who without reasonable excuse fails to report a reasonable belief of sexual abuse of a child, is liable to a fine of 15,000 XCD, or a term of imprisonment up to seven years, or both.

Reports of CSEA can also be made anonymously to the RGPF and the Child Protection Authority.

Prosecution Process

The prosecution process differs depending on whether the offence is summary or indictable. As set out above, indecent assault is the only CSEA offence which is triable either way. All other CSEA offences are indictable only.

In the case of a summary offence, the basic procedure is that a complaint is issued by the Magistrate’s Court and the accused is served with the complaint. The accused appears (either voluntarily or after a bench warrant is issued) before the Magistrate for a trial of the complaint. During the trial, the accused is permitted to cross-examine any of the prosecution witnesses and may call witnesses of his or her own in his or her defence.

When a complaint is issued for an indictable offence, a preliminary inquiry is held in the Magistrate’s Court. At this stage, the prosecution must provide sufficient evidence that the accused committed the indictable offence. If, on the evidence presented, the Magistrate finds that a sufficient case is made, then the accused is committed by the Magistrate to stand trial for the offence before the High Court.

If the accused is found to be not guilty, he or she is immediately discharged from custody on that indictment. If he or she is found guilty, the sentencing procedure by the Judge is then undertaken.

Investigation & Evidence

Presumption Survivor is a Child

There is only one express presumption under Grenadian law that the survivor is a child in the case of doubt. Section 81(2) of the Criminal Code permits the court to make a subjective presumption that the age of a survivor of assault does not exceed 14 years when determining the sentencing of a person convicted of assault. According to the Director of Public Prosecutions, in the 30 years that he has practised criminal law in Grenada, a Magistrate has never had to opine on the age of a child. The Director also noted that Section 81(2) relates specifically to the sentencing aspect of an offence, as age is not an ingredient in the offence of assault.

Procedure for Witness Testimony

The prosecution of offenders is hindered by the intimidation of witnesses and a lack of safe spaces from which children can give evidence. Witnesses can be subject to intimidation from a variety of sources, including members of the perpetrator’s family, members of the survivor’s family (mostly in instances where the survivor and the perpetrator are from the same family and the perpetrator is the sole or main breadwinner of that family), and at times from the wider community (mostly in instances where the perpetrator is a person who is well-known and liked within the community).

Corroboration

The greatest hurdle in investigating and apprehending a suspect occurs in instances where the survivor is a child of tender age and there is no other person or evidence available to corroborate the evidence of such young survivors. In these cases, perpetrators are rarely prosecuted as a conviction cannot be obtained unless the evidence of the child of tender age is corroborated by other material evidence (including but not limited to oral and circumstantial evidence) that the Magistrate or court finds to be supportive of the child’s testimony.

Section 203 of the Criminal Code permits testimony by a child of tender age if the Magistrate or court is of the opinion that although the child does not understand the nature of an oath, the child possesses sufficient intelligence to justify the reception of the evidence and that the child understands the duty to tell the truth. In such cases, the child’s evidence is taken although the child is not under oath. Each case would therefore depend on the specific child’s intelligence and understanding, as determined by the Magistrate or court.

There is a legislative proposal to remove this requirement for corroboration, but the consultation process with relevant stakeholders is still being undertaken.

DNA

DNA evidence is rarely used, as Grenada lacks the capacity to test within the jurisdiction and the cost of testing outside of the jurisdiction is very high. Anecdotal reports suggest that DNA evidence has

only been used in approximately three instances in the last 25 years, which were all murder cases.

Commonly, offences are reported weeks or even months after their commission so there is no possibility of obtaining DNA. In addition and as previously identified, the majority of CSEA cases in Grenada are indecent assaults and therefore the possibility of obtaining DNA (even if the offence is promptly reported) is minimal.

Direct evidence is always given more weight than circumstantial or hearsay evidence. Whilst this is justifiable and in line with many other jurisdictions, it presents a considerable hurdle in prosecuting and convicting CSEA offenders given the lack of DNA evidence.

Gaps in Prosecution

There are certain gaps and factors that impact the prosecution of CSEA in Grenada. These include:

- The requirement for corroboration, especially in cases where the survivor is of a ‘tender age’, which impedes the ability to prosecute CSEA offences.
- The limited use of DNA evidence in Grenada due to a lack of resources and timing issues, which is a considerable hurdle to the successful prosecution of CSEA offenders.

Some challenges to the prosecution process were addressed in the Protection of Witnesses Act 2014; however, the Act is not yet in force and no date has been fixed for its adoption. Further, the Act only applies where the offence in question carries a penalty of a term of imprisonment of 10 years or more. This includes the offences of sexual intercourse with a stepchild, foster child, ward or dependant by a person who is 21 years and over, engaging in actions which amount to sexual exploitation of a trafficked child and engaging with “child pornography”.

However, regarding the offence of sexual intercourse with a stepchild, foster child, ward or dependent by a person who is 21 years and over, if the child is over 13 years there is a possibility that the term of imprisonment will be less than 10 years. Further, regarding the offence of engaging with “child pornography”, only in the event of a second or

subsequent conviction will a term of imprisonment up to 20 years be imposed—for first time offences, the term of imprisonment will not exceed five years. Therefore, only in certain circumstances will these offences be captured by the Protection of Witnesses Act 2014.

In September 2018, the Royal Grenada Police Force created the Special Victims Unit, which was a welcome development. However, human resource constraints and other challenges affect the SVU’s ability to address CSEA offences. These include:

- insufficient police officers to investigate CSEA offences;
 - a lack of appropriate accommodation for interviewing children; and
 - limited technological resources (anecdotally, SVU officers voluntarily use their personal mobile phones and laptops to perform their official duties).
- Other challenges for the successful prosecution of offenders include:
- a lack of legal aid for criminal matters;
 - delays and long delays in the prosecution of matters in criminal courts;
 - a lack of a specialised family court to hear and determine all child-related matters;
 - a lack of child-friendly facilities to support survivors before, during and after trial; and
 - inadequate follow up with survivors by relevant agencies/parties after trial.

Protection

Protection of Survivors During Proceedings

An applicant under the DVA (whether a child or someone making an application on behalf of a child) may apply and obtain a protection order, even in cases where the application was brought outside the ordinary hours of the court, or on a day which is not an ordinary day on which the court sits.

CSEA cases are reported, but the details of such reports are usually not made public in order to protect the identity of the child survivor. In many cases where the crime is committed against a child and in particular in sexual offence cases, the criminal courts have discretion to have those proceedings heard without the presence of the public to protect the child and the child’s identity.

As per the Director of Public Prosecutions, in practice, a court may make an order restricting contact with the survivor or the survivor’s family as a condition of the sentence. Such conditions are usually made in instances where the sentence passed is a suspended sentence or the sentence is for probation. If the condition is breached, then the offender’s custodial sentence is activated, and the offender would be required to serve his or her prison sentence.

Treatment of Children of Different Genders

Under Section 202 of the Criminal Code, the court has the power to make custody orders for any female under the age of 16 if her “seduction” or exploitation for prostitution was caused, encouraged or favoured by her parent, guardian, “master or mistress”. The court has the power to divest these persons of all authority over such a female, and to appoint any person(s) willing to take charge of her to be her guardian until she reaches 21 years, or any age below this as the court may direct. This outdated wording implies that females under 16 have no autonomy and treats them as property to be minded until they turn 21 years, or an age determined by the court.

If a female has been unlawfully detained for “immoral purposes” (referred to as the seduction or exploitation for prostitution of any female under 16 years in the legislation of Grenada), under Section 204 of the Code, the Magistrate also has the power to issue a warrant authorising any person to search for her and when found, to take her to a place of safety.

The same custody orders and search powers are not offered to male survivors.

Protection of Children in General

Under the Child (Protection and Adoption) Act 2010, a child is determined as being in need of care and protection where he or she has been harmed or is likely to be harmed as a result of being sexually or otherwise exploited, and the parent has failed or has not been able to protect the child. Emergency protection is considered where the Director of the Child Protection Authority (**CPA**) under the Child (Protection and Adoption) Act 2010 has reasonable grounds to believe that a child is in need of care and protection and the health and safety of the child is in immediate jeopardy. In such case, with the assistance of a police officer, the Director may enter any place or premises where a child is believed to be present or to reside, and search for, locate and take that child into custody.

The CPA has an emergency case manager and emergency case worker so that reports can be made to the CPA and assistance rendered by the CPA personnel to children in need of care and protection, at any time of the day or night.

The CPA also has a 24-hour emergency hotline as well as an emergency case worker and on-call personnel to take reports and investigate current abuses while the agency remains closed to the public during the COVID-19 pandemic.

Similar to the limitations noted with the Special Victims Unit, the Child Protection Authority has human resource challenges as there are not enough case workers for the growing volume of reports made under the Child (Protection and Adoption) Act 2010.

Protection of Trafficked Children

Under the Prevention of Trafficking in Persons Act 2014, a police officer may take a trafficked person into temporary custody. The Act also provides for protection orders to be made regarding trafficked persons and, for trafficked persons in need of a medical examination or treatment, to be taken to a health practitioner by a police officer.

The Prevention of Trafficking in Persons Act 2014 provides for the repatriation of survivors of trafficking and sets out the repatriation procedure.

Counselling

It is understood that the CPA, in collaboration with the Ministry of Social Development, provides counselling and therapy for persons (including survivors) who are in need of such services. There are also some private facilities that provide counselling for CSEA survivors, including the Sweet Water Foundation Research and Treatment Institute. The Saint George's University School of Medicine will occasionally, on request, provide counselling services and interventions.

However, there is a need for improvements in the offering and availability of services and information from certain state agencies, including the Ministry for Social Development.

Protection of Children in Disaster Settings

There are no laws specific to disaster settings in Grenada which set out measures to combat heightened risks of child trafficking and exploitation. The provisions in the Electronic Crimes Act 2013, the Prevention of Trafficking in Persons Act 2014 and the Criminal Code relative to child trafficking and exploitation are of general application.

Others

Police Training

Police officers assigned to the SVU of the RGPF have all received special training under the National Domestic Violence and Sexual Abuse Protocol. As of 2019, all police recruits who undergo training at the Police Training School have been trained under the Protocol. The SVU also has a "call 400" hotline. However, it is understood that there are currently only seven police officers assigned to the SVU who have received this training thus far.

The National Domestic Violence and Sexual Abuse Protocol sets out a specific procedure for officers of the RGPF to follow when there are reports of sexual violence involving a minor.

Prevention

Register of Offenders

There is no official list of those convicted of CSEA offences, although the Royal Grenada Police Force maintains an informal list of persons convicted of such offences. There are also no legislative provisions that exclude convicted offenders from activities involving contact with children.

The National Sex Offenders Registry Bill 2020 was submitted to the Grenada Bar Association for review and comments in July 2020. The Bill proposes to cover the registration of offenders retroactively (five years before the Act comes into force) and includes offenders convicted in and outside Grenada. No date has been fixed for the enactment of this legislation.

The data collection process in Grenada is not in an ideal state mainly due to a lack of resources, which means that gathering and maintaining information about offenders is and will remain difficult.

Child Online Safety and Distribution of CSEA Content Online

Under the Electronic Crimes Act 2013, a violation of privacy (Section 10) and "child pornography" (Section 12) are offences. Section 12(2)(c) includes online grooming as an offence. The SVU has a cybercrime unit tasked with monitoring and investigating matters of concern related to electronic crimes (including electronic crimes which amount to CSEA offences).

However, thus far only one person has been charged under Section 12 of the Electronic Crimes Act 2013.

The penalty for engaging in actions which amount to "child pornography" is, on conviction and on indictment, a fine of up to 200,000 XCD, or a term of imprisonment up to five years, or both. In the event of a second or subsequent conviction, the penalty is a fine of up to 300,000 XCD, or a term of imprisonment up to 20 years, or both.

Awareness & Education

The Child Protection Authority utilises social media campaigns for education and information purposes.

The police officers assigned to the SVU make radio and television presentations about sexual abuse, and how to make reports to inform and educate the public on the issue.

Recommendations

There are several steps which should be taken to help combat the CSEA offences in Grenada:

Legal

- Harmonise legislation in Grenada to define a child as a person under 18 years.

- Enact legislation or amend the Code and Criminal Procedure Code to provide for the extraterritorial jurisdiction of CSEA offences, as is currently provided for in Section 3 of the Electronic Crimes Act 2013.

- Abolish the requirement for the legal corroboration of witnesses of "tender age" as set out in Section 203 of the Code.

- Give legal force to the Protection of Witnesses Act 2014.

- Enact the National Sex Offenders Registry Bill 2020.

- Enact legislation for the protection of children in disaster settings.

- Advocate for Grenada to become a signatory to the Lanzarote Convention and to the Budapest Convention.

- Adopt modern terminology in Grenada's legislation in place of terminology that legitimises CSEA.

Prosecution

- Allocate greater financial resources to the various agencies and State organisations (such as the SVU and CPA) so that:

- child friendly accommodation can be arranged and maintained;

- adequate technological resources are available to all relevant agency personnel; and

- adequate supervision and follow-up of and with child survivors can be undertaken.

Cultural/Education

- Provide continuous training to persons who provide assistance, support, and protective services to CSEA survivors.



SPOTLIGHT

We need to do better to protect children from exploitation in disasters

Amjad Saleem
Manager Inclusion, Protection and Engagement

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Child Protection Senior Advisor

International Federation for Red Cross and Red Crescent Societies (IFRC)

How disasters impact children.

The majority of people impacted by disasters are children, many of whom are also displaced due to these crises.²⁶⁷ In fact, the United Nations has declared children to be the group most affected by disasters each year.²⁶⁸ In 2018, nearly 50 million children needed protection in humanitarian settings, according to the Alliance for Child Protection in Humanitarian Action.²⁶⁹ In addition, nearly 160 million live in high or extremely high drought severity zones, and more than half a billion live in extremely high flood occurrence zones. Sadly, these numbers are growing because climate change worsens the risks and magnitude of disasters, causing more frequent and intense droughts, floods, fires, as well as public health crises and associated population movements. The

2020 IFRC "World Disasters Report" highlighted that climate-related disasters can be expected to increase by half the number of people in need of international humanitarian aid, including children, by 2050.²⁷⁰ In the six months before March 2021, the IFRC reported that 10.3 million people were displaced due to disasters triggered by natural hazards, mainly related to climate and weather extremes.²⁷¹

With such disasters, it is the secondary impacts that have direct consequences for children. Secondary impacts often include protection systems coming under increasing strain as power imbalances become more acute, causing an increase in stress within families and a decrease in access to local protection services. This has aggravated the danger for children who are at higher risk than other age groups of

encountering violence, abuse, and exploitation in disaster settings, including those disasters driven by climate change.

In addition, during disasters children suffer in silence yet are often among those most affected. They are unlikely to have a say in decisions that affect them profoundly. Their physical and mental health frequently degrades, and, in too many cases, they suffer extreme distress, are left alone, or experience violence, abuse or sexual exploitation. The top risks for girls and boys in disasters include physical, sexual and psychological violence; neglect; injuries; harmful practices, such as child, early and forced marriage; psychosocial distress and mental disorders; children becoming involved in armed conflicts and groups; child labour; malnutrition; trafficking; losing out on education; being trafficked;

It is poor and disadvantaged children who are disproportionately affected.

and becoming unaccompanied and separated. Disasters often also hamper children's access to education, health care, birth registration and other critical governmental services. There is also a gender dimension: girls are at a greater risk than boys of experiencing a loss in education opportunities, sexual and gender-based violence, experiencing sexual exploitation and trafficking, and being forced into child marriage. In disasters, we see this everywhere: a girl is sent away with someone promising good work only to find themselves trapped and sexually exploited, or girls forced to marry because the disaster has impoverished her family. As a result, girls suffer a "double disaster." It is the inequities in the everyday, and not just in times of disaster, that increase risk and reduce life chances for girls.

In all of this, it is poor and disadvantaged children who are disproportionately affected and put at risk of violence, abuse, and exploitation. Those most vulnerable, notably children who are racialised, living with disabilities, fending for themselves alone, and those from poorer families, usually suffer the most.

Whilst humanitarian agencies have improved their standards, tools, and capacity to better protect children, for example with the development of the Minimum Standards for Child Protection in Humanitarian Action,²⁷² the financial investment remains dismal. Less than 1% of humanitarian funding is directed at ending violence against children with an average only \$3 spent per child in need of protection for the whole of 2018.

Violence, abuse and exploitation of children in disasters is a profoundly harmful reality.

What can be done to improve child protection in disasters?

In 2020, the IFRC released a report entitled 'We Need To Do Better' which highlighted that there is much more to be done to protect children from violence, abuse and exploitation in disasters.²⁷³ Drawing on hundreds of interviews with children and stakeholders, and a review of the laws in 20 countries, the report outlines the actions that governments can take to cover key protection issues and ensure better coordinated, multi-level and interactive approaches to implementing domestic laws involving child protection. The report points out the need to provide genuine support to governments in their efforts to meet these goals.

To improve child protection in disasters, governments must take responsibility to ensure child protection systems are in place and function well. They must develop, implement and monitor domestic laws and regulations that enable children to live in safety, as well ensure that adequate funds are available during disasters. Child protection issues should be included in laws, regulations and policies on disaster risk management. Child participation is also key in disaster preparedness efforts, as children have the right to participate in decisions that affect them, and must be placed at the centre of local action. Despite this, the reality of the matter is that in many cases, children are excluded from planning, response and disaster risk reduction activities.²⁷⁴ Additionally, the report highlights the need to mandate the collection and analysis of age, gender and disability-disaggregated data as part of risk assessments. This includes improving specific content in governments' laws and regulations, including that related to meeting children's best interests, being gender-responsive, and drawing on necessary international minimum standards. This is all important as disasters, especially climate-related disasters, grow in frequency, scale and impact.

Different national contexts and legal traditions determine whether legislative, policy or planning tools (or a combination of all three) are best suited to ensure that child protection goals are achieved. However, disaster management professionals often come to their work without clear guidance on children's rights and special needs in disasters, and thus these issues can easily be overlooked. It is evident that there needs to be clear engagement between policymakers and those professionals to ensure that measures and responsibilities for child protection are adequately formalised and adapted to meet children's best interests. Laws and policy related to children also need to reflect the varied requirements of children of different ages and abilities. At present, these laws are lacking around the world.

While international law does not explicitly refer to child protection in disasters, the UN Convention on the Rights of the Child and other human rights instruments have set out rights that apply to all crisis situations and that are relevant to the most important protection gaps that children face in disasters. The Convention on the Rights of the Child also enshrines each child's right to express his or her views, and it requires that these views be given due weight in accordance with the age and maturity of the child.

Supporting governments alone is not enough, but it is a crucial element that has been underutilised or is even missing from our collective toolbox to protect children in disasters.

As auxiliaries to their authorities, the National Societies of the Red Cross and Red Crescent and the IFRC stand ready to support governments in this work. Violence, abuse and exploitation of children in disasters is a profoundly harmful reality: too many children are left feeling alone and hopeless, scarred for life.

Together, we can do better to protect all children in disasters from violence, abuse and exploitation.

Country Reports: Asia



REGIONAL SNAPSHOT

Asia

Areas of concern

Terminology and societal stigma

Legislation criminalising CSEA across Asia uses outdated and moralistic terminology such as “child prostitution”, “carnal knowledge/intercourse”, “indecent”, “obscene” and “child pornography”.²⁷⁵ Many of these terms do not place the emphasis on the perpetrator’s actions, and instead emphasise the victim as having been “damaged” in a moral sense, or even “legitimise” some CSEA offences by implying consent, especially in the use of “child pornography” and “child prostitution”.

Combined with the widespread culture of shame and silence surrounding CSEA offences, and sexuality in general, that is present throughout the region, such outdated and moralistic terminology discourages the reporting of abuse.²⁷⁶

“Due to cultural stigmatisation attached to CSEA, there is generally less reporting of CSEA cases to the relevant authorities for prosecution.” Researcher for Sri Lanka

As well as impacting survivors’ willingness to report, societal stigma is reflected in police attitudes towards survivors, which limit the effectiveness of the investigation and prosecution of CSEA offences.²⁷⁷ Public educational awareness-raising and training programmes for professionals in the criminal justice system are needed throughout the region to address these barriers.²⁷⁸

Treatment of children of different genders

Societal and cultural attitudes towards gender further contribute to CSEA throughout the region. Gender-based violence is prevalent across Asia, exacerbated by harmful gender norms which perpetuate the victimisation of women and girls, and silence male survivors.²⁷⁹

In many countries, children who are sexually exploited or abused are treated differently according to their gender. This is particularly evident in the age-of-

consent laws and the prevalence of child marriage throughout the region, as well as the exclusion of boys from laws and policies which address CSEA.²⁸⁰

“Restrictions on the definition of “rape” reinforce gender-stereotypical views about sexuality and who can be sexually abused, and leaves boys and men who are survivors of rape with no recourse” Researcher for Malaysia

Furthermore, the criminalisation of homosexual activity in the majority of the region’s countries may lead, in particular, to male children who have been exploited or abused by male perpetrators not reporting such offences to the authorities for fear of being charged with a crime themselves.²⁸¹

Ineffective justice systems

Across Asia, frameworks are in place for the protection of children. However, in practice these frameworks are limited in their effectiveness and implementation.²⁸² Therefore, children are not comprehensively protected from CSEA, and offenders often go unpunished.

“Although today we have a dedicated legislative framework in place, the subordinate courts often fail to provide justice.” Researcher for India

Prosecution rates for CSEA offences are low, and investigations of these crimes are often inadequate due to a lack of resources, training, use of evidence other than physical, and coordination and cooperation between services responsible for child protection.²⁸³

Cases can be stuck in the criminal justice system for years, with backlogs having been identified in multiple countries in the region.²⁸⁴ CSEA survivors become exhausted with the process and discontinue their case due to the length of the court process, as well as a lack of support available for them.²⁸⁵

Regional trends

- Sexual exploitation of children in travel and tourism (SECTT)
- Child trafficking for sexual exploitation and forced labour
- Online CSEA
- Child marriage
- Familial abuse
- Harmful cultural and societal attitudes

Risk factors

- Under-reporting
- Pervasive gender norms
- Limited and incomplete data on CSEA offences
- Widespread poverty
- High refugee and migrant populations



Protection against online CSEA

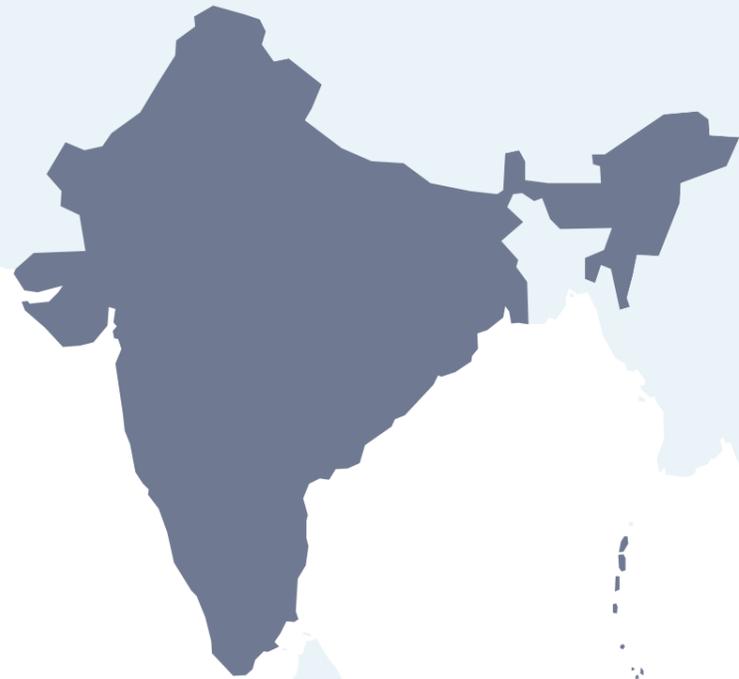
Throughout the region, online-facilitated CSEA and the production, distribution and downloading of child sexual abuse materials (CSAM) is an increasing issue as access to the internet grows rapidly.²⁸⁶ This increasing form of abuse highlights the need for many countries to introduce further criminal legislation governing online CSEA.

“The rise of the internet has resulted in a much higher prevalence of online-facilitated abuse and child sexual abuse images/materials.” Researcher for Pakistan

Furthermore, increased awareness and understanding of the vulnerabilities that children face online and the issue of CSAM is also needed in order to support governments in the region when new laws and policies are introduced.²⁸⁷

“The public perception that CSAM is neither child abuse nor exploitation remains, and most parents are unaware of the risks their children may be exposed to online.” Researcher for Malaysia

India



India is a country where a series of complex individual, familial and social factors have contributed to significantly high rates of CSEA.¹ While recent legislative efforts have been made to effectively punish the perpetrators and address the under-reporting of these crimes, the issue of CSEA is still a taboo in India and the majority of survivors remain silent due to a fear of social stigma and out-casting.² Notably, India has a relatively stringent and comprehensive framework for protecting children from CSEA, which is comprised of relevant laws embedded in the country's Constitution, Penal Code, and national legislation. However, India's primary obstacle is in the gaps that limit the effectiveness of these laws.

As a signatory to the UN Convention on the Rights of the Child since 1992, India has an international obligation to ensure all children enjoy all rights enshrined in the UNCRC.³ To further reaffirm its commitment to protecting children from all forms of CSEA, India ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) in 2005,⁴ and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2011.⁵ Furthermore, India is a member of the South Asian Association for Regional Cooperation (SAARC) and has ratified a number of regional instruments addressing CSEA, including the SAARC Convention on Preventing and Combating Trafficking in Women and Children,⁶ and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.⁷ India is also a member of the South Asia Initiative to End Violence Against Children (SAIEVC), an inter-governmental body focused on protecting children from all forms of violence.⁸

One major piece of legislation that has helped in the movement towards addressing CSEA in India is the Protection of Children from Sexual Offences Act 2012 (**POCSO Act**) which was spearheaded by the Ministry of Women and Child Development in response to increased attention and activism around child protection.⁹ The act complimented laws under the Indian Penal Code that criminalised a range of acts against girls¹⁰ and brought in new protections, such as introducing periodic police and background checks on employees at child institutions as well as protecting the confidentiality of the survivor by prohibiting a child's identity from being disclosed to the media.¹¹

The 1950 Constitution of India also affords fundamental rights to individuals and forms the basis of legislation directed at protecting children and curbing CSEA, such as through Article 23 (the right to protection from being trafficked) and Article 39f (guaranteed protection of childhood and youth against exploitation).¹² The Constitution covers physical sexual offences and is supplemented by specific laws for the protection of minors. Further, the Lanzarote Convention also provides the basis for the forms of CSEA. Several of these forms have been criminally codified into the POCSO Act, however further reform is required to ratify the entirety of the Lanzarote Convention. However, as noted above, India's most significant issue is not in enacting legislation. Instead, significant gaps exist in the effectiveness of these laws. For example, there is currently a lack of gender neutrality in the treatment of survivors. Additionally, the introduction of the death penalty as a punishment has also not proven to be effective and has faced widespread condemnation. Therefore, India's biggest challenge in the coming years appears to be how to implement effective law reform or other procedural changes to ensure that the overwhelmingly positive legislative system is utilised to the best of its ability.

CSEA Profile

CSEA is a serious problem in India. An alarmingly high rate of around 53 per cent of Indian children have reported abuse ranging from nude photography to sexual abuse.¹³ This is particularly concerning as children under 18 comprise around 37 per cent of India's population and a large proportion already lack basic needs such as food, education and health services.¹⁴ In 2018, the National Crime Bureau

released data that showed that as many as 109 children were sexually abused every day in India.¹⁵ This represented a 22 per cent increase from 32,608 cases in 2017 to 39,827 cases reported in 2018 under the POCSO Act.¹⁶ The data also showed that as many as 21,605 child rapes were recorded in 2018, which included 21,401 rapes of girls and 204 of boys. In 2020 there were 28,065 cases of penetrative sexual assault against children, according to the National Crime Records Bureau (NCRB).¹⁷ The data around this topic in India is not sufficient to correctly understand the scale of the problem, but overall awareness is growing, causing more robust legal protections to be put in place and more efforts to tackle the problem.¹⁸

The risk factors present in India which contribute to increased vulnerability to sexual abuse and exploitation include early marriage and widespread access to the internet.¹⁹ Although there is a lack of data, it is generally accepted that the most common form is male perpetrators who are known to the survivor.²⁰

Crimes against children far outweigh those against women in India, with the former accounting for 2.6 per cent of all Special and Local Laws crimes and the latter 0.8 per cent.^{21,22} While overall crimes against children in general have increased steeply over six times from 2008–2018, it has been difficult to pinpoint the reasons.²³ One possible explanation is that more people are beginning to come forward and report CSEA offences, which may mean that there is an overall increased public faith in the criminal justice and legal system.²⁴

Critically, the overwhelming majority of POCSO-prosecuted cases in 2019 involved a perpetrator known to the survivor (94.2 per cent), which is an issue that has been exacerbated during India's national lockdown in response to the Covid-19 pandemic from 2020.²⁵ Data has revealed that 93 per cent of perpetrators are relatives or known individuals, which often means that children and their families do not report the offences to the authorities for fear of social repercussions.²⁶ During the Covid-19 lockdowns, CSEA has impacted children even more negatively as mandatory isolation has decreased the child's support networks, limited their chance of escaping the offending conduct and also forced them to reside in close proximity to their abusers. In addition, the lockdown environment has proven to be the perfect vehicle for abusers to

commit more offences in response to the restrictions on movement and the stresses of the pandemic. This has dramatically impacted the mental health burden and the Vikas Puthran of Childline India Foundation reported a 50 per cent increase in calls during the lockdown between 20 and 31 March 2020 alone.²⁷ NGOs have also reported a significant increase in child trafficking due to pandemic-related loss of parental employment and school NGOs have also reported a significant increase in child trafficking due to pandemic-related loss of parental employment and school.²⁸ Whether or not children are trafficked directly into sex work, being a survivor of trafficking is a risk factor for sexual abuse and exploitation.

The National Crime Records Bureau reported that in 2020, among the 2,222 child survivors of trafficking 845 were girls and 1,377 were boys.²⁹ However this was data was not disaggregated to report on the prevalence of sexual abuse amongst these children. In 2018, the Ministry of Women & Child Development reported that of the 489 children trafficked for sexual exploitation and registered in Child Care Institutions/Homes, 451 were girls and 38 were boys.³⁰ Therefore, it may be seen that despite boys being trafficked more for general purposes, girls are more frequently sexually exploited in these circumstances.

According to the 2021 Trafficking in Persons (TIP) Report from the US Department of State, traffickers target Indian girls and also recruit survivors from Nepal and Bangladesh as well as Central Asia, Europe and Africa.³¹ These survivors are exploited in red light districts as well as small hotels and private residences.³² According to reports in the media, recruitment increasingly happens over social media and with the use of encryption tools.³³ The TIP report largely overlooks male survivors of child sex trafficking, but a report in 2007 highlighted the practice of so-called Dancing Boys, where boys are hired as traditional dancers and often made vulnerable to sexual and physical abuse.³⁴ Boys are also survivors of sexual exploitation in travel and tourism settings (SECTT), with some studies suggesting that in parts of India, boys are more victimised than girls.³⁵

Furthermore, recent reports have exposed multiple instances of child exploitation and abuse at state-run shelters, including the molestation of children as young as seven.³⁶

In addition, India has faced a significant and dramatic increase in sexually explicit online material involving children particularly in the wake of the Covid-19 pandemic. A global compilation of reports of child sexual abuse material showed that India topped the list and accounted for 11.7 per cent of total reports.³⁷ Additionally, Pakistan reported the second highest figures at 6.8 per cent and Bangladesh the fourth highest at 3.3 per cent. The geographical proximity of these countries raises concerns amongst child right activists about the prevalence of child sexual abuse material and the online safety of children in the South Asian region, and further research needs to be conducted to shed light on the reasons why this is the case.³⁸

This situation has been exacerbated by the pandemic and the effects can be seen through the NGO India Child Protection Fund's report of a 95 per cent spike in the consumption of child pornography content in India at the beginning of lockdown between 24 to 26 March in 2020. This sudden increase suggests that a number of paedophiles, child rapists and child pornography addicts have potentially migrated online, adding to the fear that vulnerable children may also be targeted online.³⁹

Major contributors to the prevalence of CSEA offences committed against children include traditional beliefs encouraging child marriages particularly for young girls. UNICEF has highlighted this as an area of critical focus as approximately one in four young women in India have been married or entered into a union before their 18th birthday.⁴⁰ India has the highest number of child brides per year and accounts for 1.5 million out of the 12 million underage girls worldwide who are married annually.⁴¹ While child brides are not the focus of this report, it is important to acknowledge its role in perpetuating the attitudes and statistics surrounding child sexual abuse. Notably, campaigners have argued that early marriage heightens the risk of either physical or sexual intimate partner violence by 50 per cent for girls married under the age of 15.⁴²

While nationwide data is not available yet, there are also concerns that the Covid-19 pandemic is driving an increase in child marriages. This is because Indian families who are facing dire financial straits are hastening to marry off their underage daughters in the belief that marriage will protect them from violence from other men in the community.⁴³ These child marriages occur despite laws prohibiting any

adult man over the age of 18 from marrying an underage bride, with penalties of up to two years in prison or fines of more than 1,300 USD or both.⁴⁴

In addition to child marriage, according to reports, many girls throughout India are at risk of female genital mutilation (FGM). Research shows that 75 per cent of the Dawoodi Bohra community in India have undergone FGM.⁴⁵ Despite this, the Indian government has not yet introduced specific measures to combat the practice. In response to a supreme court petition to ban FGM in 2016, the Ministry of Women & Child Development stated that "there is no official data or study which supports the existence of FGM in India".⁴⁶

Criminalisation/Legislation

The criminalisation of CSEA is primarily governed by the POCSO Act as well as a combination of the Indian Penal Code (**IPC** or **Penal Code**), the Constitution and other specific legislation. Penal consequences differ according to the CSEA offence and include criminal liabilities and fines. While CSEA offences are covered by the IPC and the Constitution, the POCSO Act predominantly sets out the rules for prosecutions and takes a stringent approach.

The POCSO Act importantly expanded the range of CSEA offences to include non-penetrative sexual assault as well as aggravated penetrative sexual assault, as well as criminalising sexual harassment and pornography of children under the age of 18. The POCSO Act also introduced procedures throughout the judicial process aimed at safeguarding the child's interest.

The POCSO Act is supplemented by legislation that targets specific issues. Child marriage, for example, is criminalised under the Prohibition of Child Marriage Act, with the act defining male children as anyone under 21 and female children as under 18.⁴⁷ Despite various different religious laws which operate in India, the Prohibition of Child Marriage Act takes precedence. The Act also criminalises anyone who performs, conducts, directs or abets any child marriage.

Furthermore, the POCSO is supplemented by the Young Persons (Harmful Publications) Act 1956 criminalising the exposure of children to harmful

material.⁴⁸ This law can be interpreted to address child sexual abuse material (CSAM) and the offence of exposing a child to pornographic materials. The production, dissemination and transfer of CSAM is more comprehensively criminalised under the Information Technology Act 2000 (amended in 2008) (ITA),⁴⁹ as well as the POCSO Act itself.

Since 2012, new sections have also been inserted into the IPC to expand its criminalisation of sexual offences, including: Section 354A, which specifically covers sexual harassment and punishment for sexual harassment (including towards children); section 376AB, which punishes rape of a woman under 12 years of age; and sections 376DA and s76DB, which punish gang rape of women under the ages of 16 and 12 respectively.⁵⁰

To address sexual exploitation, the Immoral Traffic Prevention Act (ITPA) has been implemented. The ITPA criminalises “the sexual exploitation or abuse of persons for a commercial purpose”, however it does not specifically address children or the use of children for sexual purposes. It has been recommended that a definition of sexual exploitation that refers exclusively to children be included to bring Indian legislation in line with the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), which India became a party to in 2005.⁵¹

The ITPA criminalises procuring, inducing or taking a person for the purpose of prostitution, with higher penalties attributed to offenders committing these crimes against children.⁵² Whilst the Indian Penal Code also sets out the offence of procuring a child, it refers only to “minor girls” and so does not offer boys protection from this crime.

Furthermore, the ITPA can be seen to criminalise the sexual exploitation of children in travel and tourism settings (SECTT), as Section 7(c) criminalises renting out a hotel or a part thereof for the purpose of the exploitation of children in prostitution and may revoke the licence of a hotel found to be engaging in such conduct. In addition to this national legislation, the Goa Children’s Act explicitly holds the private sector liable for the sexual exploitation of children, due to the high incidences of SECTT in Goa.

Despite the somewhat comprehensive criminalisation of CSEA offences in Indian legislation, as highlighted by the Human Dignity Trust, there are still some

offences which are not criminalised, including ‘sexual grooming, sexual communication with a child and sexual activity in front of a child’.⁵³

Lanzarote Convention

Indian law has largely adopted the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**), which sets the benchmark for criminal law reform to protect children against CSEA.

For example, Chapter IV of the POCSO requires that the statement of the child be recorded, and as far as practically possible, by a woman police officer who is not in uniform (which aligns with Article 30 of the Convention), and the child must not come into contact with the accused during the interview. Furthermore, the POCSO has taken precedence in criminal proceedings regarding setting the age of consent at 18 (as in the Lanzarote Convention) over the Indian Penal Code, which sets the age at 16.⁵⁴

Sections 13 and 14(2) of the POCSO also incorporate Articles 18–24 of the Lanzarote Convention, by codifying into criminal law the offences relating to child sexual abuse materials (CSAM). This is supported by further legislation such as the Information Technology Act 2000, which penalises the electronic transmission and publication of material which depicts children in a sexually explicit act.⁵⁵

However, there are some limitations to the transition of the Lanzarote Convention principles to Indian law. Notably, Article 25 lays out the principles relating to jurisdictional reach and the aims to extend jurisdiction further than national citizens. Currently, Indian law only exercises extraterritorial jurisdiction over offences within its Penal Code, and extraterritorial jurisdiction does not extend to include the POCSO Act. Furthermore, this extraterritorial jurisdiction only applies to Indian citizens, and does not include residents of India.

Other notable gaps in the implementation of the Lanzarote Convention include Article 26 (corporate liability) and Article 27, relating to sanctions and measures, of which subsection 2 has not been implemented to date. These articles are particularly important because they aim to encourage the implementation of legislative provisions against

corporations and other non-human legal persons to ensure that they are also liable for CSEA offences. This places an emphasis on any systemic abuse that may be prevalent in certain companies or industries. Most notably, the Indian travel and tourism industries have significant problems with CSEA.⁵⁶ Therefore, the codification of these articles would likely assist in reducing this systemic abuse.

Age of Consent & Definition of a Child

In India, a child is defined as anyone under 18 years of age as per several of the main Indian national laws, including the POCSO Act and the Juvenile Justice (Care and Protection of Children) Act 2015 (**Juvenile Justice Act**).⁵⁷

As noted above, case law has indicated that the POCSO’s legal age of consent to engage in sexual intercourse at 18 overrides the Penal Code’s standard. However, some legal confusion still exists.

This issue is also apparent regarding the law surrounding marriages in India. Significantly, Indian legislation uniformly sets the age of consent to marriage at 18 for females and 21 for males, but several other different laws governing marriages suggest otherwise. Under well-established Muslim common law, those who have attained puberty may legally enter into marriage under the *Muslim Personal Law (Shariat) Application Act, 1937*.⁵⁸ Puberty may be assumed to be reached at 15 years of age.⁵⁹ Notably, this tradition was upheld in a 2021 Indian High Court case whereby the court held that the marriage between a 36-year-old man and 17-year-old girl was not invalid.⁶⁰

The Act also does not provide any clarity on what happens when two minors engage in any kind of sexual activity, which could lead to the prosecution of children engaged in consensual sexual activity.⁶¹

Trafficking

Trafficking is explicitly illegal under section 370 of the Penal Code. It penalises anyone who recruits, transports, harbours, transfers, or receives, a person, by the use of threats, force, abduction, fraud, abuse of power or inducement, for exploitation. The trafficking of a child attracts an aggravated penalty, with sufficiently high punishments of ten years to life imprisonment and a fine.

Experts have found that this provision is inadequate in providing full legislative protection to children and is not in line with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**Palermo Protocol**), which India ratified in 2011. This is because the Penal Code requires that the means of trafficking, such as ‘deception, threat, force, coercion’, be proven in order for an offence to be committed. This has the potential to leave children vulnerable to trafficking offences and contradicts the principle that a child cannot consent to being trafficked.

In 2021, the Ministry of Women & Child Development introduced the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill aimed at preventing trafficking and focused on rehabilitating survivors.⁶² The trafficking offence contained under this Bill applies to both adults and children. It is fully in line with the Palermo Protocol and it does not require the means of trafficking for offences involving children. It is unclear, however, whether the Bill’s provisions will take precedence over existing trafficking provisions contained under the Penal Code. Furthermore, as of March 2022, the Bill has yet to be passed.

Extraterritoriality

While the Penal Code has extraterritorial jurisdiction, its reach only extends to Indian citizens and not residents.⁶³ Regarding crimes relating to child sexual abuse material (CSAM), the Information Technology Act establishes that it will apply to offences committed outside India by any person.⁶⁴ The POCSO Act, meanwhile, has no extraterritorial jurisdiction. Therefore, CSEA offences in India do not have sufficient extraterritorial application.

The Penal Code governs any offences committed by an Indian citizen in a foreign country which includes ships and aircraft registered in India, as well as computer resources located in India. The penalties for engaging in sexual activities extraterritorially are the same as for offences committed within India.

The UN Committee on the Rights of the Child noted in its most recent concluding observations on India that the extraterritorial jurisdiction featured in the Penal Code is subject to a limiting condition of double criminality,⁶⁵ in that the act needs to be an offence in both India and the country where it was committed for the offender to be prosecuted. According to ECPAT, ‘this double criminality requirement may act

as an obstacle in prosecuting SEC offenders who have committed crimes abroad.⁶⁶

Extradition

Under the Schedule to the Extradition Act 1962, only a handful of CSEA offences are extraditable, including rape, procuring or trafficking women or young persons for immoral purposes, and stealing, abandoning, exposing or unlawfully detaining a child.⁶⁷ However, India does not require an extradition treaty to extradite a CSEA perpetrator and can act on requests made through diplomatic channels.

Before issuing a warrant for the arrest of a person, a magistrate must be satisfied of a number of requirements, including that an arrest warrant for the person exists in the foreign country (or the person has been convicted of an offence against the law of the foreign country), the offence to which the warrant relates is an extraditable offence, and the dual criminality principle is complied with. The dual criminality principle only permits extradition for offences which are recognised as crimes in the foreign state and punishable with imprisonment, as stated in Section 2(c) of the Extradition Act 1962.

Conversely, Section 3 of the Extradition Act outlines the requirements for extradition regardless of the dual criminality element. This requires the existence of an extradition treaty with the foreign State. Extradition treaties are very common globally and allow for easier extradition for certain offences. Under this section of the Extradition Act, the Central Government may direct that the provisions of the Extradition Act will apply and subsequently lay the extradition treaty out in full. Where a treaty is not in place, the Central Government may, by notified order, treat any Convention to which India and a foreign State are parties, as an extradition treaty made by India with that foreign State providing for extradition for the offences specified in that Convention.

The extradition legislation is also inadequate as the extradition laws of the country where the offender has absconded will apply. Critics have highlighted the Goan orphanage case, in which six foreign nationals who regularly visited an orphanage were found to have sexually abused the children. Out of the six, only one faced seven years of imprisonment before returning to their home nation and another was

successfully extradited and imprisoned for ten years. Significantly, the accused British citizen initially evaded extradition by alleging that the conditions in Indian prisons were harsh and in violation of his human rights, despite a two-member committee finding and reporting that the conditions were suitable. When this failed, the UK courts ultimately rejected the extradition request on the basis that the accused had dementia and was therefore classed as a 'vulnerable individual' who could not be extradited.⁶⁸

Statutes of Limitation

CSEA offences in India have no statute of limitations as no limitation period applies to the POCSO Act, and offences under the Penal Code only have a limitation period if they are punishable by two years' imprisonment or less.

Even if a statute of limitations is applied to CSEA offences, Section 473 of the Code of Criminal Procedure 1973 grants the courts discretion to choose to still prosecute cases after the expiry of the limitation period for 'effective administration and in the interest of justice.'⁶⁹

A lack of limitation period is especially important in CSEA cases because of the social stigma that survivors and their families often face, which delays the reporting of such offences.

Outdated Terminology

The term 'child pornography' is referenced in India's domestic legislation. It is widely accepted that this term is 'outdated' and is legitimising child sexual abuse and exploitation, implying that the child is complicit in the sexual abuse.⁷⁰

Other

Juvenile Offenders

Following the Delhi Gang Rape case in 2012, in which a minor was involved in the gang rape and murder of a 23 year old woman,⁷¹ the Juvenile Justice Act 2015 was introduced to replace the Juvenile Justice (Care and Protection) Act 2000.⁷²

The Act allows for juveniles between 16–18 years of age to be tried as adults under Indian law. Despite

this provision being initially rejected by a Standing Committee, the Government passed the bill into law as committee approval was not required. As part of this process, an offender is initially evaluated by a Juvenile Justice Board comprised of psychologists and social workers to determine whether they should be tried as an adult.

A significant oversight in Indian legislation is the lack of an exemption clause for children to prevent them from being prosecuted for offences relating to sexual exploitation and trafficking. As was noted in the 2021 TIP Report, this lack of exemption and screening procedures has led to authorities arresting, penalising and deporting some child trafficking survivors for crimes they had been compelled by traffickers to commit.⁷³

Sentencing

Generally, the penalties under POCSO offences are imprisonment for a term at least five to seven years and for a maximum of life imprisonment. Some offences are also subject to a fine.

Further, the death penalty is still in place in India and governs some CSEA offences. Most notably, section 376AB of the IPC (rape of a child under 12 years) and section 376DB (gang rape of a child under 12 years) are indeed punishable by death. Convicted rapists have been sentenced to hanging as recently as 2020, sparking controversy as to whether this contributes to improving the safety of women and children.⁷⁴

According to the National Crime Records Bureau, 2016 (NCRB 2016), the majority of those accused of the rape were members of the family.⁷⁵ In such scenarios, introducing the death penalty is believed to cause increased mental trauma and anguish to the survivor as well as leading to lower reporting rates for these crimes. Furthermore, there is fear that setting the death penalty for rape as equivalent to the punishment for murder will incentivise perpetrators to kill their survivors in order to hide the crime.

Treatment of Children of Different Genders

The provisions of POCSO take a gender neutral stance and apply equally to the sexual abuse of male and female children, including offences such as sexual assault, penetrative sexual assault, and

sexual harassment. However, there are still legislative gaps that can cause gender discrimination in practice. For example, the statutory rape provision under the Penal Code still uses a gendered definition of rape.⁷⁶ Section 375 of the Penal Code (as amended in 2013) criminalises the rape of girls below the age of 18, thereby denying boys protection against rape under the Code.

As highlighted by ECPAT in their 2021 report, whilst it is possible that the rape of boys can now be prosecuted under the provisions of the POCSO Act, the continued use of these gendered provisions across different pieces of legislation risks perpetuating harmful social stigma surrounding the sexual abuse of boys in India.⁷⁷

A similar issue can be found in legislation criminalising the sexual exploitation of children. The Penal Code sets out the offence of procuring a child, but it refers only to 'minor girls' and therefore boys are not protected from this crime.⁷⁸ Whilst the ITPA does provide gender-neutral criminalisation of the sexual exploitation of children in prostitution,⁷⁹ the divergence in applicability can result in the same crimes being overlooked by law enforcement when they are committed against boys.⁸⁰

Anecdotal evidence also suggests that female survivors are given precedence both at the investigation and sentencing stages. For example, recent legislative amendments to the Penal Code now impose the death penalty on those convicted of raping a female child below the age of 12.⁸¹ However, there is no equivalent rule for male children which means that a convicted rapist of a male child under the age of 12 will receive a comparatively lesser punishment. Whilst the death penalty is controversial, this difference in punishment, and therefore implied severity, for crimes committed against girls and boys demonstrates that male children are somewhat overlooked as potential survivors.

Gaps in Criminalisation

In summary, some of the noteworthy gaps in criminalisation of CSEA offences include:

— Offences such as sexual grooming, sexual communication with a child, or causing a child to watch sexual activity are not currently criminalised.

- The age of consent and marriage is not consistently applied across federal and religious legislation.
- The potential for the death penalty as punishment for CSEA offences may place children at even greater danger, as perpetrators may decide to kill their 'victims' in order to avoid detection.
- Some gendered terminology is used in the Penal Code that excludes male survivors, and may contribute to societal stigma surrounding CSEA offences.
- The level of sentencing for particularly heinous crimes is still gendered, leaving boys less protected.
- CSEA offences in India do not have sufficient extraterritorial application.
- India's power to extradite perpetrators from foreign States is limited.
- Trafficking is still rife and India requires further law reform to make effective change, including the introduction of the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, removal of the requirement for the means of trafficking to be proven, and the specific definition of the sexual exploitation of children included in law addressing trafficking and exploitation in general.
- Current legislation places children at risk of being prosecuted for their own exploitation or trafficking.

Prosecution

Initiating Prosecution

Crimes against children can be reported through Childline 1098, a free emergency helpline for children in need of aid and assistance.⁸² The Ministry of Women & Child Development has also introduced the POSCO e-Box, an online complaint management system for reporting CSEA offences under the POSCO Act.⁸³

A complaint can be filed by either the victim, a family member, or any other person by lodging a First Information Report [FIR] (as required under section 154 of the C.D.C.).⁸⁴ As per Section 19 of the POCSO, any person (including the child) who has

apprehension that an offence under the act is likely to be committed or has knowledge of the act, is to provide the information to (a) Special Juvenile Police Unit, or (b) the local police. Section 21 of the POCSO provides that any person with knowledge of an offence has a duty to report it and will face penal consequences if they wilfully fail to report. This is similar to Section 202 of the Penal Code, which criminalises the failure to give information about a crime.

However, CSEA offences are cognisable offences, which means that police officers have the authority to make an arrest without a warrant and to start an investigation without the permission of a court.⁸⁵ This means law enforcement agencies can initiate action to prosecute CSEA offences without requiring the survivor to first file a complaint.

Further, the POCSO does not specify a limitation period for filing of a complaint if the offence took place when the child was under the age of 18. Section 468 of the Penal Code previously provided a period of three years for reporting an offence, including those of child abuse. However, this was removed through the ratification of a proposal by the Ministry of Women & Child Development.⁸⁶

Prosecution Process

As established by the POCSO Act, all CSEA offences are tried in Special Courts.⁸⁷ The State Government is responsible for appointing a Special Public Prosecutor for each case tried in the Special Courts. A person is eligible to be appointed as a Special Public Prosecutor only if they have been in practice for at least seven years as an advocate.⁸⁸

However, the Supreme Court has reported that states often lack the requisite infrastructure for conducting trial proceedings in these Special Courts required in POCSO cases.⁸⁹ Furthermore, basic facilities in the offices of magistrates and presiding officers lead to delays in processing CSEA cases under the POCSO Act.⁹⁰

Investigation & Evidence

Under Section 107 of the Juvenile Justice Act, every police station in India must have at least one child welfare police officer (CWPO) whose role is to exclusively deal with children, either as survivors or

perpetrators, in cooperation with other police officers and voluntary and non-governmental organisations.⁹¹ Special Juvenile Police Units have also been established in each district and city, consisting of CWPOs and two social workers, one of whom must be a woman, who have experience in working in child welfare.⁹²

According to experts, despite these provisions, the majority of CWPOs are not well-informed about CSEA legislation or a child-friendly approach to the investigation and prosecution of these cases.⁹³ Furthermore, many reportedly try to register cases of children as adults in order to ease the enquiry process.⁹⁴

Furthermore, there are currently no guidelines or standard operating procedures in place to support Special Juvenile Police Units in their work. This has been highlighted as a key reason why officers assigned to the units are unable to perform their duties.⁹⁵

According to Agnihotri and Das, despite their best efforts, police officers face many barriers in conducting proper investigations of CSEA cases criminalised under the POCSO Act.⁹⁶

Presumption Survivor is a Child

Section 94 of the Juvenile Justice Act provides a presumption about the minority of a child based on appearance, and if there is reasonable grounds for doubt, provides for determination by seeking evidence such as a birth certificate from school or a corporation or medical examination.⁹⁷ Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 provides for determination based on physical appearance or documents if available.⁹⁸

However, it should be noted that Courts have not always accepted this presumption and the standard process is for a medical examination in the absence of documentary proof in cases of a doubt. Case law has indicated that age determination is an important factor for the court to consider. In *Jarnail Singh vs. State of Haryana*, the Supreme Court held that even if a girl had accompanied the accused by her own free will or had consensual sex, these factors are inconsequential as the girl was obviously a minor.⁹⁹

Reportedly, many instances have demonstrated the difficulty in proving the age of the child; any documents beyond those referred to by the act are not considered valid proof, 'creating a disparity and often segregation of child survivors'.¹⁰⁰

Procedure for the Child to Give Evidence

Chapter VI of the POCSO outlines the procedure for recording the statement of the child, including that the recordings must be made at their place of residence and performed as far as reasonably possible with video and audio.¹⁰¹ Under Chapter VII, for the purposes of expediting the trials, the State Government can designate a Special Court to try CSEA offences under the POCSO.

The child's evidence must be recorded within 30 days of the Special Court taking note of the offence, under section 35 of POCSO Chapter VIII. Section 39 of the same outlines procedures for the use of non-governmental organisations and psychologists to assist the child in preparing their evidence.

Chapter VIII of the POCSO further outlines the procedure and powers of the Special Court. The child may present evidence themselves, however any questions to be put to the survivor must first be put to the magistrate, who in turn will put the questions to the child. The Court is obliged under section 33 to ensure that the child is not called repeatedly to testify in the Court, and aggressive questioning or character assassination of the survivor is explicitly prohibited.

However, it has been reported that these provisions are more often flouted than complied with due to the overburdened nature of the criminal justice system in India.¹⁰² The 2021 TIP Report highlighted that survivors have often refused to participate in trials due to inadequate implementation of protection measures.¹⁰³

In practice, the credibility of child evidence is often determined on a case by case basis, e.g. the Supreme Court determined that in an agrarian society where children often carry working responsibilities, a 13-year-old child can be considered as a rational adult and therefore their testimony be seen as credible.¹⁰⁴

DNA

In terms of the collection of DNA evidence during a medical examination of a survivor of CSEA, Section 27 of the POCSO Act states the following requirements:

- If the victim is a female child, the medical examination must be conducted by a female doctor.
- The medical examination must be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
- Where the parent of the child or other person cannot be present, for any reason, during the medical examination of the child, it must be conducted in the presence of a woman nominated by the head of the medical institution.

It has been reported that forensic samples taken by the police often end up being contaminated, or putrefied due to improper storage.¹⁰⁵ Accordingly, there is a need for further training for police on collecting forensic evidence such as DNA for use in the prosecution of CSEA offences.

In 2018, the Indian government launched the National Registry of Sexual Offenders which contains the names, addresses, photographs, fingerprints, DNA samples, and PAN and Aadhaar numbers of sex offenders convicted under charges of rape, gang rape, and POCSO offences. This information can only be accessed by law enforcement agencies.

There is little evidence for the impact of this registry on CSEA in India: only one article written in 2019 reported five new names being added to the registry but did not comment on its impact.¹⁰⁶

Defences

Where a person is prosecuted for committing, abetting, or attempting to commit offences under the POCSO Act, the Special Court presumes that such person has carried out the offence and the burden of proof is on the defendant to prove otherwise.¹⁰⁷

Furthermore, in prosecutions under the POCSO Act, the Court presumes a culpable mental state on the part of the accused. However, the accused may prove that they had no such mental state with respect

to the offence as a defence. This includes their intention, motive, knowledge of all the facts and the belief in those facts.

Unwillingness to Proceed with 'Formal' Trial

According to Kushi Kushalappa, a social worker for ENFOLD, an NGO that supports survivors of CSEA in India, one of the biggest challenges in her work is convincing a person or family to report a case of CSEA.¹⁰⁸ This resistance to reporting such crimes to the police is caused by the fact that 'girls and women disclosing sexual abuse are treated poorly by society.' Survivors are often blamed for what has happened, rather than the perpetrator.¹⁰⁹

A further consequence of the strong statistical link between sexual offences against children and family perpetrators is that many children are then coerced by family to withdraw their statements.¹¹⁰ Families are often unwilling to proceed with a trial as perpetrators are often relatives or people known to the family, and as a result the survivor's family may either face social disrepute or threats by the accused. Under the current law and in contravention of Article 32 of the Lanzarote Convention, proceedings cease if the survivor withdraws their statements. This is a gap in the criminalisation and prosecution process that needs to be addressed.

Gaps in Prosecution

While the POCSO Act has improved the prosecution process for children, there are however some areas within the legal system that must still be addressed, which include:

- Despite comprehensive provisions put in place by the POCSO Act and Juvenile Justice Act, limitations in the criminal justice system in India call into question the extent to which these provisions are implemented in all cases of CSEA.
- The lack of a gender-neutral stance under the Penal Code which shifts the emphasis at prosecution onto cases where the survivor is a female and diminishes the experiences of male survivors.
- Limited coordination among the different government bodies at the national, state, and district levels who are responsible for the implementation and monitoring of children's rights.

— Limited training for professionals involved in the criminal justice system and the handling of CSEA cases, including police officers, social workers and legal professionals, which inhibits the effective prosecution of offences.

- Socio-political issues relating to caste and cultural differences, which hinder prosecutions, even though the Indian legal system now follows international legal standards in criminalising CSEA.
- Lack of clarity over the effectiveness of the use of DNA records stored in the National Registry of Sexual Offenders in solving and prosecuting CSEA cases.

— Under-reporting and under-prosecution of CSEA cases, as survivors and their families resist going to the police due to shame and withdraw statements out of fear of backlash.

Protection

Protection of Survivors During Proceedings

With the introduction of the POCSO Act in 2012, India implemented measures to protect survivors from re-traumatisation and further harm during court proceedings. Sections 33–38 under Chapter VIII of the POCSO Act outline the procedures of the Special Courts in protecting children during proceedings. These include:

- The Special Court may, if it considers it necessary, permit frequent breaks for the child during the trial.
- The Special Court will create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.
- The Special Court will ensure that the child is not called repeatedly to testify in the court.
- The Special Court must not permit aggressive questioning or character assassination of the child and ensure that the dignity of the child is maintained at all times during the trial.

— The Special Court will ensure that the identity of the child is not disclosed at any time during the course of investigation or trial.¹¹¹

Questions have been raised as to the rate of implementation of the measures outlined in the POCSO Act and Juvenile Justice Act which seek to protect children during court proceedings.¹¹² In 2018, the Supreme Court passed a slew of directions for effective implementation following the raising of a petition which highlighted alleged apathy by the governments in implementing these welfare measures.¹¹³

Protection of Children in General

In 2018, the Ministry of Women & Child Development drafted a new national policy to replace the 2013 National Child Protection Policy.¹¹⁴ However, at the time of writing in March 2022, the policy does not appear to have received final approval or been implemented.

In terms of responding to protect a child who has reported exploitation or abuse, the POCSO Act states that, within 24 hours of a CSEA offence being reported, the Special Juvenile Police Unit must report the case to the Child Welfare Committee and the Special Court, including whether the child is in need of special care and protection measures, and what steps have already been taken in this regard.¹¹⁵

According to the Juvenile Justice Act, if the child has no home or no satisfactory arrangements can be made for their secure stay within the family, or such child already living in a care institution suffers maltreatment, they must immediately be placed by the police temporarily in a children's home or shelter home.¹¹⁶ Placing the child in a shelter home for their care and protection must, however, be the last option.¹¹⁷

A recent audit by the government on child care institutions for the period 2018–2020 found that 40 per cent of such institutions didn't have adequate measures in place to protect children from exploitation and abuse.¹¹⁸

Protection of Trafficked Children

As reported by ECPAT, despite several commitments made by the Indian government to eliminate human

trafficking and protect trafficked children, there are critical gaps in the implementation of existing laws and policies.¹¹⁹

The proposed Trafficking in Persons (Prevention, Care and Rehabilitation) Bill contains stronger measures to prevent and protect against human trafficking.¹²⁰ However, it has been critiqued as not going far enough in its support of survivors beyond the provision of shelter homes.¹²¹ Survivors of human trafficking have requested that the Bill be amended to include 'a community-based rehabilitation model that provides health services, legal aid, access to welfare schemes and income opportunities' in order to ensure survivors can fully reintegrate back into their communities.¹²²

India currently does not have legislation which governs the repatriation of child trafficking survivors. This is an area of concern for India which has been highlighted by the 2020 TIP Report. Notably, the report found worrying trends around repatriation, including a long six-year process for Bangladeshi survivors to be repatriated to their homeland and instances of refusal by Indian officials to repatriate child survivors of sex trafficking, unless they gave evidence in criminal trials.¹²³

Counselling

According to ARPAN, 'there is a broad variety of practical, cultural, individual and family-related barriers that restrict initialisation and adherence to therapy and counselling' for survivors of CSEA in India..

Furthermore, the quality of counselling services provided to CSEA survivors is limited due to a lack of training and support available for professionals carrying out counselling. For example, it has been reported that as many as 70 per cent of mental health professionals in Mumbai feel ill-equipped to counsel survivors of CSEA.¹²⁴

Protection of Children in Disaster Settings

The Disaster Management Act 2005 is the main law that addresses disaster protection and management across India. The definition of disaster management includes disaster preparedness which refers to measures taken to prepare for and reduce the effects of disasters.¹²⁵

The National Policy on Disaster Management, 2009 recognises that children are more vulnerable and are exposed to higher risks in disaster settings. In fact, Unicef states on its website that children are the most at risk from the impact of natural disasters and conflicts.¹²⁶ The policy encourages State Disaster Response Force (SDRF) to equip and train a unit to look after children and women.

However, the protection of children in disaster situations has been limited so far, as there are no specific legal provisions that deal with CSEA offences in disaster situations. Rather, only the standard existing legal frameworks on CSEA can be invoked in addition to the training of unit responders in CSEA awareness and relevant laws.

Further, there are no specific measures in place to combat heightened risks of child trafficking and exploitation during a disaster situation. While Article 23(1) of the Indian Constitution and The Immoral Traffic (Prevention) Act, 1956 (ITPA) criminalise trafficking and child trafficking, there are no specific provisions that deal with disaster scenarios.¹²⁷ In addition, there is no special body responsible for the planning and coordination of child protection during disasters.

During the Covid-19 pandemic, CSEA became more prevalent: a case was reported every 12 minutes in 2020.¹²⁸ This further highlights both the vulnerability of children during times of disaster and the need to have policies in place to counter this. So far, it appears that little has been done by the Indian government to protect children from this rise in CSEA, most notably online CSEA.

Other

Protection of Adopted Children

Adoption is overseen by the Central Adoption Resource Authority (CARA), which is a statutory body of the Ministry of Women & Child Development of the Government of India. CARA is responsible for monitoring and regulating adoptions both domestically and internationally.

In terms of legislation, adoption is regulated by the Juvenile Justice (Care and Protection of Children) Act 2015 (JJA), which seeks to create a universally accessible adoption policy for India.¹²⁹ The JJA

overtakes, but does not replace, the provisions laid out in the Hindu Adoptions and Maintenance Act 1956 (HAMA), which applies to Hindus, Buddhists, Sikhs and Jains, meaning the provisions of the HAMA will continue to apply.

The process of adopting orphaned, abandoned and surrendered children has been streamlined as a result of the JJA, both for domestic and international adoptions.

For example, for domestic adoptions, prospective parents living in India, irrespective of religion, may apply under the JJA to the Specialised Adoption Agency which will consider the application and obtain the adoption order from the court.¹³⁰

In addition, the JJA incorporates the principles of the Hague Adoption Convention and includes special provisions for proposed inter-country adoptions. Section 60 of the JJA states that all applicants must file for adoption before a Principal Magistrate of the concerned jurisdiction where the registered adoption agency is located. The Principal Magistrate is then obliged to pass the adoption orders on the first date of the hearing itself, or within two weeks of this date.

However, this process seems unlikely to be implemented from a practical standpoint, as all judicial proceedings in India are regulated by the Code of Civil Procedure and any proposed fast-tracked procedure would need to bypass rules of evidence and therefore be in contravention of the law.¹³¹

Collection and Dissemination of Data on Child Protection

Data and research on the sexual exploitation and abuse of children in India is limited.¹³² Furthermore, formally-collected data relating to child protection, gathered by the police and other child welfare authorities, lacks specific details and disaggregation.¹³³ The collection and dissemination of data on all forms of CSEA is necessary to plan and allocate resources effectively, as well as review and continually improve the child protection system.

Additionally, ECPAT reports that there is a lack of specific data on other forms of online child sexual exploitation and abuse, such as live-streaming of

child sexual abuse, online grooming and sexual extortion in India.¹³⁴

Registration of Births

Ensuring that every child born in India is registered is one way of preventing CSEA offences from going unpunished, because a child survivor is not registered.

The Registration of Births and Deaths Act 1969 provides for this by promoting uniformity and comparability in the registration of births (and deaths) across the whole of India, as well as facilitating the compilation of vital statistics. After the Act was enacted, the registration of all births (including still-births) became mandatory and all children born in hospitals are now issued with a birth certificate.¹³⁵

In terms of implementation, whilst coordination of this practice occurs at the Central Government level as the Registrar General's responsibility, the implementation of the Act is vested in India's various State Governments. In practice, an estimated 80.21 per cent of children are registered in India, with the rate being as low as 50 per cent in some districts.¹³⁶ It is recommended that India provide registering services at the point of birth, i.e. at healthcare facilities.¹³⁷

Prevention

In practice, UNICEF reports that the Indian government focuses too heavily on aftercare for CSEA offences, and should instead work towards taking a preventative focus to these crimes.¹³⁸

Registration of Offenders

The Indian Government launched the National Registry of Sexual Offenders in 2018, which contains the names, addresses, photographs, fingerprints, DNA samples and the PAN and Aadhaar numbers of persons convicted of CSEA offences (rape, gang rape, offences under the POCSO). However, this registry is not publicly accessible and only law enforcement agencies can access it.

There is also currently no method of excluding persons convicted of CSEA offences from activities involving contact with children.

As previously mentioned, there is little reporting on the impact of this registry on preventing CSEA.¹³⁹

eVisa application rules adopted in 2018 require applicants to provide details about their involvement in child abuse, cyber-crime, and human trafficking, thereby partially regulating the entry/exit of potential CSEA perpetrators in India.

Child Online Safety

India has introduced several measures to ensure children's safety online. In terms of legislation, the Information Technology Act 2000 (amended in 2008) (ITA) aims to prevent the dissemination of CSEA material online and punish those guilty of doing so.¹⁴⁰¹⁴¹ It prohibits publishing or transmitting child sexual abuse material, as well as creating, collecting, seeking, browsing, downloading, advertising, promoting, exchanging or distributing CSAM.

Amongst others, section 67 of the ITA provides that those found guilty of punishing 'obscene material' in electronic form can be punished by up to five years' imprisonment and a fine of up to 1,000,000 INR, depending on whether it is a first or subsequent offence. Section 68 mirrors this for 'sexually explicit' material and carries a sentence of up to seven years' imprisonment and a fine of 1,000,000 INR. However, as the ITA is not specifically focused on the protection of children, it does not redress all of the issues surrounding CSEA offences.

The POCSO Act criminalises the act of repeatedly or constantly following or watching or contacting a child either directly, through electronic, digital or any other means with sexual intent. According to ECPAT, whilst this provision is categorised under sexual harassment it could be invoked to prosecute online grooming offences.¹⁴² However, legislation would benefit from explicitly criminalising grooming a child for sexual purposes, both online and offline.

The POCSO Act also contains provisions relating to the dissemination of CSEA content online. Section 14(1) provides that a person guilty of using a child for the purposes of 'child pornography' (child sex abuse material or CSAM) will be liable for a fine and up to seven years' imprisonment. Section 15 of the POCSO Act deals with possession of CSAM, ranging from a fine of up to 10,000 INR for personal possession, to a prison sentence of between five to

seven years and a fine for possession for a commercial purpose.

According to ECPAT, a potential loophole exists in the POCSO Act whereby the possession of CSAM is only criminalised for the purpose of distribution, display or transmission, or for a commercial purpose. Therefore, mere possession for private consumption may not be covered. Furthermore, whilst the POCSO Act provides quite a broad definition of CSAM (including digitally-generated images or realistic images of non-existent children), it does not explicitly criminalise materials other than visual or other depictions of child sexual abuse).¹⁴³ Additionally, there is no provision in Indian legislation which criminalises the live streaming of CSEA.

Despite having enacted these laws to combat online-facilitated CSEA and CSAM, India is not yet a member of the WeProtect Global Alliance,¹⁴⁴ nor has the Indian government signed or ratified the Council of Europe's Convention on Cybercrime.¹⁴⁵

Distribution of CSEA Content Online

In January 2020, the Rajya Sabha (the Upper House of the Parliament of India) presented a report of recommendations to be implemented in order to address online-facilitated CSEA and distribution of CSEA content online.¹⁴⁶ The report encouraged internet service providers and online platforms to take measures to protect children and limit the distribution of CSEA content online, such as age verification and introducing technology to detect CSAM.

The Government of India set up a portal at <https://cybercrime.gov.in> in 2018 for the purpose of reporting cybercrime.

The Indian government restricts websites from carrying extreme Child Sexual Abuse Material (CSAM) based on INTERPOL's 'worst-of-list'. This list is then shared with the Department of Telecommunications, which then directs major Internet Service Providers (ISPs) to block offending websites. The Government also orders major ISPs to disable/remove CSAM content based on the International Watch Foundation's list.

The Ministry of Home Affairs has led a volunteering scheme which encourages citizens to volunteer as

Unlawful Content Flaggers, whose role involves identifying, reporting and removing illegal/unlawful online content, including CSEA/CSAM material.

Heightened awareness of the issue has resulted in the increase of recorded incidents of cyber-crimes against children, with the National Crime Records Bureau reporting 1,102 cases of cyber-crimes against children in 2020, in comparison to 305 cases reported in 2019.¹⁴⁷

Awareness and Education

ECPAT has highlighted that the Indian government has only implemented prevention programmes and awareness-raising campaigns on specific forms of CSEA, whilst other manifestations have not received adequate attention.¹⁴⁸ Targeted forms of CSEA include sexual abuse, child marriage, gender-based violence, trafficking, online CSEA and, more generally, children's rights.¹⁴⁹

In addition to government-led initiatives, the role of raising awareness and educating about CSEA in India is also taken on by civil society organisations. These organisations often collaborate with the government, and some, although not all, are state-funded.¹⁵⁰

According to Roy and Madiki, 'sex education is one of the most neglected topics in India, due to cultural and social norms of the society.'¹⁵¹ A 2015 survey conducted in Mumbai found that 88 per cent of male and 58 per cent of female university students had not received any sex education at home, and their only source of information was friends, magazines, books, and the internet.¹⁵² 'Children are easy to manipulate and therefore sexually exploited, especially if they remain uneducated', argue Roy and Madiki.¹⁵³

Furthermore, the media plays a large role in publicising cases of CSEA. However, it has been found that media coverage in India tends to sensationalise the issues; news outlets prefer to report on the more severe cases of CSEA, including rape and murder, and rarely release articles covering crimes committed against those belonging to the middle and upper classes.¹⁵⁴ Therefore, media coverage can reinforce inaccurate stereotypes on the profile of CSEA.

Recommendations

There are several steps which should be taken as a matter of priority to help combat CSEA offences against children in India.

Generally, India's domestic legislation is comprehensive and for the most part follows international legal standards in this area for combatting CSEA offences. However there are numerous bespoke issues which limit its ability to respond and redress the issues surrounding CSEA offences highlighted in this report, such as deeply ingrained socio-cultural issues that prohibit survivors from speaking out or reporting their cases. Added to this are issues surrounding the high prevalence of child marriages in India, which stem from familial, social and religious pressures. With this in mind, and using the Lanzarote Convention, Budapest Convention and Palermo Convention as the global 'best practice', various recommendations have been made for improving India's ability to address the CSEA issues discussed in this report.

Legal

Recommendations for legal reform primarily revolve around the harmonisation of national laws on all CSEA issues in line with international standards and conventions, particularly with reference to both the Lanzarote and Budapest Conventions, including:

- Amend the POCSO Act to include forms of CSEA which are not currently criminalised, including specific provisions against grooming a child for sexual purposes (both online and offline), sexual communication with a child, or causing a child to watch sexual activity.

- Legislation should be also updated to criminalise all forms of online child sexual exploitation, such as live-streaming of abuse, instead of solely addressing child sexual abuse material (CSAM), and non-visual depictions of CSEA.

- Integrate missing concepts from the Lanzarote Convention into Indian domestic law such as Article 3 (inserting a definition for 'victim' as contained in Article 3(c)).

- Integrate Article 26 of the Lanzarote Convention, which deals with corporate liability for CSEA offences.
- Integrate Article 27(2), which deals with sanctions for CSEA offences.
- Resolve the discrepancy between domestic law and Article 25 of the Lanzarote Convention, which deals with the concept of ‘habitual residence’, which is not recognised in Indian law.
- Redraft the POCSO to extend its extraterritorial reach, in order to comply with Article 25 of the Lanzarote Convention. Currently, extradition is required under Article 25 is dealt with under Indian domestic law in accordance with the Extradition Act 1962, and in accordance with the provisions and rules of the Extradition Treaty between India and the relevant foreign state. Regrettably, this leads to a scenario where the fate of a child survivor is governed by legislation which is not drafted with his/her best interests in mind, but rather political or extraneous issues.
- Remove the double criminality requirement for both extraterritorial jurisdiction and extradition for CSEA offences.
- Enact a defence for children or young persons (where the age gap between the offender and the survivor is less than four years) engaged in consensual sexual activity, to prevent the further criminalisation of children.
- Legislation should be amended so that children who are survivors of sexual exploitation or human trafficking are not at risk of prosecution for these crimes, which they were compelled to commit.
- The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill should be enacted to provide comprehensive legal protection to children from human trafficking, taking into account the critiques from survivors regarding the need for more comprehensive support and reintegration measures.
- India should introduce measures, as recommended by the Rajya Sabha committee in 2020, to require technology companies to monitor, report and remove CSAM on their platforms.

— To affirm their commitment to addressing online-facilitated CSEA and CSAM, the Indian government should become a member of the WeProtect Global Alliance and a party to the Council of Europe’s Convention on Cybercrime (the Budapest Convention).

Prosecution

To effectively redress the issues caused by CSEA offences, India’s ability to prosecute is also crucial to the prospects of a nation seeking to protect child survivors of CSEA offences. These recommendations may cover a broad range of issues relating to the prosecution of offenders under CSEA legislation, such as problems posed by corruption in India, a lack of resources, funding and training for law enforcement agencies attempting to tackle such offences, as well as issues relating to India’s court systems.

Recommendations include:

- Approve the updated National Policy on Children, and implement and monitor the following key measures.¹⁵⁵
- Establish uniform standards across India for institutional care and protection for organisations which provide support to child survivors of CSEA offences. Such change will provide a legislation-led effort in ensuring that support for survivors of CSEA offences is provided not only to a sufficient standard required to rehabilitate survivors, but that such support is both offered and provided with the survivors’ best interests in mind, and is not compromised by extraneous political, social or religious sensibilities.
- The Indian government must ensure that the National Commission for Child Rights, the statutory body established by the Commission for Protection of Child Rights (CPCR) Act 2005, has an adequate budget to implement the NPA against CSEA offences.
- The Indian government must also ensure that it strengthens coordination among the different government bodies at the national, state and district levels to reduce friction and ensure the overarching direction of the plan to prevent and counteract CSEA offences is as harmoniously as possible. To coincide

with this, the varying levels of government must all seek to ensure that cooperation—both domestically and with foreign governmental bodies—is at the forefront of the nation’s response to CSEA, especially regarding instances where the origin of survivors has to be tracked, either across state or national borders.

— Ensure that police officers, as well as any other relevant professionals dealing with children in legal proceedings involving CSEA offences, are provided with training on the *Juvenile Justice System Act 2015* that is both adequate for the nature of the crimes CSEA legislation seeks to encompass and is long-term. This aims to address the law enforcement bodies’ inability to recognise and respond to offences under domestic legislation by fostering a culture of understanding.

— Relevant professionals should also receive adequate and long-term training on child-sensitive approaches when dealing with CSEA offences to mitigate the risks of re-traumatisation for the survivors and improve the quality of support provided.

— Child-friendly justice measures enshrined in the POCSO Act and the Juvenile Justice Act must be implemented in practice, rather than solely on paper.

— Leverage and enhance the pre-existing National Cyber Crime Reporting Portal (**Reporting Portal**) and its network of volunteers, in order to combat the issue of CSEA material being disseminated online. This should involve training volunteers on improving systems through which child sex abuse and child survivors are identified and adequately reported to the officers of the Reporting Portal.

— Commit to enhanced cooperation with other national and international crime units focused on identifying, reporting and removing CSEA content online, such as Interpol. This would ensure that India is able to contribute to the pre-existing global network combatting the dissemination of CSEA material online and ensure that its cooperation be counted on when required.

Protection

Aside from improving processes relating to prosecution, protection for those vulnerable to being victimised by CSEA perpetrators must be central to

India’s domestic response to tackling and counteracting child abuse.

Recommendations include:

- Ensure the widespread implementation of child-friendly justice measures outlined in the POCSO Act and the Juvenile Justice Act to protect children from re-traumatisation during court proceedings.
- India’s commitment to a veritable support system for child survivors of CSEA offences is vital to its wider National Plan of Action. A concerted effort should be made to adopt a comprehensive National Plan of Action or national strategy addressing the issue of tackling CSEA offences.
- Respond to the lack of a system in place to provide comprehensive, counselling and wider support to survivors of CSEA as a matter of urgency, and establish a system and stream of funding which is coordinated at the national, state and district levels.
- The reallocation of significant funds of governmental spending—at all levels—is required to prioritise child safety. Despite accounting for 40 per cent of India’s population, only 4.52 per cent of the total budget for the Government of India is allocated to services for children, and specifically only 0.05 per cent of the Budget is spent on child protection initiatives.¹⁵⁶
- Mobilise the Integrated Child Protection Scheme (**ICPS**) which has been designed as a centrally sponsored scheme aimed at building a protective environment for vulnerable children in difficult circumstances.¹⁵⁷ While it is commendable that this scheme has been created, the ICPS needs to take further action to ensure that child protection committees operating at state, district and community levels in India are provided with the requisite resources to train staff. This will provide a safe space for children to visit and for authorities to be able to recognise, respond to and prevent situations involving CSEA offences.

— Strengthen and increase funding for local child protection systems to ensure the protection of internally displaced children in refugee camps and of children in emergency situations and during disasters.

— Develop more specialised care services for survivors of CSEA offences, such as specialist services for children which are differentiated from services for adult survivors, to redress their specific issues.

— Establish services to specifically address CSEA offences involving boys to address various social vulnerabilities encountered by male survivors of CSEA.

— Improve the quality and detail of data related to CSEA so that it is consistent, disaggregated and categorised to better inform policy and programming responses.¹⁵⁸

Prevention

It is important for India to respond to the need to protect children before they become survivors.

— Programmes must be introduced which effectively tackle the root causes of CSEA and the trafficking of children, such as poverty and discrimination.

— Implement CSEA awareness and protection training in the national and district school curriculums to educate students, generate discourse surrounding CSEA and reduce social stigma surrounding survivors. Part of this training should include clarifying the definition of CSEA offences and educating children on the avenues for reporting these crimes and the importance of following through with prosecutions.

— India's NPA should seek to raise awareness among potential exploiters of child sex abuse survivors about the penalties associated with CSEA crimes, as well as India's efforts to increase conviction rates for offenders under the POCSO and other CSEA-related legislation. This aims to create an effective deterrent against these crimes.

Cultural/Educational

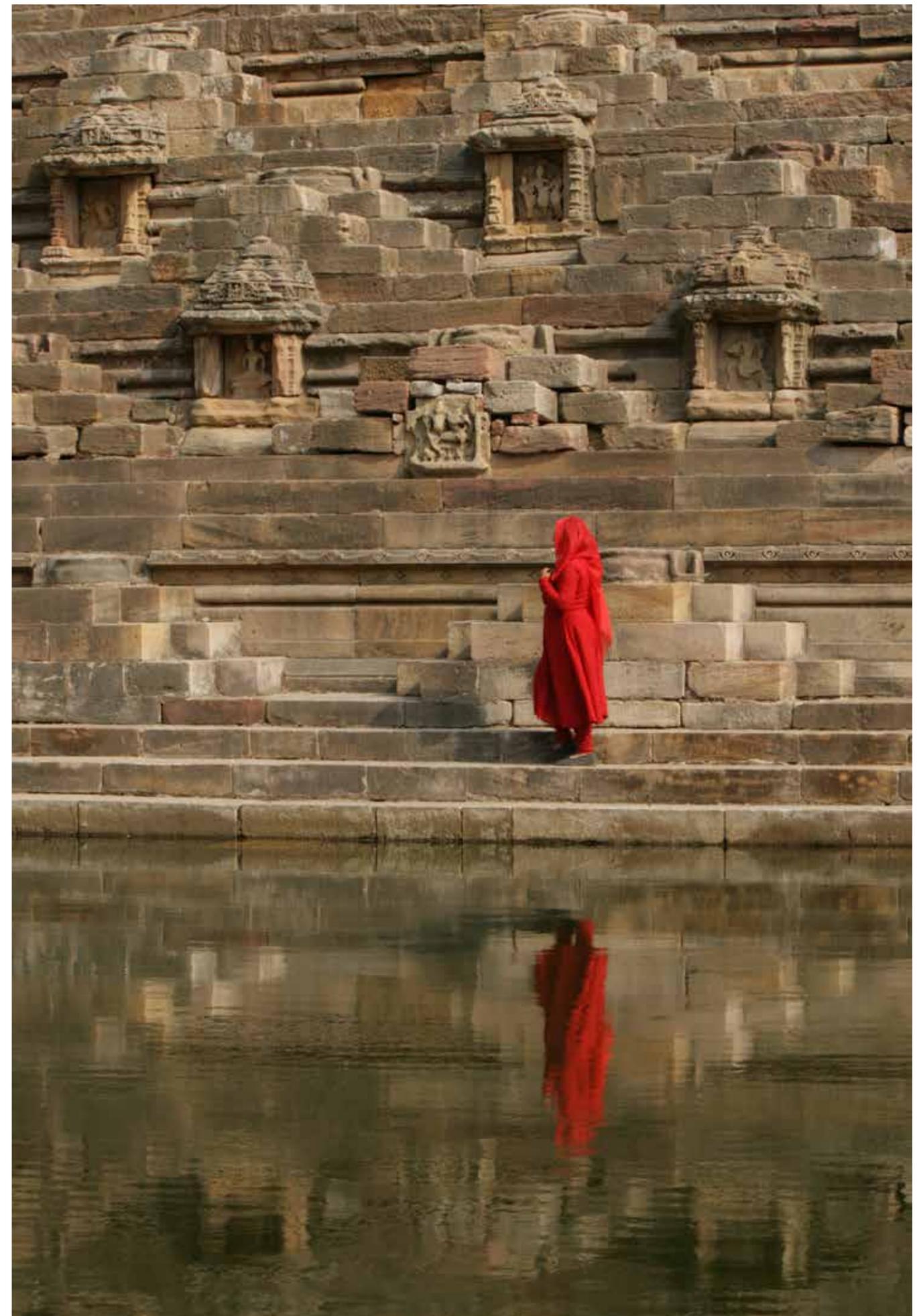
Arguably, education is the biggest obstacle preventing India's efforts to redress issues surrounding CSEA offences, especially those relating to the education of communities.

Recommendations include:

— Socio-political issues relating to caste and cultural differences that hinder prosecutions and encourage survivors to remain silent must be addressed.

— Programmes should be implemented educating parents on how to recognise CSEA offences being committed and the vulnerability of children to such offences, as well as ways to report and seek justice.

— The Government of India should adopt a targeted approach and focus its educational efforts on the most at-risk populations and specifically those for whom the socio-cultural climate jeopardises their protection from CSEA.





Malaysia

CSEA cases came to the forefront of public and government attention in Malaysia in 2016, following international media attention on the Richard Huckle (RH) CSEA case.¹ RH, who was arrested when he arrived at London's Gatwick airport from Malaysia in December 2014, was found with over 20,000 child sexual abuse materials, including more than 1,000 images of him raping and abusing children, on his computer and camera, mostly in Kuala Lumpur. He later pleaded guilty in a British court to 71 charges involving 23 children, but he was suspected to have abused and exploited close to 200 children, mostly in Malaysia. In the course of the media coverage, it came to light that RH and his offences had been brought to the attention of the Malaysian police in late 2014 by British and Australian law enforcement officers, but the Royal Malaysian Police Department (the Malaysian Police) took no action.² The RH case caused a public outcry, triggered calls for better protection for children against CSEA, and garnered political attention.

According to classified data that the Malaysian Police compiled and shared with Reuters, 12,987 cases of child sexual abuse were reported to police between January 2012 and July 2016. Charges were filed in 2,189 cases, resulting in just 140 convictions.³

Before 2017, CSEA cases in Malaysia were prosecuted under the Penal Code, which covers offences like rape, statutory rape, sodomy and incest. In 2017, the Sexual Offences Against Children Act 2017 (the **SOACA**) was passed, which introduced new offences including child grooming and "child pornography", a new provision on the capacity of child witnesses and removed the necessity for corroboration.⁴ The SOACA further imposed harsher penalties where CSEA is committed by a person in a relationship of trust. The Malaysian Government at that time also came up with special measures to enhance the existing legal structure and frameworks to combat CSEA, including setting up special courts for Child Sexual Offences (**Special Courts**) and formulating and launching the Special Guidelines In Handling Cases Involving Sexual Offences Against Children (**Special Guidelines**),⁵ a multi-agency operating procedure for child sexual offences. In 2019, ECPAT reported that the Malaysian laws against child rape, purchasing sexual services from children, procuring children for sexual activities, trafficking children and grooming children online were adequate.⁶

Nevertheless, it is felt that these measures have not been prioritised with the changes in Government since 2018. For example, the Special Courts were announced to be set up in every state in Malaysia. The two initial courts were launched in Putrajaya (2017) and Kuching (2018),⁷ but since then no new Special Courts have been established. The Special Guidelines are not widely known nor implemented, with little to no awareness or training provided on them. Cases reported in the media in the last two years seem to indicate that the new offences under the SOACA are not being properly understood or enforced, with little or no training being provided to frontline enforcement agency members, such as the police and prosecution.

There is a general lack of specialised judges, judicial officers, DPPs, enforcement officers, Child Protectors, service providers supporting children with safe placements, case management, psychosocial support, legal intervention and rehabilitation.

Twenty-nineteen data from the World Bank states that 84 per cent of Malaysians are online.⁸ With the rise in the online sexual abuse and exploitation of children, Malaysia lacks trained enforcement, child protectors, prosecutors and judicial authorities to investigate online crimes against children. Police are reluctant to investigate child pornography without a police report, shifting the burden away from the enforcement body.

CSEA Profile

Although data on child sexual abuse is not systematically collected in Malaysia, which makes it difficult to determine the exact number of cases, it is nonetheless accepted as a prevalent problem in the country.⁹ It is estimated that one in 10 children in the country are affected by sexual abuse, based on three local community studies.¹⁰ According to classified data that the Malaysian Police compiled and shared with Reuters, 12,987 cases of child sexual abuse were reported to police between January 2012 and July 2016.¹¹ On 30 March 2021, the Malaysian Police stated that 993 cases of physical sexual assault involving children below the age of 18 were reported in 2020, an increase from 732 and 591 reported in 2019 and 2018 respectively.¹² The primary perpetrators of sexual abuse are reported to be known to the survivor, often family members or those in a relationship of trust.

It must be taken into account that these numbers account for incidents which are reported, and are not indicative of the true number of cases. In fact, prominent child rights activists have said that cases of child abuse are greatly under-reported in Malaysia.¹³

According to the US Trafficking in Persons Report for Malaysia, commercial sexual exploitation is another issue in the country with the government acknowledging increased vulnerability of children to online sexual exploitation, including some instances of child trafficking.¹⁴ The report also highlighted that traffickers recruit girls from Rohingya refugee camps in Bangladesh to Malaysia, where they are coerced into commercial sex.¹⁵ Malaysia's trafficking profile was downgraded this year to the worst tier (Tier 3) by the US Report as it "does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so, even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity."¹⁶ This further indicates that the government of Malaysia is not adequately addressing instances of child trafficking in the country.

The factors which increase children's vulnerability to sexual exploitation and abuse in Malaysia are in line with regional trends, including widespread access to technology and high levels of tourism.¹⁷ Specifically in Malaysia, social norms and values which encourage silence and shame around sex increases vulnerability, as well as its geographical location as

Malaysia shares its borders with Myanmar, Indonesia and Thailand, and thus has high levels of immigration.¹⁸

The risks of CSEA in Malaysia are further exacerbated due to a lack of enforcement, prosecution, as well as poor awareness and application of the laws, policies and SOPs which often causes children to be re-victimised.

Child marriage remains a significant issue throughout Malaysia. Although data on the practice is outdated, evidence indicates that child marriage is practiced across almost all communities in the country.¹⁹

In 2010, the national census found that approximately 16,000 children were married.²⁰ According to data published by the Penang Institute, over 9,000 cases of child marriage occurred between 2010 and 2015.²¹ This amounts to an average of five cases per day. A total of 6,268 of these child marriage cases involved Muslim couples, while the remaining 2,775 involved non-Muslims.

Malaysia has three systems when it comes to marriages: the civil law system, codified by the Law Reform (Marriage & Divorce) Act 1976 (the **LRA**), which applies to non-Muslims,²² the syariah system, which applies to Muslims and which varies from state to state, and native laws regulated by the native courts, which applies to indigenous people in Sabah and Sarawak. Anecdotal evidence suggests that refugees in Malaysia and survivors of trafficking practice cultural marriages, within the customs of each community and generally do not formalise their marriages.

The three systems have different thresholds of age of eligibility for marriage:

— Under the LRA, the minimum age of marriage is 18 years, but the LRA has a conditional threshold for girls aged 17, where such marriage is authorised by a licence granted by the Chief Minister. Under the LRA, there are no circumstances where the marriage of a non-Muslim girl under 16 years old can be legally approved. There are no circumstances where a non-Muslim boy under the age of 18 can be legally married.

— Under the syariah system, each state or federal territory in Malaysia has an Islamic Family Law

Act/Enactment (which seems parallel in all the states) of the Federal Territories and the States, which sets the age of marriage at 18 for boys and 16 for girls. However, this is not an absolute minimum and Muslim children below those ages are allowed to be married, subject to the Syariah Court's approval. Unlike the LRA provisions, there is no absolute minimum threshold age set which bars a Muslim child from being married, as long as the Syariah Court has given its consent to the marriage.

— The native courts of Sabah and Sarawak do not have a codified minimum threshold age, or even a minimum number of wives that a man can marry. It is known that even where the threshold is fixed at 18 years of age, as in the state of Sarawak, this is conditional and marriage below this age is a valid subject to consent by the native court, with no absolute minimum threshold age being set.

The majority of applications for child marriages put before the Syariah Courts are approved; on average, out of 10 child marriage applications, the Syariah Court will approve eight.²³ In a 2016 paper written on child marriages by Malaysia's current Child Commissioner,²⁴ an analysis of case files from the syariah courts of seven states from 2012 to 2016 revealed that only 10 out of 2,143 applications for child marriage were rejected, emphasising that child marriage is easily accepted in the (syariah) judicial system.

Campaigning to end child marriages in Malaysia by local and international organisations such as UNICEF is ongoing, but it is recognised that the trigger factors must be adequately addressed.²⁵ According to Girls not Brides, the drivers around child marriage are not those typically seen in other contexts (such as poverty), but rather the culture of shame around sex and sexuality, as well as beliefs found in Islam which allow for child marriage.²⁶

Recent media reports of cases of girls as young as 11 years old being married have brought public attention to the issue, prompting government action. In 2018, the Malay Mail reported that the Kulim Shariah Lower Court had approved the marriage of a 13-year-old girl in 2012.²⁷ The marriage, which lasted less than a year, had been allowed by the girl's father as her 19-year-old future husband and his friends had raped her four months before the wedding, and the man's parents wanted to avoid criminal punishment for their son's crime. In July 2018,

journalists highlighted the case of a 41-year-old Muslim man who married an 11-year-old Muslim girl in Kelantan.²⁸ In September of the same year, a second case involving a 15-year-old girl marrying a 44-year-old man was reported.²⁹ Girls who are married as children are not protected in Malaysian law from rape by their husbands as marital rape is not criminalised.³⁰ This results in the perpetrators of rape evading prosecution by marrying children who they have raped despite the age of consent.

In a written parliamentary reply on 3 December 2020,³¹ the Women, Family and Community Development Ministry said that the Syariah Judiciary Department Malaysia's (the **JKSM**) records for Muslim couples showed that there were 520 applications for child marriages recorded from early January to September 2020. Furthermore, the Ministry noted the scarcity of reliable and up-to-date data on child marriage. It is evident that there is a lack of systematic/disaggregated data on why child marriages occur, and a lack of documentation on the reasons for approving child marriage in both the Syariah Court and civil systems.

The Malaysian Government launched a five year plan, the National Strategic Plan On Handling Causes Of Child Marriage (the **National Strategic Plan**) on 16 January 2020 and identified (without providing hard data) the six main triggers for child marriages in Malaysia as: low household income and poverty; stigma and social norms on child marriage chosen as the best solution by communities to address problems; the lack of access to sexual reproductive health education and parenting skills; lax laws that provide for marriage under the age of 18; a lack of access to education and poor school attendance; and the lack of coordination of marital data and underage divorce.³² Regrettably, with the change in government in 2020, the implementation of the National Strategic Plan seems to have come to a halt. The former Deputy Minister who launched the National Strategic Plan was reportedly investigated by the Malaysian police in June 2020 for a tweet questioning the future of the National Strategic Plan.³³

Criminalisation/Legislation

Classification of Sexual Offences against Children

Sexual Offences against Children in Malaysia are criminalised in four main pieces of legislation:

- the Penal Code;³⁴
- the Child Act 2001;³⁵
- the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (**ATIPSOM**);³⁶ and
- the Sexual Offences Against Children Act 2017(**SOACA**).³⁷

The Malaysian Penal Code, which is modelled on the Indian Penal Code, enacted offences against male and female persons, which would by implication include offences against children. The Child Act 2001 was enacted with a view to Malaysia complying with its obligations under the UN Convention on the Rights of the Child. It introduced offences relating to trafficking/prostitution and selling a child as well as the offence of ‘sexual abuse’ of a child. This position was then improved with the enactment of the ATIPSOM and the SOACA.

There is a comprehensive range of child sexual assault offences criminalised in these four pieces of legislation, including sexual communication with a child, grooming, physical sexual assault and non-physical sexual assault.³⁸ Section 16 of the SOACA applies a higher penalty when an offence against a child is committed while in a relationship of trust.³⁹

Lanzarote Convention

Cumulatively taken, the four key pieces of legislation stated above encompass a broad range of sexual offences against the child and have in a large measure brought Malaysia in line with Articles 18 to 24 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**).

Certain CSEA laws in Malaysia provide for corporate liability for CSEA offences in line with Article 26 of the Lanzarote Convention, which provides for the liability

of corporate entities for criminal acts contained in the Convention. Section 23 of the SOACA provides for a limited corporate liability for offences in the SOACA and offences covered by the SOACA, as follows:

“If any offence under this Act, or any offence specified in the Schedule where the victim is a child has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he had exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.”

The private travel and tourism sector is bound by the general provisions relating to the sexual exploitation of a child, namely in the offences listed in the Child Act 2001, ATIPSOM Act 2007, and the Penal Code.

Age of Consent & Definition of a Child

The age of consent for sexual intercourse in Malaysia is 16 for female children, pursuant to section 375 (f) of the Penal Code (which age falls short of the recommendations of the Lanzarote Convention). Section 375(f) defines as rape the act where a man has sexual intercourse with a woman with or without her consent, when she is under 16 years of age.⁴⁰ There are no defences for this offence which within the Malaysian context and for the purposes of this paper, is referred to as “statutory rape”.

The definition of a **child** differs in the various legislations and offences in Malaysia.

Instead of one age defining the meaning of ‘child’ to all its provisions, the Penal Code, being the defining legislation before 2001, sets different ages as thresholds for different offences. As an example, Section 377 of the Penal Code, which criminalises the offence of inciting a child to an act of gross indecency, only applies to **a child under the age of 14**, whereas statutory rape only applies to a girl under the age of 16.

The ATIPSOM and the Child Act defines a **child** as a person under the age of 18.

The definition of a **child** in the SOACA is as follows:

- in respect of the offences contained in the SOACA, a **child** is defined:
 - as a person under the age of 18; or
 - a person who the accused believes to be under the age of 18;
- in respect of other sexual offences not covered by the SOACA (which includes the Penal Code, Child Act and ATIPSOM offences), the protections afforded to child survivors under the SOACA and the applicability of the SOACA is extended only to those persons defined as a **child** in such specified law(s).

Trafficking

The Child Act has specific provisions in sections 43, 48 and 49 that criminalise the commercial sexual exploitation, selling, trafficking, abduction, importing and other related offences relating to the exploitation of children (regardless of gender). ATIPSOM includes a specific provision criminalising the trafficking of a child for the purpose of exploitation. Malaysian law enforcement agencies typically use other related prevailing laws to complement the above, including the Immigration Act 1959/63,⁴¹ the Malaysian Maritime Enforcement Agency Act 2004,⁴² the Customs Act 1967,⁴³ the Evidence Act 1950,⁴⁴ the Court of Justice Act 1964,⁴⁵ the Penal Code,⁴⁶ the Restricted Residence Act 1933,⁴⁷ and Emergency Ordinance 5/69.⁴⁸

In line with Part II of the ATIPSOM, Malaysia has a Council For Anti-Trafficking In Persons (MAPO). A special trafficking court (presided by a Sessions Court judge) was set up in Klang in March 2018 with an announcement by the then eighth Chief Justice (CJ) of Malaysia Tun Md Raus Sharif that plans were underway to set up further special courts in Ipoh, Melaka, Muar, Kota Kinabalu and Balik Pulau (and other locations).⁴⁹

The Third National Action Plan on Anti-Trafficking in Persons (2021–2025)⁵⁰ (**NAPTIP 3.0**) was launched on 31 March 2021 after consultations with CSOs and government agencies.

Despite these measures provisions, it is felt that there are inadequate provisions in place to protect children, especially refugee children with regards to slavery and child marriage.

In its 2018 Concluding Observations to Malaysia, the CEDAW Committee stated that “it remains deeply concerned that the State party remains a destination country for trafficking of women and girls, including asylum-seeking and refugee women and girls, for the purposes of sexual exploitation, begging, forced labour, or forced marriage (UN Committee on the Elimination of Discrimination Against Women (2018) Paragraph 25).”⁵¹

CSOs supporting refugee communities in Malaysia continue to report that child marriages in refugee communities are prevalent and that girls are being trafficked into Malaysia for the purpose of marriage.

The UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material in her Report on her visit to Malaysia, reported that as of end August 2018, UNHCR had identified 203 cases of child marriage of Rohingya girls as young as 10.⁵²

The Rohingya Women Development Network (the **RWDN**) and Fortify Rights conducted 11 interviews in Malaysia and Bangladesh between 2018 and 2019 with Rohingya child brides, former child brides, family members of child brides, and men arranging to marry or married to child brides, where they reported that during these interviews, Rohingya girls described situations of domestic servitude, beatings, and hopelessness in Malaysia.⁵³ Rohingya families also cite economic hardship and insecurity as drivers of child marriage. The report by Fortify Malaysia goes on to state:

“Rohingya girls have been trafficked into “marriages” in Malaysia for years. From 2013 to 2015, Fortify Rights documented how transnational criminal syndicates operating out of Myanmar, Bangladesh, Thailand, and Malaysia trafficked Rohingya girls into forced marriages in Penang, Butterworth, and Kuala Lumpur. From 2013 to 2015, Fortify Rights interviewed Rohingya men who purchased women; Rohingya women and girls who were sold by traffickers; and eyewitnesses to the trafficking of Rohingya girls. Fortify Rights also recorded phone calls during which traffickers and buyers negotiated

the sale of Rohingya women and girls to men in Malaysia. When possible and with consent, Fortify Rights referred cases to relevant organizations.”

It calls on the Malaysian government to investigate the connection between human trafficking of Rohingya and child marriages.

In July 2021, the US State Department announced that Malaysia’s ranking in its Trafficking in Persons Report (2021) (the **2021 TIP Report**) has been downgraded to Tier 3 (from Tier 2) as it “*does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so, even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity.*”⁵⁴

The available data on trafficking is scarce and is generalised, with no breakdown as to how many cases involve children or how many of those cases involve children who were sexually exploited or abused. The 2021 TIP Report, though helpful, primarily focused on forced labour in the glove manufacturing and plantations sectors.

The 2021 TIP Report states that from April 2020 to March 2021, law enforcement authorities conducted 118 total human trafficking investigations and, of these cases, referred 52 suspected sex trafficking cases and 57 suspected labour trafficking cases to the Attorney General for prosecution. The Attorney General’s Chamber initiated the prosecution of 79 alleged traffickers. The courts convicted 25 human traffickers and migrant smugglers, but it did not breakdown this data, nor did it provide case details; perpetrators were charged and convicted under a range of laws, including the ATIPSOM Act, Immigration Act, and the Penal Code. This data, not being disaggregated, is inclusive of cases involving child victims’ Civil Society Organisations (**CSOs**) and Non-Governmental Organisations (**NGOs**) providing survivor support and shelter, confirm that they deal with many children who have been subjected to human trafficking and smuggling, especially in the sex industry, but at present this evidence is anecdotal and unsupported by government data. Official figures obtained by the Thomson Reuters Foundation from the court’s registrar office showed that only 26 cases were cleared in the special trafficking court’s first 15 months—with eight resulting in a conviction. Again, there is no disaggregation of this data.⁵⁵

Extraterritoriality

Extraterritorial application regarding CSEA offences is provided in Malaysian law via various pieces of legislation.⁵⁶

Extradition

The Extradition Act 1992 provides that extradition is possible where a binding arrangement has been entered into between Malaysia and any country for the extradition of fugitive criminals, and the offence is an extradition offence as defined by Section 6 of the Extradition Act.⁵⁷ To this end, Malaysia has executed various treaties with countries around the world to enable extradition between governments. Where there is no such binding agreement, and a request for extradition is made by a requesting country, the Minister may personally, if he or she deems it fit to do so, give a special direction in writing that the provisions of the Extradition Act 1992 will apply to that country for the extradition of that particular fugitive criminal.

Statute of Limitation

There is no limitation period for the prosecution of offences in Malaysia.

Outdated Terminology

The Penal Code, which contains the majority of sexual offences, was codified along the same lines as the Indian Penal Code.

Terms such as “incest”, “prostitution”, “carnal intercourse against the order of nature”, “outrages on decency” and “inciting a child to an act of gross indecency” are referenced in the Penal Code. The use of the term “incest” in section 376A of the Penal Code is particularly of concern, as cases involving parental or familial sexual abuse are still prosecuted under this section, which was drafted not to deal with child sexual abuse but consensual incestuous relationships between adults.

The term “child pornography” is widely used in the SOACA. This is particularly problematic in Malaysia where there is a lack of awareness of the impact of CSEA on children, and a prevalent mindset that pornography is essentially a victimless crime.

Other

Sentencing

Generally, the penalty for any CSEA offence in Malaysia is imprisonment coupled with whipping with a cane. However, different sections of the law can carry different lengths of custodial sentences, and in some instances provide the court with the discretion to impose a fine instead of a custodial sentence. The number of whipping strokes differs depending on the offence. The SOACA also provides that when a person is convicted of any offence under it, or of any offence specified in the Schedule where the survivor is a child, the court must direct that they be subject to the supervision of the police for between one year and three years commencing immediately after the expiration of the sentence passed on them.

Reported cases show that there is a disparity in terms of sentencing, with each court/judge/magistrate applying different standards.

In a recent case, the decision of the Sessions Court that a school teacher charged with two charges of gross indecency under the Penal Code be sentenced to eight years imprisonment and one stroke of the cane for each charge, was reduced by the Court of Appeal to a fine of 10,000 MYR per charge.⁵⁸

In another case, the lower court sentenced a man to four years’ imprisonment and one stroke of the cane for ‘caressing an eight year old girl’s private parts’ in the classroom of a primary school between mid- and the end of August 2019, and another seven years’ imprisonment and one stroke of the cane for touching a teenage girl’s thigh and trying to fondle her breasts inside a moving car on 30 October 2019.⁵⁹ On appeal to the High Court, the first sentence was increased to seven years’ imprisonment to run consequently after the second sentence. The sentence on whipping was maintained.

In early 2021, a court in Malaysia sentenced a man to 1,050 years in jail with 24 strokes of the cane for raping his stepdaughter.⁶⁰ The man had pleaded guilty to raping the 12-year-old girl 105 times over two years from 5 January 2018 to 24 February 2020, and the court had sentenced him to 10 years’ imprisonment per charge.

Treatment of Survivors of Different Genders

CSEA offences criminalised in the SOACA are gender-neutral, including sexual communication with a child, grooming, physical sexual assault of a child, non-physical sexual assault of a child and abuse or breach of trust to sexually exploit a child.⁶¹ However, in the Penal Code the crime of ‘rape’ as criminalised in Section 375 relates only to a man who assaults a woman, and Section 375(g) defines ‘statutory rape’ as sexual intercourse with a girl who is under 16 years of age.⁶² Other sexual offences such as ‘sexual connection’ (Section 377A) and ‘gross indecency’ (Section 377D) are gender-neutral.⁶³ This restriction on the definition of “rape” in section 376 of the Penal Code to women only reinforces gender-stereotypical views about sexuality and who can be sexually abused, and leaves boys and men who are survivors of rape with no recourse, except to rely on the provisions of the SOACA, which fall short of rape.

Statutory Rape

There are no defences in Malaysian law for statutory rape; nor does the law provide protection where there is consensual sexual intercourse between two children or where the age gap between the victim and the offender is less than four years. This has resulted in the criminalisation of children and young persons for consensual sexual intercourse.

Statutory rape is an offence under section 376(f) of the Penal Code,⁶⁴ and considered a serious offence, which carries with it a mandatory imprisonment sentence of at least 10 years⁶⁵ and up to 30 years, and is also liable to whipping.

Before the enactment of the SOACA, children and young offenders charged with statutory rape could be sentenced to lighter punishments, including being bound over on good behaviour pursuant to the provisions of sections 173A, 293 and 294 of the Criminal Procedure Code.⁶⁶

A case of particular notoriety is that of a 19-year-old Malaysian national bowler who, having pleaded guilty to a charge of raping a 13-year-old minor (evidence was given to show that the intercourse was consensual) was sentenced to a binding over of good behaviour for five years and a fine of MYR 25,000 under section 294 of the Criminal Procedure Code (the **CPC**).⁶⁷ In not imprisoning the appellant under

section 376 of the Penal Code, it was the view of the learned Sessions Court judge (the **SCJ**) that public interest would best be served by not imposing a custodial sentence. This decision caused a public outcry as it was felt that there was discriminatory sentencing at play purely because the accused was a national athlete, with other children and young offenders similarly charged with statutory rape not being accorded such considerations.⁶⁸

It should be noted however that the protection accorded by the above sections were removed in respect of young persons by virtue of section 24 of the SOACA, which provides that sections 173a, 293 and 294 of the Criminal Procedure Code do not apply to any offence under the SOACA, or any offence specified in the Schedule where the survivor is a child, if the person convicted of such offence is of or over 18 years.

Gaps in Criminalisation

There are several gaps in the criminalisation of CSEA in Malaysia. These include:

- The limited definition of rape in section 376 of the Penal Code, which discriminates against gender and fails to recognise marital rape.⁶⁹ The law as it presently stands, does not:
 - provide an age of consent for male children;
 - provide an acceptable age difference for sexual relations between a child and an adult;
 - contain any provisions or defences where there are sexual relations between two children;
 - recognise that a man or a boy can be the victim of rape or statutory rape; or
 - recognise marital rape.
- There are no provisions in place to criminalise persons (especially Malaysians) who cross Malaysian borders into a foreign jurisdiction (such as Thailand) for the sole purpose of marrying a child (whether Malaysian or otherwise) and thus avoiding the process of obtaining consent from the relevant local authority such as the Syariah Court or the Chief Minister of a State. The ATIPSOM provisions are not utilised in such cases.

— The law does not criminalise persons who conduct child marriages without obtaining consent from the relevant local authority such as the Syariah Court or the Chief Minister of a State, or the parents or guardians who have enabled the said child marriage without obtaining the relevant consent.

— The classification of CSEA offences in the Penal Code according to various ages of children instead of 18.

— Internet service providers in Malaysia are not required to block, delete or report offensive content involving CSEA.

Prosecution

Initiating Prosecution

Pursuant to section 13 of the Criminal Procedure Code, any person aware of the commission of or the intention of any other person to commit any offence punishable under various provisions of the Penal Code, including the provisions on CSEA, must inform the police, thus triggering an investigation and prosecution.⁷⁰ There are mandatory reporting provisions in the SOACA,⁷¹ the Child Act 2001,⁷² and ATIPSOM,⁷³ which makes it an offence if a person fails to give information of an offence under the said laws. However, teachers, parents, caregivers, CSOs, medical authorities and communities lack awareness of CSEA (including online CSEA) and their roles under the mandatory reporting of SOACA, Child Act 2001 and ATIPSOM.

Recent widely publicised CSEA cases, including the RH case highlighted above, have showcased a reluctance by law enforcement officers and prosecutors to prosecute offenders unless and until a police report has been lodged and a survivor named. In the RH case, local police officers are reported to have declined to take further action and informed international law enforcement officers that they did not have enough evidence to investigate even though CSEA materials uploaded by RH had been shown to them.⁷⁴ Anecdotal evidence suggests that no further action was taken by the Malaysian police as no child survivor came forward at the time to lodge a report. With the enactment of the SOACA, and the attention brought about by the RH case, the Malaysian police's cooperation on security and policing with their international partners has been strengthened and

enhanced. In a recent joint operation between the Malaysian police, the Australian Federal Police and United States Homeland Security Investigators, one of the top-10 offenders in the world in the exploitation of children on the internet was identified and apprehended in Lundu, Sarawak.⁷⁵ In October 2020, the V2K case erupted in Malaysia, where it was found that sexual and sexualised images of women and children were being shared without consent via online telegram chats using the Telegram application, with the handle V2K. Four women whose photos and videos were shared without their consent and who were subjected to sexual taunts on local Telegram group chats each lodged a police report for sexual harassment and cybercrime.⁷⁶ Screenshots of the images were shared with Malaysian police, some of which depicted children in sexual and sexualised poses falling foul of the “child pornography” provisions of the SOACA. Despite the police reports and widespread media attention, to date no prosecutions (or convictions) have been reported. Apart from the four who lodged reports, other sexually explicit photos and videos of women and children were also allegedly spread through these group chats.

The law as it stands clearly allows prosecution and police officers to commence investigations and prosecute regardless of whether a survivor has lodged a police report. Section 13 of the Criminal Procedure Code provides that every person aware of the commission of or the intention by any other person to commit any offence punishable under various provisions of the Penal Code, including the provisions on CSEA, give that information to the police, thus triggering an investigation and prosecution. There is nothing in this provision that precludes the police from “giving information” which could trigger a prosecution. It is noted too that the mandatory reporting provisions under the various CSEA laws makes a failure to give information an offence. Despite these provisions, the failure to initiate prosecutions without an identified child survivor remains prevalent, and can be attributed to a lack of awareness or training on the provisions of the law, especially regarding the new provisions under the SOACA.

Investigation & Evidence

Malaysia does not have any provisions in place which enable a child to be interviewed from the comfort of home or in a safe space. A visit to the

police station is unavoidable except in situations where the child is hospitalised. Investigations are usually triggered by a police report being lodged directly, pursuant to an examination at the hospital or pursuant to a call to a helpline.⁷⁷ It has been noted that an investigation is frequently conducted in the Investigating Officer's (the **IO**) room, which the IO shares with other IOs. Police officers on the ground lack the training on how to investigate and record statements from a child survivor, and special rooms to conduct the initial interview with the child which will reduce re-traumatisation.

The Sexual, Women and Children's Investigations Division of the Malaysian Police, known as D11, was created in 2007 with the aim of providing support and assistance for survivors and witnesses involved in criminal cases involving sexual and domestic abuse. These divisions were created throughout the major police stations in the country. The centrally located D11 unit in Bukit Aman, Kuala Lumpur reportedly handles some 11,000 cases annually.⁷⁸ The Division also conducts interviews with minors at the Child Interview Centre (the **CIC**), while providing psychological support for survivors placed at their Victim Care Centre (**VCC**). However, these facilities are:

- only usually accessible after an initial visit to the police station to lodge a report;
- still located in the complex of a police station; and
- still not widely available in smaller towns or remote areas in Malaysia, with officers in these smaller towns not having the capacity to provide adequately the full range of services the D11 division is meant to deliver.

The Child Interview Centre (the **CIC**) was introduced in Malaysia in 2002 with the goal of reducing the trauma suffered by a child telling his or her story. Since then, 15 CICs have been established, with a ratio of one CIC for each state in Malaysia. It is noted that small districts, especially those in remote areas, still lack access to the CICs or face problems referring a child survivor to the CIC. It is also noted that a CIC is not the location of the primary report, and that despite the Special Guidelines, children frequently have to repeat their stories several times, which sometimes results in prosecutions failing to establish their case, when confronted with multiple conflicting versions of the child's story.

The evidence of a child via a video CIC recording is deemed as direct oral evidence, although the child can be called for further examination if evidence on any matter has not been dealt with adequately. If the child was sworn when the CIC recording took place, then the evidence of the child in such recording will be admitted as sworn evidence (for a child of tender years, the court will assess and form an opinion as to whether the child possesses sufficient intelligence and understands the duty of speaking the truth, though not given on oath).

Whilst attention has been given to the infrastructure of the CICs that have been set up to enhance their quality regarding the facilities and environment, the training and skills knowledge of the officers manning the CICs have not been prioritised, leading to:

- a lack of officers trained in child communication, child interviewing skills, and child development and sensitivity;
- a lack of trained officers who are available to take the primary evidence of a child, with trained officers sometimes being transferred or promoted to other divisions in the police force;
- language difficulties: there is a shortage of trained, accredited interpreters translating languages other than the national language; more so in the various dialects of Malaysia and sign language in the case of hearing-impaired children;
- a lack of officers trained in extracting evidence from the child without breaching the laws on evidence. The manner of questioning by recording officers have in several cases led to challenges by the defence, especially where officers used leading questions to obtain answers, resulting in the reliability of the statement given by the child witness in the CIC recording being discredited;
- a lack of focus and coordination between the different stakeholders, i.e. the police and the prosecution, to ensure that all CICs produce quality recordings that can be admitted during the trial;
- for CSEA cases, the CIC protocol is that the recording officers should be experienced IOs certified as interviewing officers. Despite this, data revealed that from 2003 to 2016, out of a total number of 2,711 CIC recordings conducted throughout Malaysia, only

108 recordings were used in court.⁷⁹ Given the fact that the purpose of CIC recordings is to procure the freshest possible evidence, this data strongly suggests that the current system lacks efficacy and can be improved.

Presumption Survivor is a Child

Section 11 of the Evidence of the Child Witness Act 2007 provides that if the Court is in doubt as to the exact age of a child witness, then a certificate by a medical officer to the effect that in his or her opinion, the child witness has or has not attained a specified age may be given in evidence, and the Court will declare the age of the child witness accordingly.⁸⁰ The age of the child declared by the Court will be deemed the true age of the child unless the contrary is proved.

Other than this provision, Malaysia's CSEA laws do not have express provisions in place where the age of a survivor who appears to be a child is unknown.

This remains a problem, as statelessness is an issue in Malaysia and there are children born and raised in Malaysia who do not have a birth certificate or other valid identification documents to verify their age. In practice, the courts have allowed child survivors to produce, where possible, other external evidence to establish age, but this is not always possible, especially in the case of foundlings, children in care and children from vulnerable communities.

The extension of the definition of a **child** in the SOACA to include a person who the accused believes to be under the age of 18, improved this position to a certain extent, especially where digital evidence of communications between the survivor and the accused is available—but again is rebuttable by an accused where documentary evidence cannot be produced or traced to substantiate such belief.

Procedure for the Child to Give Evidence

In Malaysia, the Evidence of the Child Witness Act 2007:⁸¹

- includes many measures with the objective of reducing the stress and trauma experienced by child witnesses in court appearances, including the use of a screen in court to shield the child witness from the accused person, the use of live links and the

admission of video recordings such as CIC recordings;

- allows the examination of a child witness to be carried out by the court or an interpreter or an intermediary authorised by the court;
- prevents an unrepresented accused person from questioning a child witness directly;
- allows the child witness to be accompanied by an adult while giving evidence;
- allows the dispensation of formal court attire; and
- allows a child suffering from any disability to give evidence via a screen, live link, video recording or a combination of these methods, wherein such evidence so given is deemed to be oral evidence.

However, it is to be noted that the Evidence of the Child Witness Act protections are only available to children under 16,⁸² and does not extend to children accused of an offence.

Section 17 of the SOACA provides that a child is presumed to be competent to give evidence unless the court believes otherwise.

With the setting up of special courts for CSEA cases, the child can give his or her testimony from a different room in the court complex, which will be broadcasted to the courtroom via video link. However, as stated earlier, at present there are only two such special courts, with limited capacity to handle the many CSEA cases.

Prosecutors and CSOs supporting child survivors frequently report that children often lack the terminology on basic body parts such as “penis, vagina, clitoris”, having been taught such terms as “flower, stick, etc.,” which thus leads them to faltering or giving confusing testimony when giving evidence in court.

In the case of children with disabilities, CSOs specialising in assisting hearing-impaired communities have reported that survivors of CSEA cases face difficulties in testifying, due to:

- some hearing-impaired children not being taught Malaysian Sign Language (Bahasa Isyarat Malaysia

or **BIM**), where families have developed their own language to communicate with the child; and

- even where children know and can converse in BIM, they do not have the terminology for technical CSEA terminology or body parts like “penis” or “vagina”.

Corroboration

Section 18 of the SOACA introduced a provision enabling the court to convict a person on the basis of the uncorroborated evidence of a child, given on oath or otherwise. This has been applied in cases including in PP v. Muhammad Shan Abdullah,⁸³ and Razali Silah v PP.⁸⁴

DNA

Malaysia does not currently have any mandatory provisions in place requiring Deoxyribonucleic acid (**DNA**) tests to be carried out to cross reference foreign DNA on the child's person with that of a suspected offender's DNA sample. There is similarly no sexual offender registry containing offenders' DNA profiles in a database.

Unwillingness to Proceed with 'Formal' Trials

The Malaysian system does not provide CSEA survivors with much support. Legal companions were introduced in 2017 to aid the families of CSEA survivors (only applicable to child survivors of CSEA who have Malaysian citizenship) during the trial process. There is not much awareness of these legal companions however or the assistance or role that they can provide a child survivor with, which has led to this service being underutilised.

The lack of adequate support for survivors includes:

- the child often being notified of the trial dates or postponements late;
- no support or financial aid being provided to the child survivor or the family of the child to defray the costs of traveling to court for trial dates;
- the prosecuting officer meeting the child survivor for the very first time the morning (or in best cases the day before) they are called to testify. The law as it presently stands does not adequately protect the

child in this aspect: defence lawyers may and do accuse the prosecution of coaching a child witness if it is established that the prosecutor met the child before the trial proceedings commenced;

- the child survivor not being kept informed of the status of the case or occasionally even whether the accused has been released on bail;
- there is no or an inadequate explanation of the court process to the child survivor or accompanying adult in a manner in which the child or the accompanying adult may understand;
- the child survivor not being given protection against harassment by the offender or the offender's family; and
- where the child survivor lives with the offender, the child being displaced and put into care.

All of these factors severally or jointly lead to survivors choosing to opt out of proceeding with the trial. Anecdotal evidence suggests where the offender is the family breadwinner, the child survivor would be coerced by family members to withdraw the complaint or drop out of the trial process. Families also accept out-of-court settlements from the offender, and on occasion have married off the child survivor to the offender,⁸⁵ in some instances in exchange for monetary gains or because the child survivor is pregnant. Frequently, the child is not brought to court by the child's family and there is no formal court process or witness protection system in place to assist the child in these situations.

Prosecutors faced with child witnesses who drop out of the trial process, mostly fail to continue with the trial even where CIC recordings are available as primary evidence. There are also no provisions in place to ensure that child survivors who have dropped out of the trial process are traced and accounted for, or counselled or placed under welfare supervision, or that the circumstances which led to the complaint of CSEA being lodged have been corrected and the offender no longer has access or proximity to the child survivor.

Gaps in Prosecution

There are several gaps underpinning low levels of prosecution for CSEA offences in Malaysia which must be addressed. These include:

- The failure to initiate prosecution where the child survivor has not been identified.
- There are no provisions in place for persons to make anonymous reports. For example, in the V2K case the women who came forward to lodge reports to the police were only allowed to make reports in relation to photos and videos of themselves. Members of the public who were concerned with sexualised images of children were also not allowed to lodge police reports where the child was not identified.
- The police and prosecution still allow families to withdraw complaints or categorise cases as “No Further Action” taken despite an initial report of CSEA being lodged.
- NGOs and CSOs report that there are incidences of selective investigations/prosecutions by the police.
- The lack of training or awareness on the SOACA provided to judges, judicial officers, prosecutors handling CSEA cases and law enforcement agencies results on occasion in perpetrators being charged under the provisions of the Penal Code instead of the SOACA, which covers a wider range of offences, defines children as under the age of 18, and has more stringent punishments. A case in point is the one highlighted for sentencing above. In that case, the teacher was charged with two charges of gross indecency under the Penal Code instead of the wider provisions of the SOACA, which led to a fine of MYR 10,000 per charge.⁸⁶ Furthermore, a 43-year-old lorry driver who was arrested in July 2020 for sexually exploiting his 13-year-old daughter and wife, was charged and convicted under the ATIPSOM provisions alone, and not prosecuted for any offences under the SOACA.⁸⁷ In the child marriage case highlighted in the section above of the 41-year-old Muslim man who married an 11-year-old Muslim girl in Kelantan,⁸⁸ the man was not charged with or prosecuted for child grooming under the SOACA, although he had in media reports reportedly stated that he had “been in love with the girl since she was seven”.

— Anecdotal evidence suggests that there is limited knowledge and awareness of the Special Guidelines for CSEA cases throughout Malaysia. Children are still being re-victimised because of this. For example, multiple recounting of survivors' stories take place at hospital and police levels despite the special Guidelines provisions and protocols to protect against this. Many stakeholders are ignorant of the fact that the Special Guidelines apply, or regard the Special Guidelines as merely theoretical.

— There is a lack of specialisation for judges, judicial officers and prosecutors handling CSEA cases. This lack of specialisation translates to these officers being expected to handle a variety of other criminal cases in addition to their CSEA cases. This results in these key officers being under-equipped to handle the cases, regarding the law, the evidential burden, the treatment and protection accorded to witnesses, the Special Guidelines, sentencing protocols and the provisions of the SOACA. There is also the problem that even where officers have been trained in CSEA cases and the SOACA, they stand to be transferred or promoted to other divisions, thus losing their specialised skills. This lack of specialisation results in miscarriages of justice in CSEA cases.

— There is a lack of understanding and knowledge of protocols and laws relating to CSEA. A prime example is the instance of CSEA charges being dismissed due to a conflict of dates in the charge sheet or the prosecution papers. The Malaysian position on dates in a charge for rape was reiterated in the case of *Mohd Hanif Kassim v. Public Prosecutor & Anor Appeal* [2015] MLRHU 1306; [2015] 3 CLJ 984, where Choo Kah Sing JC held that in cases where the time, date or place does not constitute an essential ingredient of the offence, mere non-compliance with section 153 of the CPC on the time, date or place will not vitiate the validity of the charge. As long as the general particulars of the time, date or place are stated in the charge and the exercise of an accused's fundamental right to defend his case is not prejudiced or derogated, the charge remains a valid charge. His Lordship Choo Kah Sing JC cited the Federal Court case of *Law Kiat Liang v. PP* [1965] 1 MLRA 297; [1966] 1 MLJ 215 which in turn referred to and adopted the following statement by Atkin J in the case of *R v. Severo Dossi* [1918] 13 Cr App R 158: “From time immemorial, a date specified in an indictment has never been a material matter unless it is actually an essential part of the

offence.” This was reaffirmed in the case of *Razali Silah v PP*.⁸⁹ A lack of understanding of the above by the police, prosecutors and the judiciary has led police and prosecutors including dates in respect of CSEA cases (even in cases of long-term CSEA by a person in a relationship of trust), which then leads to judges applying the general law relating to prima facie cases and finding that a prima facie case has not been made merely because there is a discrepancy in the dates stated in the charge sheet, the medical report and the CIC statement. This was considered in *PP v. MUHAMMAD SHAN ABDULLAH*, where the High Court on appeal quashed the decision of the Sessions Court which had acquitted the accused.⁹⁰

— The lack of understanding on the purposes of the SOACA has also led to the prosecution of children engaged in consensual sexual activity. There are high incidences of children being prosecuted and found guilty of statutory rape, despite being in genuine relationships. No statutory defences are available to these children.⁹¹ Two teenage children reportedly engaged in consensual sexual activity were charged in Sibul, Sarawak under sections 14 (physical sexual assault) and 5 (child pornography) of the SOACA and were reported to have pleaded guilty to the charges.⁹²

— It is also to be noted that because of the disparity between the age of consent in the Penal Code (a girl aged 16) and the definition of a “child” under the SOACA (below 18), a female child who has consented to sexual intercourse (e.g. a girl aged 17), can be found to be a survivor of physical or non-physical sexual assault under the SOACA, even if the sexual conduct was consensual. There is a lack of education for children about statutory rape and the implications of the SOACA for teenagers engaged in sexual activity, as well as a lack of comprehensive sexual and sexuality education for school children.

— Although the Evidence of the Child Witness Act 2007 provides for intermediaries to assist child witnesses in trial proceedings, in practice there are no trained intermediaries in Malaysia, and often it is the court interpreter who steps in to act as “intermediary”. The court interpreter would not have been given any training in child development or communication skills, or child interview skills.

Protection

Protection of Survivors During Proceedings

There is no protection currently accorded to survivors during proceedings, except for the services of the Legal Companion, which is available on application to the families of Malaysian CSEA survivors who are children at the time the proceedings commence. NGOs have striven to fill this gap by providing survivors with support during the trial process, but this is on a case-by-case basis, where the NGO comes to know of a survivor who needs support.

Protection of Children in General

The One Stop Crisis Center (**OSCC**) service is an integrated and comprehensive multiagency service centre established in all Emergency and Trauma Departments (**ETD**) of the Ministry Of Health for the management of survivors of domestic violence, sexual assault, child abuse and neglect. Every OSCC contains a SCAN (Suspected Child Abuse and Neglect) team.⁹³ The survivors are seen at the OSCC centre where all agencies converge to manage them. Survivors are counselled on lodging police reports (though a police report is not necessary for the SCAN team to commence action. The SCAN team protocol is that:

- all alleged rape and sexual assault survivors will be referred, managed and followed up by the attending specialist from the Obstetrics and Gynaecology (O&G) Department;
- all alleged child abuse and neglect cases will be referred, managed and followed up by the Paediatric Department and, where available, to a Suspected Child Abuse and Neglect (SCAN) team;
- all sodomy survivors will be referred to the Surgical Department;
- survivors will be referred to a counsellor, psychologist or psychiatrist when necessary;
- in penetrative CSEA offences such as sodomy and rape, DNA evidence will be collected;

— all evidence collected by the SCAN team will be handed over to a police officer immediately and must not be kept in the hospital;

— the chain of evidence in specimen handling must be maintained and preserved at all times until specimens are handed over to a police officer;

— all survivors of rape (or their parents/legal guardians) will be counselled on the availability of emergency contraception if deemed to be at risk.

The OSCC and SCAN team doctors and medical personnel go a long way towards supporting the CSEA survivor at the point of hospitalisation. However, these facilities are still not widely available in smaller towns and remote areas in Malaysia. Due to a shortage of qualified personnel, a specialist is not always available to gather primary evidence, which sometimes results in compromised evidence that is discredited during the trial.

The D11 Division of the Malaysian Police provide support and assistance to survivors and witnesses involved in criminal cases involving sexual and domestic abuse.⁹⁴

Officers in the division are tasked with assisting those involved with lodging police reports, conducting counselling sessions, crisis situation interventions at home or at hospitals, and assuming the role of a Victim Care Officer (**VCO**).

The Malaysian Social Welfare Department (**JKM**) is tasked with preventive and rehabilitative services in social issues and the development of the community. It is responsible for the provision of care, protection, management and rehabilitation of children including survivors of CSEA cases to ensure their well-being. It is widely felt that there are an insufficient number of Child Protection Officers in the JKM to handle the child protection cases in the country. In a January 2021 report, the Minister of Women, Family and Community Development confirmed that at present, JKM has only 264 Child Protection Officers, which number was inadequate to deal with the number of cases reported to them.⁹⁵ The Minister further went on to state that the government has approved the recruitment of 224 Child Protection Officers and Moral Officers who will serve in the JKM, in an effort to address various problems involving children.

JKM officers are currently the only officers dealing with CSEA survivors, meaning the survivor has little to no support throughout. There is a lack of counselling measures extended to CSEA survivors.

It is felt that the above agencies and measures do not provide adequate or sufficient protection or counselling to all CSEA survivors in the country. There is a disparity of support depending on the survivor's location. Even in the best scenario, the protection and support extends only up to the point the investigation or hospitalisation is carried on. Once the survivor returns home, and at least up until the trial (where a Legal Companion is appointed), the survivor is unsupported. This lack of protection sometimes results in survivors of CSEA being displaced from their homes, environments and schools due to protection orders from the court and thus denied access to education. These survivors are occasionally placed in care, especially where the offender is related to the survivor. NGOs have also reported cases where the family of a CSEA survivor has been forced to move due to the influential position held by a particular offender.

Protection of Trafficked Children

Survivor support and rehabilitation for children who are trafficked is viewed as inadequate at present. The 2021 TIP Report for Malaysia states:

"...authorities continued to inappropriately penalize victims for immigration and prostitution violations. Insufficient interagency coordination and inadequate victim services, which discouraged foreign victims from remaining in Malaysia to participate in criminal proceedings, continued to hinder successful law enforcement efforts to prosecute traffickers."⁹⁶

This sentiment is echoed by CSOs working in Malaysia to support survivors of trafficking in the country. The enforcement of local laws, the quality of protection accorded and the rehabilitative processes have not been synergised with Malaysia's international human rights obligations pursuant to the ASEAN Declaration against Trafficking in Persons Particularly Women and Children,⁹⁷ the United Nations Declaration on Human Rights [UDHR] 1949,⁹⁸ the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] 1979,⁹⁹ and the Convention on the Rights of the Child [CRC] 1989.¹⁰⁰ CSOs report that the lack of trauma support care and the fact that survivors are

sometimes penalised with immigration offences, has led to under-reporting in some cases.

Although the issue of children and child trafficking or the exploitation of children and child brides being trafficked into the country is not specifically addressed in the national action plan, NAPTIP 3.0 acknowledges the issue with survivor support, and recognises that:

"there is a need to provide places of refuge and other necessary facilities conforming to the minimum international standards. Basic facilities and necessities must be made available for victims' comfort where the victims should be made to feel safe, secure and protected. Availability of victim friendly rehabilitation services based on best practices so to ensure the mental and emotional well being of the victims and to assist them in the recovery process. Thus the victim would also be in a better frame of mind and well prepared to assist in investigation and prosecution."

Counselling

No counselling is provided to survivors of CSEA, although the SOACA makes provision for counselling to be ordered to persons convicted of SOACA offences.

Protection of Children in Disaster Settings

Before the COVID-19 pandemic, the extent of disasters in Malaysia was limited to annual floods caused by the Monsoon rains. The pandemic and the ensuing lockdowns imposed by the Malaysian government resulted in children being forced to stay home and attend online lessons. This has naturally removed a layer of protection against CSEA as children are prevented from reporting CSEA to adults who play a protective role (e.g. teachers, therapists and social workers) and friends. The Women, Family and Community Development Ministry released data in June 2021,¹⁰¹ that in 2020 alone, a total of 4,349 cases of child abuse (both CSEA and otherwise) had been reported.

Other

Collection and Dissemination of Data on Child Protection

Sufficient and reliable data regarding the prevalence of all forms of sexual violence and exploitation against children in Malaysia and the number of complaints resulting in investigations, prosecutions and convictions on CSEA cases is not publicly available, which has resulted in child protection stakeholders being left largely in the dark. This can partially be attributed to the operation of the Official Secrets Act 1972,¹⁰² which gives wide discretionary power to authorities not to disclose classified information.

The court on sexual crimes against children set up in mid-2017 reportedly¹⁰³ cleared 367 cases in the first year, the court website showed,¹⁰⁴ without giving conviction numbers, or details as to how many offenders were charged with the 367 cases. Of the resulting convictions, no data is recorded as to how many of those convictions were as the result of guilty pleas and how many were findings of guilt made after a trial. In September 2017, a father of three, labelled “Monster Dad” by the local press, pleaded guilty to a total of 623 charges under the Penal Code, the SOACA, and the Child Act 2016.¹⁰⁵ It is unclear, however, how the data for this case was collated in the overall case statistics for the Special Court. The scarcity of such essential data renders it difficult to gauge the efficacy of the implementation of the measures introduced in 2017.

Prevention

Register of Offenders

A registry for perpetrators of child sexual crimes to screen people who could care for their children, was launched in April 2019. It was reported that the registry would contain the names of some 3,000 reported offenders from 2017 until 18 February 2017.¹⁰⁶ The registry is not available to the general public. The Women, Family and Community Development Ministry announced in March 2019 that applicants who want to verify if an individual has been convicted of a sexual offence against children will first need to fill in a form and state their relationship to the individual before they can check.

Child Online Safety

With the arrival of the pandemic and the lockdowns, Malaysian children spent most of 2020 and 2021 in online lessons rather than attending physical schools. In addition, parental supervision decreased as most parents could not cope with the hours children are expected to be online for daily lessons. The lockdowns also meant that children’s only interaction with other children was online. This increased online exposure coupled with less parental supervision has led to fears that online CSEA has increased. Children’s lack of access to adults who would otherwise play a protective role (e.g. teachers, therapists and social workers) or friends, has further prevented children from seeking help or reporting online CSEA.

Distribution of CSEA Content Online

In 2018, the Malaysian Police disclosed that data furnished by Dutch police based in Malaysia in 2015 revealed that:

- about 17,338 IP addresses involved in child pornography were from Malaysia;
- close to 20,000 IP addresses in Malaysia upload and download photographs and visuals of child pornography; and
- the country ranks top in South-East Asia in this regard.¹⁰⁷

In April 2019, the Malaysian Communications and Multimedia Commission (the **MCMC**) announced that it had blocked more than 400 websites containing CSEA content.¹⁰⁸ The 2019 CyberTipline Reports by Country, reported a total of 183,407 incidents of “apparent child pornography” had been logged for Malaysia.¹⁰⁹

Although the SOACA clarifies what constitutes “child pornography” and has broad definitions and application, there is a lack of awareness or enforcement of the provisions, and very few prosecutions or convictions of persons accessing CSEA materials.

Apart from the SOACA provisions, Malaysia launched a specialised investigative police task force (**MICAC**) to combat the growing threats of CSEA

online via technology and the internet, and formally connected to Interpol’s International Child Sexual Exploitation Database.

Awareness & Education

The Malaysian police, Malaysia’s Multimedia and Communications Commission and various NGOs have conducted training to raise awareness of CSEA online, but the public perception that “child pornography” is neither child abuse nor exploitation remains, and most parents remain unaware of the risks their children may be exposed to online and their roles under the mandatory reporting of SOACA and the Child Act 2001.

It is felt that frontline police officers and prosecutors lack awareness or training on the implications or gravity of CSEA materials. Investigations are rarely launched where a police report is not lodged.

Recommendations¹¹⁰

Legal

— Synergise Malaysia’s international human rights obligations pursuant to the Convention on the Rights of the Child [CRC] 1989, ASEAN Declaration against Trafficking in Persons Particularly Women and Children, the United Nations Declaration on Human Right [UDHR] 1949, the Convention of the Elimination of All Forms of Discrimination against Women [CEDAW] 1979, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Convention on the Rights of Persons with Disabilities, the Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography, the Declaration On The Elimination Of Violence Against Women And Elimination Of Violence Against Children In ASEAN (adopted 2013), the ASEAN Regional Plan of Action on Elimination of Violence against Children 2016–2025 (ASEAN RPA on EVAC) (adopted 2015), and the Declaration On The Protection Of Children Against All Forms Of Online Sexual Exploitation And Abuse In ASEAN (under its drafting as of 2019).

— Address gaps in criminalisation that mean boys cannot legally be ‘victims’ of rape, and that rape is only legally defined as being committed by men.

— Replace outdated terminology currently present in legislation with preferred terms, notably ‘child pornography’ with child sexual abuse materials and “child prostitution” with “exploitation of children in/for prostitution”.

— Enact a defence for children or young persons (where the age gap between the offender and the survivor is less than four years) engaged in consensual sexual activity, to prevent the further criminalisation of children.

— Streamline and standardise sentencing practices and protocols to ensure that convictions from courts of first instance are upheld.

— Establish multi-prong partnerships with government, airline corporates, travel & tourism companies, international agencies and civil society to develop effective prevention of trafficking policies and laws.

— Classify extraterritorial sexual exploitation of children as crimes against humanity.

— Impose strict sentencing for transnational sexual crimes against children carried out by organised criminal groups.

— Develop an effective and efficient intelligence network among ASEAN to legislate, detect and control sexual crimes against children.

— Establish jurisdiction powers when a crime is committed, including extradition agreements and other arrangements to ensure that a sexual offender is prosecuted in another country.

— Amend the Age of Majority Act, the Law Reform Act (Marriage & Divorce) Act 1976, the Child Act and Islamic Family Law Section 8 provisions in all states and Federal Territories Enactments to standardise the age of marriage for children in Malaysia. Enact a Prohibition of the Child Marriage Act, similar to the Indian Prohibition of the Child Marriage Act 2006, which not only bans child marriages but also penalises person(s) who conduct the marriage rituals or who solemnise the ceremony and the parent(s) who facilitate the child marriage.

— The provisions in the Sexual Offences Against Children Act 2017 relating to sexual offences against

children and the Penal Code offences listed in the schedule to the said Act must be strengthened with express provisions stating that (marriage at any time) cannot be a defence against any of the said offences.

— Raise awareness on the Special Guidelines and ensure that their provisions are strictly complied with in all CSEA cases.

— Institutionalise awareness raising and training on trafficking and smuggling, anti-trafficking laws, the Child Act 2001, the SOACA, interagency coordination and data sharing, child friendly interview techniques, confidential reporting mechanisms with anti-trafficking enforcement and border control authorities, judiciaries, prosecutors, police, and medical authorities, including SCAN and OSCC, child protectors, social workers, teachers, NGOs, religious authorities, families and children including refugees, asylum-seekers and migrants.

— Stop the arrest, detention and deportation of trafficked migrant and refugee children from violating immigration laws and avail temporary residence permits, interpretation services, redress, rehabilitation and compensation. Recommend repatriation following a best-interest determination for trafficked children, and in the case of refugees, government agencies to coordinate with UNHCR.

Prosecution

— Conduct training for judicial officers and judges on effective communication with children, sensitive handling of CSEA cases and survivors, case management for CSEA cases, on the use of CIC recordings, the SOACA and the impact of CSEA on children, as well as on sentencing protocols.

— Ensure that a sufficient number of police officers are trained on the procurement of effective CIC recording evidence around the country.

— Conduct continuous systematic training for police and prosecution officers on the use of CIC recordings, the SOACA and the impact of CSEA on children.

— Ensure that law enforcement officers and prosecutors trained in CSEA are retained in CSEA frameworks and provided with opportunities for career advancement and promotion.

— Set up and maintain adequate infrastructure and equipment including video link rooms, Special Courts for CSEA cases and Special Courts for ATIPSOM cases.

— Increase existing resources, i.e. more trained SCAN, OSCC, enforcement, D11 units, Child Protection Officers to bolster the national systems and services to effectively prevent and respond to child protection issues, including online crimes against children.

— Revoke the policy on No Further Action on CSEA police reports, meaning all reports on CSEA must be investigated even where the survivor or their family is reluctant to proceed.

— Establish a formal, timely and effective child-centred case management procedure, including accurate identification, response mechanisms, assessment for international protection to ensure child survivors are referred for protection and services.

Protection

— Introduce trained court intermediaries who will assist and support child witnesses before, during and after the trial proceedings, with an emphasis on such court intermediaries being first trained on child communication, child interviewing skills, child development and sensitivity, and provided with facilities where the court intermediary can meet, interview and assess the child witness before and during the trial proceedings, with the view to obtaining the best evidence from the child.

— Research and adopt adequate support measures to protect and support child survivors (whether Malaysian, stateless, refugee or other) of CSEA.

— Establish an inter-agency data collection mechanism with confidentiality safeguards with the police, JKM Hospitals, clinics, NGOs, and UN agencies.

— Conduct action-oriented research with strict consent and confidentiality safeguards in place on CSEA, including online CSEA offences against child refugees, asylum-seeker and stateless children, and share this information with all stakeholders.

— Coordinate systematic dialogues on national and international data sharing with consent and confidentiality safeguards, legal procedures and stronger cooperation with countries of origins, transit and destination to prevent trafficking, prosecute traffickers and protect child survivors.

— Institutionalise an independent and dedicated child hotline mechanism with a referral system and trained responders for child survivors of all forms of CSEA, violence and neglect, including online crimes. Avail adequate and trained responders on identifying and responding to child survivors.

— Raise awareness and capacitate police and JKM, including state child protectors and their assistants, medical, enforcement and judicial authorities, NGOs, teachers, parents, school staff on applying the best interests principle and determination, identification, child protection case management, communicating with children and determining cases with limited evidence.

— Strengthen governance for the protection of children by establishing a Child Commission and a high-level intersectoral committee including NGOs, which formulates policies, monitors the implementation of the policies by all relevant agencies at State and Federal levels, such as the Ministry of Health, the Ministry of Education, and the Ministry of Labour, collects and analyses data pertaining to the status of children, and takes steps for improvement and enhancement. It is further proposed that the Child Commission be headed by a Child Commissioner who reports directly to Parliament, with the powers to oversee, regulate and supervise all agencies dealing with children, to address not only the issue of child marriages but to ensure that all issues pertaining to children in Malaysia can be monitored, supervised, regulated and enforced by one Commission, which is answerable to Parliament.

— Require welfare assessments to be carried out periodically on any child who has reported CSEA (whether this report resulted in a successful conviction or not) to ensure that the child is safe and protected.

— Provide state-funded counselling for any child who has reported CSEA, whether this report resulted in a successful conviction or not, to ensure that the child is safe and protected.

— Institutionalise child safeguarding policies and child protection response procedures with all schools, learning centres, community based organisations, religious schools, and residential care centres, including those run by NGOs and the government. Establish confidential feedback and reporting mechanisms regulated by an independent and specialised team of experts managing child sexual abuse cases.

Prevention

— Establish specialised alternative care arrangements when required and rehabilitation programmes for sexually abused children, and those who manifest inappropriate and sexual risk behaviour.

— Provide comprehensive affordable access to sexual and reproductive health to all, irrespective of age and marital status.

Cultural/Education

— Create awareness with families and communities on online CSEA, effective communication with children, sexual and reproductive health including refugees, stateless persons and migrants. Engage and empower children, parents, caregivers, and communities through systematic participatory assessments, capacity building, awareness raising on all forms of violence against children.

— Educate all multi-stakeholders on the disadvantages and negative impact of child marriages on society and children.

— Provide comprehensive sex, sexuality and reproductive health education to school children at all levels.

— Educate religious leaders, clerics and muftis with the knowledge of why child and early marriages are harmful to their flock and empower them with the means to spread this message.

— Set up a system of counselling before marriage licences are given that systematically educates applicants on the harms of child and early marriages, and which are targeted at providing applicants with alternatives and solutions other than child or early marriages.

— Introduce technical and alternative education learning centres in rural communities as well as in urban poor communities, targeted at providing children with alternatives and options to child and early marriages.

— Adopt the recommendations made by the Center for Reproductive Rights' Briefing Paper on Child Marriage in South East Asia, International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change (from page 56 onwards) where they are not included above.



SPOTLIGHT

Protecting children and young people from ill-treatment: the key role of Social Workers

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Social workers are key professional partners in the prevention and response to child abuse of all forms around the world. Their role varies according to the legal frameworks and social policy histories of each country, but in many countries social workers have a responsibility, frequently working with police, to investigate allegations of abuse and to provide care and protection to children and young people.²⁹⁶

The global bodies representing social workers include the Commonwealth Organisation for Social Work (COSW), a formally accredited Commonwealth Organisation, working closely with the International Federation of Social Workers (IFSW) and the International Association of Schools of Social Work (IASSW).

It is also sadly necessary to acknowledge that some people working in social services have been found to have abused the children and young people in their care. In several Commonwealth countries and elsewhere, there is clear evidence from local and national enquiries and court cases, that some people in authority in political roles, public agencies, religious organisations and voluntary bodies have ignored or

colluded with such abuse.²⁸⁸ There are significant challenges from these reports to political and social cultures which have allowed such abuses to continue, reflecting a lack of respect for the humanity and integrity of those who are vulnerable and lacking power and influence.

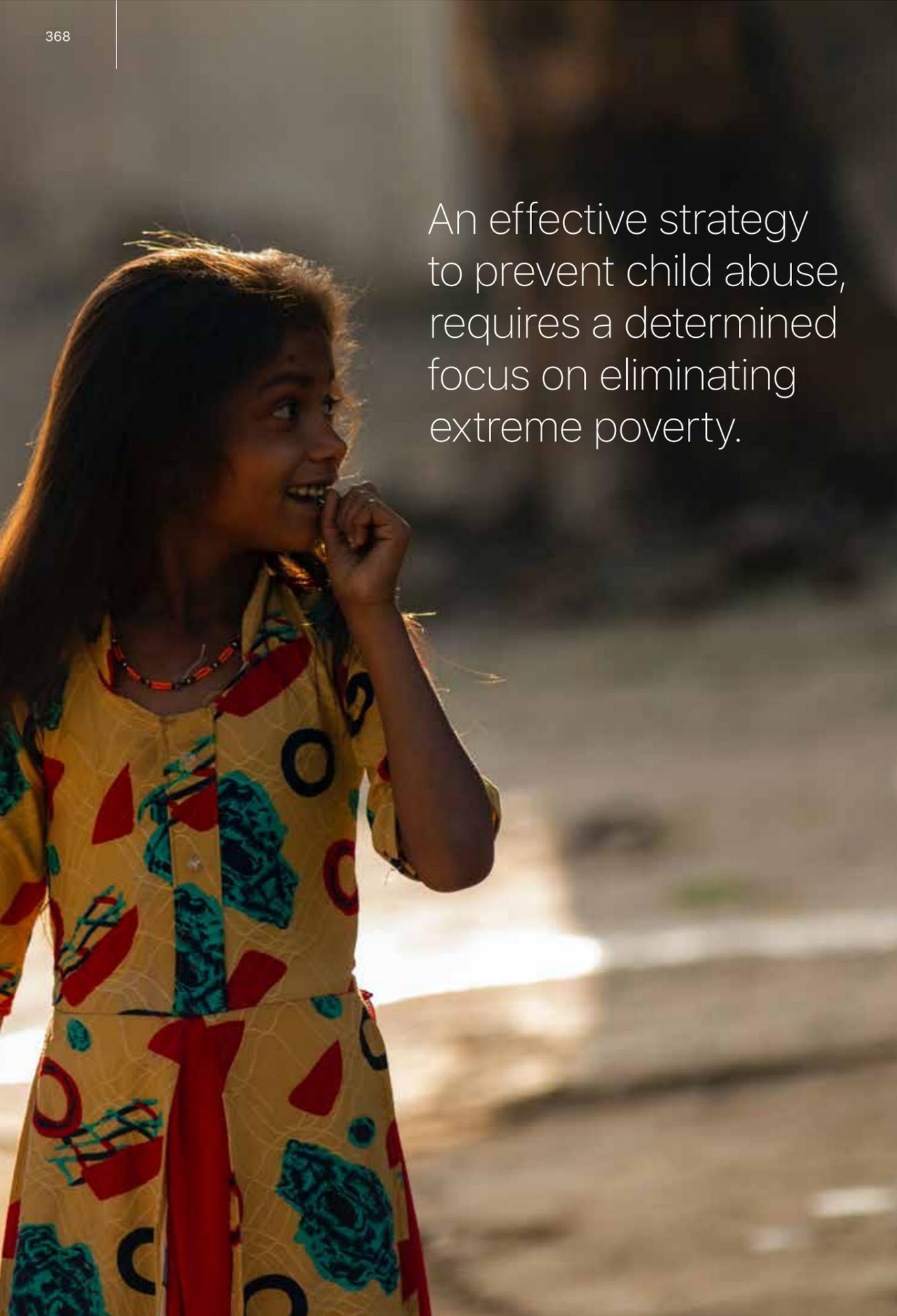
The abuse of children and young people—and indeed of women and others who lack social protection—is the result of many factors and cannot be said to have a single causation. Social attitudes, a lack of legal rights and protections, personality disorders, family dysfunction and social circumstances can all be among the factors that create the context for abuse and ill-treatment. The prevention of, and the response to, abuse therefore requires a multi-faceted and multi-disciplinary approach.²⁸⁹

Social workers are key professional partners in the prevention and response to child abuse.

This is especially complex when children are separated from family members across national borders.²⁹⁰ We need to use all potential strategies and interventions to make a difference.

Social workers are employed in public and non-governmental agencies that address most of these difficulties. However, research demonstrates that social workers themselves have some of the most negative working environments of any profession,²⁹¹ which frequently undermines their ability to respond effectively. In light of this, the COSW is supporting initiatives by the IFSW to highlight and improve the working environment for social workers.

Poverty and a lack of support for parents are probably the most significant factors resulting in the neglect and abuse of children and young people. The UN Sustainable Development Goals and the Global Agenda for Social Work and Social Development highlight the need for investment in family and parenting support to ensure that no one is left behind.²⁹² In the most extreme situations, parents are faced with the painful choice of whether to 'sell' their child to raise funds or face the inability to pay for essential needs or medical emergencies.²⁹³ In other contexts, children are handed over in payment of financial or cultural debts, or parents must rely on charitable food donations to prevent children from starving and less extreme forms of neglect.²⁹⁴



An effective strategy to prevent child abuse, requires a determined focus on eliminating extreme poverty.

Case Study: India

The reasons for human trafficking in India, as elsewhere, are forced labour, bonded labour, sexual slavery, commercial sexual exploitation and extraction of organs. More than 100,000 children go missing across India every year and one-third remain untraced. Children who go missing are usually trapped in human trafficking. The children are generally trafficked from poverty-stricken communities and sold by their own parents to agents.²⁹⁵

Other prevalent causes of human trafficking in India are a lack of parental skills in managing teenagers, children migrating for education, or children leaving rural areas in favour of urban cities where they are subjected to abuse and exploitation. The global COVID-19 pandemic and its associated economic fallout, resulting in job losses and under-employment for many, has exacerbated vulnerabilities to exploitation.

Evidently, there is a growing need in India, as in many Commonwealth countries, for effective and sustainable child protection services of which social workers are a key part.

Conclusion

An effective strategy to prevent child abuse, child sexual exploitation, trafficking and other forms of abuse of children and adults requires a determined focus on eliminating extreme poverty and implementing the SDGs, ensuring more effective support and advice for parents and families, enforcing robust legal frameworks, intervention by justice agencies to disrupt criminal exploitation, and cultural change among political, social and religious leaders. Social workers, working alongside and in partnership with communities and families as well as other professionals, make a crucial contribution to all of those strategies.



Pakistan

Pakistan is a multi-layered society where the interplay between traditional values associated with family, community, religion and various social and cultural norms have resulted in a lack of awareness of CSEA issues. These practices have affected the response of legislators and law enforcement towards these issues of violence over the years.¹ However, there is an increasing awareness of CSEA issues in Pakistani society, demonstrated through street protests and media coverage in response to such crimes.² In the words of one prominent child right's activist, Mehnaz Akber Aziz, “there is a lot of indifference...there is no empathy, only silence. That is changing, because the public is pushing back.”³

In recent years, both federal and provincial governments have taken proactive steps to enact legislation to address specific CSEA issues in an attempt to eliminate the current gaps in legislation. Most significantly, Pakistan's first national child abuse law, the *Zainab Alert Response and Recovery Act, 2020* (the **ZARRA**) was enacted to criminalise CSEA offences throughout Pakistan, and has been a significant first step in closing the various gaps and inconsistencies between provincial laws that criminalise CSEA. The ZARRA legislates on CSEA offences specifically and aims, among other things, to delegate the role of dealing with CSEA offences specifically to magistrates and judges, minimise the response time of local law enforcement and the length of court proceedings, maintain a missing child database, and set up a dedicated hotline and a new agency to issue alerts to report missing children. In December 2020, the Criminal Law (Amendment) Ordinance 2020 (the **Criminal Law Ordinance**) as well as the Anti-Rape (Investigation and Trial) Ordinance 2020 (the **Anti-Rape Ordinance**) bills were approved, expanding the scope of 'rape', addressing issues on survivor justice and witness protection further, and increasing the penalties for offenders.

While these improvements are encouraging and there are signs that addressing CSEA issues are increasingly being prioritised from the community level to the highest decision-making forums, the overall effectiveness of the new laws remains to be seen. Pakistan's biggest challenge in the coming years will be to transform the cultural attitudes towards CSEA issues across all areas of society, driving the change needed to enact consistent, focused legislation, increase resources, and

implement practices that are effective and relevant to each Pakistani community and society as a whole.

CSEA Profile

The actual prevalence of CSEA offences committed in Pakistan is difficult to quantify as the current mechanism for dealing with CSEA offences is underdeveloped. Despite improvements in the legal framework, there are still major gaps and inconsistencies in legislation around defining types of CSEA offences. Further, underreporting, an absence of effective criminalisation and deficiencies in enforcement combined with a lack of awareness and training among authorities on CSEA offences, often results in cases not being identified, remaining unregistered, or procedural errors occurring which prevent a case from being prosecuted due to cases being registered under the wrong offences.⁴

There is also a socio-cultural stigma attached to openly discussing sexual activity. It is believed that CSEA, which also includes sexual activity outside marriage, is shameful and dishonourable, and violates the fundamental values of marriage, honour and family reputation.⁵ As these socio-cultural values are viewed as hierarchically more important than the individual, the social consequences and possible disruption to family life cause CSEA cases to go unreported. Furthermore, sexual education (which includes education about the prevention of CSEA) is viewed as immoral and vulgar.⁶ Deficient sexual education in schools has resulted in a general lack of awareness across Pakistani society of the concept and importance of bodily autonomy along with misconceptions about bodily functions and gender relations.⁷ This has resulted in a culture of silence—

from the child survivors themselves, their families and society at large.⁸ According to the Sahil Cruel Numbers Report 2020 (the **Sahil 2020 Report**), most cases of abuse occur at an acquaintance's home or in the survivor's residence; 43 per cent of offenders are an acquaintance of a survivor and only 25 per cent are reported as strangers.⁹ Other offenders include people in positions of power such as neighbours, relatives, *molvi* (Muslim doctors of the law), teachers, shopkeepers and police.

Geographically, CSEA occurs across all provinces in Pakistan, with a majority of reported cases occurring in Punjab province and in rural areas.

In many rural areas, child marriages are common. The Sahil 2020 Report notes that 76 per cent of child marriages are from the Sindh area, due to the abject poverty and poor infrastructural facilities in the province.¹⁰ In parts of Pakistan, girls are 'given away' through marriage in order to settle familial disputes or debts.¹¹ This practice, coupled with the customary belief that the younger the bride the larger the dowry parents will receive, has resulted in many young girls being married pre-puberty.

According to the Centre for Reproductive Rights, Pakistan ranks sixth in the world in terms of the highest absolute numbers of child marriages.¹² Overall, it is reported that 21 per cent of children are married by 18 years of age and 3 per cent by 15 years of age.¹³ The Child Marriage Restraint Act 1929 (CMRA) provides the legal age for marriage as 16 for females and 18 for males. This discrepancy between the genders leaves girls more vulnerable to child marriage than boys.¹⁴ Several provinces, including Sindh, have introduced their own legislation raising the minimum age of marriage to 18 years for both genders, but there remains considerable inconsistency.¹⁵ The law of consent to sexual activity as written in Pakistani domestic law is linked to the age of consent to marriage, which as discussed further below, is inconsistent, resulting in very little data available on CSEA offences against married children.

Although relations between men and women outside marriage are culturally frowned on, associations between men and boys do not receive the same scrutiny, meaning they may not be so easily noticed.¹⁶ The high school dropout rates and necessity of young boys to work can often take them

away from their family home, thus making them more vulnerable to being abused or exploited.¹⁷

Widespread poverty has led to many children engaging in work to assist in providing for their families. In the coal mining communities in Balochistan province, there are reports of widespread sexual exploitation of boys as young as six years old.¹⁸ These boys have been purportedly lured to work in the mines, but have instead been subjected to sex trafficking, and in some cases, parents are complicit in sending their children to the mines for sex trafficking work.¹⁹ Across Pakistan, NGOs and police services have reported that some employers, including in restaurants, factories and private households, have exploited child employees to provide sexual favours in order to obtain or maintain a job with the employer and/or for accommodation. For example, research has found that children working as helpers for truck drivers are often sexually exploited as part of the job.²⁰

While the most prevalent types of CSEA include sodomy and rape, the rise of the internet has resulted in a much higher prevalence of online-facilitated abuse and child sexual abuse images/materials.²¹ The Sahil 2020 Report indicates that out of the 89 reported cases of child sexual abuse and 'pornography', 74 per cent occurred with boys and 26 per cent occurred with girls.²² In the February 2020 report from Human Rights Watch, it was reported that although authorities successfully disbanded a 'child pornography' ring in Pakistan's Kasur district in 2015, abuses have nevertheless continued due to the lack of action by the authorities to find the perpetrators.²³ More generally in 2019, more than 3,800 cases of child sexual abuse across Pakistan have been documented, and recently during the COVID-19 pandemic, roughly eight children were sexually abused daily in Pakistan from 1 January 2020 to 30 June 2020.²⁴ However, the actual figures are likely much higher due to considerable underreporting.

Criminalisation/Legislation

Classification of Sexual Offences with Children

Laws in Pakistan are underpinned by the fundamental human rights protected in the Constitution of the Islamic Republic of Pakistan 1973. CSEA offences are criminalised under a range of federal and provincial legislation. The main criminal legislation is the Pakistan Penal Code 1860 (the

Penal Code), federal legislation that classifies some sexual offences against persons including children. More specifically, the offence of trafficking is covered in the federal Prevention of Trafficking in Persons Act 2018 (the **Trafficking Act**) and electronic crimes such as 'child pornography' are provided for under the federal Prevention of Electronic Crimes Act 2016 (the **Electronic Crimes Act**). Each province and the Islamabad Capital Territory have enacted their own laws for the protection of children to varying degrees, with certain CSEA offences covered under provisions within these laws, however such laws only apply to their respective provincial jurisdictions.

In their current state, these laws are inadequate in criminalising all forms of CSEA and insufficient to deal with the magnitude of issues related to CSEA. While the enactment of the first national child abuse law, ZARRA, in 2020 provided more extensive coverage of CSEA offences, particularly in provinces such as Punjab, which does not criminalise CSEA specifically within its provincial legislation, there are still several material gaps in which the law still does not recognise certain CSEA offences, and those laws which are in place are often applied inconsistently across domestic jurisdictions. The Human Dignity Trust reports that legislation in Pakistan 'does not take into account the full range of sexual acts that can violate the sexual integrity of a person, whether female or male,' and therefore inadequately criminalises all sexual offences against children.²⁵ In addition, while many of the new amendments under the Anti-Rape Ordinance and Criminal Law Ordinance are promising given it was drafted with a more survivor-centred approach specifically focusing on women and children, there has been delay in passing this bill into law in the National Assembly, and it remains to be seen how effective it will be in practice once passed as law.

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA.

The laws of Pakistan comply with Article 3 of the Lanzarote Convention to an extent, however there is a lack of harmonisation of the legal definition of a child between federal and provincial legislation. Article 3(a) of the Lanzarote Convention defines

'child' as any person under the age of 18 years. Other than in the Punjab province, where a 'female child' is defined as a person under 16 years, the Lanzarote Convention definition has largely been implemented within the Trafficking Act, Electronic Crimes Act and each province's individual laws. However, the definitions of 'child' and 'minor' under the Penal Code are inconsistently applied depending on the relevant provision. For example, sections 366-A 'Procurator of a minor girl' and 366-B 'Importation of girl from foreign country' of the Penal Code comply with the standards of the Lanzarote Convention, defining a 'minor girl' as under the age of 18 years and 'girl' as under the age of 21 years respectively. Other examples of CSEA provisions define 'child' as under 12 years (section 328 'Exposure and abandonment of child under 12 years by parent or person having care of it'), as 14 years (section 364-A 'Kidnapping or abducting a person under the [age of 14]') and 16 years with respect to rape (section 375 'Rape').

Provisions in line with Articles 18–24 of the Lanzarote Convention have, to an extent, been implemented by Pakistan. Articles 18(1)(b) subsection 2 and 3, 18(3) and 20(3) have not been implemented due to the fundamental principles of Islam, whereby sexual activity outside marriage and all things constituting 'obscenity' (including 'child pornography') are viewed as illegal. In respect of Articles 26–29, only certain sections of Article 27 have been implemented by Pakistan.

In respect of Article 9 of The Convention on Cybercrime (the **Budapest Convention**), Pakistan has implemented the offences related to 'child pornography' in section 22 of the Electronic Crimes Act.

Age of Consent & Definition of a Child

There is no clearly defined age of consent regarding sexual activity in Pakistan; the underlying Islamic principle that sexual activity outside marriage is prohibited is deemed to render legislation on this point unnecessary. Some guidance on consent is given in the Penal Code, however there are inconsistencies within the code itself. For example, in section 375 'Rape', consent to sexual intercourse is given at 16 years, while section 90 'Consent known to be given under fear or misconception', the age of consent is 12 years.

Given that sexual activity and marriage are intrinsically linked in Pakistan, any criminalisation of CSEA offences also involves the consideration of prevalent laws relating to consent to marriage. There are different pieces of legislation that apply to consent to marriage depending on specific provinces, religions and sexes, and invariably the age of consent is also inconsistent across the various laws. The Sindh Child Marriage Restraint Act 2013 for Sindh province provides the age of consent to marriage as 18 years. In Punjab province, the Child Marriage Restraint Act 1929 and the Punjab Marriage Restraint (Amendment) Act 2015 provide the age of consent to marriage for boys as 18 years and girls as 16 years. In Balochistan province, the Child Marriage Restraint (Amendment) Bill was rejected as the Council of Islamic Ideology declared it unacceptable on the grounds that Islam does not state a specific age for marriage. Similarly in the province of Khyber Pakhtunkhwa, the Khyber Pakhtunkhwa Child Marriage Restraint Bill 2019, which purported to raise the age of consent to 18 years for both male and females, failed to pass and replace the ages of consent within the Child Marriage Restraint Act 1929. Amongst the religions, the Hindu Marriage Act 2017 and the Sindh Hindus Marriage Act 2016 require both parties to be at least 18 years old. The Christian Marriage Act 1872 provides that the age of marriage for males is 16 years and for females 13 years. The Parsi Marriage and Divorce Act 1936 provides that the age of marriage for males is 16 years and for females 14 years. Finally, the Special Marriage Marriages Act 1972, which applies to marriages for those persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Bhuddist, Sikh or Jaina religions, the age of consent for males is 18 years and for females 14 years.

Trafficking

The Trafficking Act specifically criminalises the trafficking of persons, including children (defined as a person under 18 years). It broadly provides that “any person who recruits, harbours, transports, provides or obtains another person, or attempts to do so, for compelled labour or commercial sex acts through the use of force, fraud or coercion, commits an offence of trafficking in person.” Certain provincial laws also criminalise trafficking (within and between countries), including the Balochistan Child Protection Act 2016 (**Balochistan Act**). The Balochistan Act is the only legislation in Pakistan that specifically criminalises

child sexual exploitation in the context of travel and tourism.

Extraterritoriality

Under Pakistani law, there are no provisions specifically penalising CSEA offences committed outside Pakistan. However, sections 3 and 4 of the Penal Code provide that any offences (including CSEA offences) committed abroad by Pakistani citizens, persons in the service of Pakistan in any place without and beyond Pakistan, or any person on any ship or aircraft registered in Pakistan, are subject to prosecution in Pakistan. The law does not appear to extend to residents of Pakistan. Extraterritoriality is further limited under these provisions, as there is a double criminality requirement where it only applies if the offence is criminalised with the same punishment in both Pakistan and the jurisdiction where the offence occurred. A major gap in the extraterritorial jurisdiction of CSEA offences includes inconsistencies in the definition of a ‘child’ between Pakistan and third states, where an offender may avoid criminalisation by arguing that a survivor in the foreign country consented to the sexual activity or that they are too old to be considered a ‘child’ under the relevant Pakistani legislation.

For a CSEA offence to be prosecuted in Pakistan, there is no requirement for a complaint to be lodged in the foreign jurisdiction first. To initiate an investigation or prosecution of extraterritorial CSEA offences, the offence should be reported to the Federal Investigation Agency of Pakistan.

There are no restrictions which prevent persons who have committed CSEA offences from travelling overseas. However, the Exit from Pakistan (Control) Rules 2010 provide under section 2(c) that a person may be prohibited from proceeding from Pakistan to a destination outside Pakistan if that person is involved in “acts of terrorism or its conspiracy, heinous crimes and threatening national security.” While not directly related to CSEA offences, there have been cases of sexual assault with minors that have been tried within the anti-terrorism court.²⁶ However, it should be noted that there is no publicly reported judgment where an offender has been placed on the exit control list by reason of being a CSEA offender made by a court order or otherwise.

Extradition

There are limited CSEA offences which Pakistan considers to be extraditable offences under the Schedule to the Extradition Act 1972 (the **Extradition Act**). The relevant offences are limited to rape (item 3), procuring or trafficking in women or young persons for immoral purposes (item 4) and stealing, abandoning, exposing or unlawfully detaining a child (item 6).

To extradite a Pakistani national, it is not a prerequisite that there be an extradition treaty with the third country in which the offence occurred. However, for a state that is not a treaty state, section 4 of the Extradition Act requires the Pakistani federal government to issue a formal direction in the Official Gazette to direct the provisions of the Extradition Act to apply specifically to such a case.

Statutes of Limitation

There are no statutes of limitation in criminal cases in Pakistan. However, in practice it has been observed that judges can often be swayed against the survivor if there is an unexplained delay in reporting the crime.²⁷

Outdated Terminology

The terms “child pornography”, “child prostitution”, “seduction” and “outrage of modesty” are referenced in Pakistan’s legislation. Pakistan also criminalises consensual same-sex sexual activity between males using discriminatory language such as “carnal intercourse against the order of nature.”²⁸

Other

Treatment of Survivors of Different Genders

A number of Pakistani laws on CSEA are gendered, which may be due to the general historical perception that girls are more vulnerable to child sexual abuse than boys.²⁹ In the Penal Code, the definition of ‘rape’ under section 375 begins with: “a man is said to commit rape who has sexual intercourse with a woman”, section 366-A “Procuration of a minor girl” and section 366-B “Importation of girl (under the age of 21) from foreign country” are further examples. In provincial laws, section 58 of the Sindh Children Act 1955 “Young girls exposed to risk of seduction”, and

sections 9 and 10 of the Punjab Suppression of Prostitution Ordinance 1961 “Punishment for importing any woman or girl for prostitution” and “Punishment for keeping any woman or girl for prostitution”, are further examples of the widespread and country-wide issue of boys often being left out by the law.

Statistics by Sahil indicate that in 2020, out of 1,823 cases of CSEA reported, 55 per cent of survivors were boys and 45 per cent of survivors were girls, portraying how boys are increasingly survivors of child sexual abuse and are equally vulnerable as girls.³⁰ In addition to the widespread reports of CSEA against boys throughout Pakistan, including commercial sexual exploitation, it is clear that equal protection against CSEA for boys is desperately needed under Pakistani laws.³¹

Gaps in Criminalisation

It is critical that the gaps in the criminalisation of CSEA offences in Pakistan be addressed as a first step in combating the prevalence of CSEA in the country. Suggestions to close the gaps in criminalisation of CSEA offences include:

- There is a lack of a broad definition which includes all forms of CSEA in federal and provincial legislation. For example, offences against children with special needs, grooming children, abuse of positions of trust, familial child sexual offences, sexual touching, and luring of a child through the internet are all offences which are not currently criminalised in Pakistani law.
- The age of consent and marriage is not consistently applied across federal and provincial legislation.
- There is a discrepancy in the criminalisation of CSEA amongst different genders, with male children currently not being treated as equally at risk and therefore not protected equally with female children.
- The approach to CSEA offences to provide adequate and equitable punishment is not standardised at present. For example, sentencing is not severe enough to act as a deterrent in many instances, and differs according to the gender of a survivor.

— Legislation regulating extraterritorial jurisdiction must be amended with respect to CSEA offences committed abroad to include Pakistani residents.

— There is a double criminality requirement regarding extraterritorial jurisdiction laws which undermines their effectiveness.

— In terms of extradition situations where multiple states claim jurisdiction, the best interests of the child, rather than political relations, should be the priority.

Prosecution

Initiating Prosecution

The prosecution of CSEA offences does not require the survivor to first file a complaint. As CSEA offences are cognisable offences under Pakistani law, law enforcement may initiate an action. A survivor, their family member or any other person (such as extended family or friends) can file a complaint by lodging a First Information Report (**FIR**) under section 154 of the Code of Criminal Procedure 1898, which then sets the law in motion.³²

There is no express time limit for lodging a complaint for a criminal case in Pakistan. However it is noted that, in general practice, judges are often swayed against the survivor if there is an unexplained delay in the lodging of the FIR.³³ A measure to be introduced under the Anti-Rape Ordinance to counter this is the requirement for FIRs to be launched promptly after survivors have completed medico-legal examinations in the new anti-rape crisis cells set up in government hospitals around Pakistan.

Investigation & Evidence

Presumption Survivor is a Child

There is no presumption in Pakistani CSEA laws that a survivor is a child. The Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 (the **KPK Act**) is the only legislative instrument which enables a court to decide on a survivor's age, if it is contentious. Under the KPK Act, the survivor's age is decided by the court in the first instance based on a medical report provided by the medical superintendent of that district. The Punjab Destitute and Neglected Children

Act 2004 allows the court to rule on the survivor's age through a similar procedure.

DNA

While there is an increasing use of DNA evidence in CSEA cases, such as in the case of Zainab Ansari in 2018³⁴, there is still a lack of legislation specifically designed for the admissibility of DNA evidence. Under the current law, DNA evidence is admissible under section 9(3) of the Punjab Forensic Science Agency Act 2007, as well as the Balochistan Forensic Science Act 2015, read with Articles 59 and 164 of Qanun-e-Shahadat Order 1984, dealing with expert opinion in section 510 Code of Criminal Procedure 1898 (the **Cr.P.C.**). Sections 164(A) and 164(B), inserted into the Cr.P.C. in 2016, enables authorities to obtain and use DNA evidence in rape cases. Further, section 27-B of the Anti-Terrorism Act 1997 (**ATA**) allows the admissibility of electronic and forensic evidence.³⁵ However, in the case of sexual offences (including CSEA offences), DNA evidence is often admissible only as a secondary evidence, corroborative to any primary evidence, often being witness testimonies, which in itself poses challenges in its authenticity. According to Dr Muhammad Ashraf Tahir, director general of the Punjab Forensic Science Agency, the general view is that ocular evidence (eyewitness testimony) is the preferred form of evidence.³⁶

In addition, issues such as delays in the medical examination of survivors and improper collection and packaging of evidentiary material compromise the admissibility of DNA evidence in CSEA cases in Pakistan. These delays have been identified by the Pakistan government as hindering the dispensation of justice for survivors, and under the Anti-Rape Ordinance, it is proposed that anti-rape crisis cells will be set up in hospitals for specialist medico-legal surgeons, police officers and independent support advisers to obtain and preserve DNA evidence to ensure its admissibility in trials.

Admissibility of Evidence as to Character

In the Anti-Rape Ordinance, there is a new inclusion under clause 2 of section 13 which states that: "in respect of any scheduled offence, any evidence to show that a survivor is generally of immoral character, shall be inadmissible." This provision aims to ensure that any evidence comprising a survivor's past history, past relationships, character, or any

attempt to vilify the person, or to cast any aspersions or any doubt on their character, or to display that they may be immoral, should not be admissible in a rape case with the intent to undermine the survivor's testimony.³⁷ While this is a positive step in the dispensation of justice to survivors of CSEA, as stated earlier the ordinance has not yet come into force.

Unwillingness to Proceed with 'Formal' Trial

The social stigma felt by survivors and their families who report CSEA offences has resulted in a general underreporting of CSEA in Pakistan.³⁸ Notwithstanding this reluctance to report, according to the Cruel Numbers 2020 report by Sahil, as many as 2,960 children were reported as being subject to CSEA offences in 2020.³⁹ Out of the total reported cases, 87 per cent registered with the police and there were 19 cases that police refused to register.

Gaps in Prosecution

Even when cases are registered, a number of police officers in the provinces of Pakistan have been identified as not having been procedurally trained to identify and register CSEA cases specifically; resulting in cases being registered under incorrect legislation, ultimately causing a delay in proceedings. An instance of a procedural failure is seen in the case of *Momin v State* [2020 PLD Peshawar-High-Court 70] regarding the Khyber Pakhtunkhwa police, where police continued to register cases under the Penal Code instead of the KPK Act, despite the latter having been enacted for ten years.

In addition, there is a general lack of case law available in Pakistan, indicating that many CSEA cases do not make it into the judicial system. This low level of CSEA case progression correlates with the social stigma that prevents survivors and their families reporting of CSEA cases. This low level of case law also highlights the challenges that survivors face when reporting to the police, including the delay and mishandling of the processing of complaints.⁴⁰

Even where cases have been tried through the judicial system, the option to appeal against the order of a court created under section 23(4) of the Punjab Destitute and Neglected Children Act 2004 is not available. In addition, section 4 of that same act allows for proceedings only for children who have not reached the age of 15 years, leaving those children

aged between 15 and 17 years unprotected by the law.

The Anti-Rape Ordinance and Criminal Law Ordinance seeks to address these hurdles, through the establishment of special fast-track courts for hearing rape cases and the requirement that trials are completed within four months and appeals completed within six months. Unfortunately, there have been delays in setting up these special courts to conduct rape trials,⁴¹ and it has also been noted by women's groups Women's Action Forum and the Women Lawyers' Association that, as currently drafted, the ordinances contain contradictory time periods for the conclusion of trials and there is duplication of the Code of Criminal Procedure and the Penal Code in the provision pertaining to the right to appeal.⁴²

The gaps in the prosecution of CSEA offences in Pakistan that need to be addressed include:

- Training on the law and legal procedure, which is not currently being provided for law enforcement agents, particularly those in Khyber Pakhtunkhwa.
- There exist several procedural barriers to appealing court orders across all legislation, particularly under the Punjab Destitute and Neglected Children Act 2004.
- Children aged between 15 and 17 years are not currently protected under the Punjab Destitute and Neglected Children Act 2004.
- Procedural gaps under the KBK Act and Balochistan Act do not currently include provisions on the criminal procedure to be taken against offenders.
- Education and awareness of CSEA issues is strongly needed amongst children and their families, including the lack of clear procedure for children and their families to make police reports thereby influencing under-reporting.
- The use of DNA evidence in CSEA cases is not currently compulsory, and there are several gaps in the investigation process. Changes must be made to ensure that DNA samples are collected efficiently and accurately so that DNA evidence is admissible in CSEA cases.

Protection

Protection of Survivors During Proceedings

Pakistan has in recent years implemented measures to increase the powers of the federal and provincial governments to protect survivors if their safety is at risk, including during trials under section 11 of the Trafficking Act. These measures include holding in-camera proceedings on the basis that intimidation tactics by accused persons against survivors have impacted rape trials in the past.⁴³ In addition, under section 14 of the Anti-Rape Ordinance, accused persons will not be able to directly speak to survivors in court; rather, it is proposed that questions be asked through the accused's counsel or the presiding officer of the court.

Protection of Children in General

In terms of survivor assistance and support, at the provincial level each provincial law contains provisions for the constitution of a commission, bureau or institution for child protection. These bodies are created to develop frameworks and units for the protection, survival, participation, psychological support of children at risk in accordance with the spirit of each provincial law.⁴⁴ The commissions are also mandated to look after the needs of CSEA survivors. For example, the Child Protection and Welfare Bureau under the Punjab Destitute and Neglected Children Act 2004 in Punjab has set up a psychological counselling service for survivors and their parents by trained counsellors.⁴⁵

While such measures have been enacted through legislation over the years, in practice there have been delays to their implementation. Under the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, the Child Protection and Welfare Commission of Khyber Pakhtunkhwa supervises the 12 child protection units in 12 different cities in Khyber Pakhtunkhwa province. However, it has been noted that these child protection units have been non-functional for a number of years due to financial constraints and the unavailability of staff.⁴⁶ Moreover, in the Child Protection and Welfare Commission itself, which is responsible for the shelter and safety of any child at risk in that state, the position of Chief Child Protection Officer has been vacant since 2014, and the commission's progress has been obstructed by the COVID-19 outbreak.⁴⁷ Across the country in Balochistan, the Child Protection Commission and

Child Protection Unit was mandated to be established under the Balochistan Act; however, it is unclear whether the commission has been established yet. Further, the first child protection unit was established in 2020, after a delay of four years.⁴⁸ In Sindh, the Child Protection Authority was established after four years from the enactment of the Sindh Child Protection Authority Act, 2011 (the Sindh Act). This Authority was created after criticism of the province's inability to take steps to fully implement the law to protect the rights of children, resulting in the Sindh High Court seeking enforcement and implementation of the Sindh Act in the province—of which the case is still pending.⁴⁹

Other measures available for the protection of child CSEA survivors include awareness campaigns by the child protection bureaus of each province. These include:

- the Sindh Child Welfare & Provincial Commission for Child Welfare and Development, which operates awareness activities such as FM radio programmes for children and training for government officials on child rights;⁵⁰

- the Child Protection and Welfare Commission of Khyber Pakhtunkhwa, which operates a Facebook page to provide updates on awareness events and activities—most recently a sensitisation session on CSEA issues for key stakeholders such as civil society organisations, health and police departments;⁵¹ and

- the Child Protection & Welfare Bureau of Punjab, which operates a child helpline to support children subjected to CSEA.⁵²

On a country-wide level, under the National Commission on the Rights of Child Act, 2017 (the **CRCA Act**), a National Commission on the Rights of Child was constituted with one of its functions being to 'examine all factors that inhibit enjoyment of the rights of the child, such as violence, abuse and exploitation, trafficking, torture, pornography and prostitution and recommend appropriate remedial measures.'⁵³ This body was only established in March 2020, three years after the enactment of the CRCA Act in 2017. Recently, however, it has started to take positive action by establishing social media pages on Facebook and Twitter. The social media campaigns are intended to increase awareness amongst young people in Pakistan by posting regular

updates on its work, correspondence with local police stations regarding cases of child rights violations, and providing proposals and recommendations for reforms. Most encouragingly, it has prepared a policy brief on issues of forced conversion based on an analysis of the Arzoo underage marriage case,⁵⁴ highlighting the gaps in legislation and providing recommendations for legal and community reforms.⁵⁵

More recently, through the establishment of ZARRA in 2020, a number of measures in regarding the response and recovery of missing children have been enacted. Most significantly, the 'Zainab Alert' was created, which is a nationwide toll-free hotline and an integrated app between district police officers throughout the country, with any complaints registered with the app prompting the police to launch an immediate probe into the matter. The 'Zainab Alert' is conducted in coordination with the Pakistan Telecommunication Authority, which issues the 'Zainab Alert' through SMS and MMS, and the Pakistan Electronic Media Regulatory Authority, which issues tickers on television channels, announcements on radio stations, and alerts on social media, relevant websites and online, print media or any other available medium to report abductions.⁵⁶ However, ZARRA does not directly provide for awareness campaigns or the training of personnel working with children. Though these additional measures are encouraging, their effectiveness remains to be seen.

Protection of Witnesses

Witnesses in CSEA proceedings are an important part of the judicial system in Pakistan. Despite this, there have been several high-profile cases involving heinous crimes remaining unresolved because witnesses were eliminated or removed.⁵⁷ In many instances, witnesses are scared to testify against offenders due to threats, intimidation or are prevented from testifying due to the risk of being murdered.⁵⁸ To combat these issues, various legislation has been introduced into domestic law to increase witness protection, including in CSEA cases.

Section 21 of the ATA provides protection to witnesses by allowing in-camera proceedings, and the withholding of the identity of witnesses from being published. Under provincial laws, the Witness Protection, Security, and Benefit Act 2017 of Islamabad Capital Territory mandates the protection

of witnesses of 'serious offences' during the investigation, inquiry and trial stages. A number of witness protection acts also allow the examination of witnesses through video conferencing, reallocation, change of identity or any other suitable help or service provided to the protected witness or any person related to them or part of their family. These witness protection measures can be found in Punjab province, under section 10 of The Punjab Witness Protection Act 2018, in Sindh province under The Sindh Witness Protection Act, 2013, and in Balochistan province under the Balochistan Witness Protection Act, 2016.

While it is encouraging that such protections have been implemented in legislation, in practice many of these measures have been insufficient, particularly in Sindh and Balochistan. In Sindh, the law provides for an advisory board as an overseeing authority to set up the Protection Unit responsible for the protection programme; however, an advisory board has not yet been implemented.⁵⁹ In addition, more extreme measures, such as the "relocation of witnesses" and "assigning a new identity" may not be viable initially as they involve significant costs, and provinces have recorded a general insufficiency in funding for the judicial system.⁶⁰

Given how vital witnesses are in Pakistan's judicial process, it is critical that they be properly protected. It is imperative that witnesses are able to cooperate and collaborate fully and safely with the criminal justice system in dispensing justice for CSEA survivors. The greatest hurdle to implementing these measures appears to be budgetary and financial constraints.⁶¹

Protection of Children in Disaster Settings

The National Disaster Management Act 2010 is the principal legislation dealing with overall disaster protection and management in Pakistan. Currently, Pakistan does not have a specific piece of national legislation enacted which addresses CSEA in times of disaster. Some form of protection is offered in the recently enacted ICT Rights of Persons with Disability Act, 2020, which has a specific provision (section 20) that ensures the protection of persons with disabilities in risk and disaster situations. In addition, while not enacted in legislation, the Pakistan National Disaster Management Authority has produced a training manual specifically for child protection in emergencies, which consolidates all

child protection laws for responders.⁶² This manual addresses CSEA situations during disaster events.

On a provincial level, only section 4(m) of the KPK Act includes a specific provision on the protection of children during disasters. Under this section, the KPK Child Protection and Welfare Commission is tasked with providing care to children during natural disasters and armed conflicts.

More recently in the context of the COVID-19 pandemic, Pakistan's Ministry of Human Rights has produced a report analysing COVID-19 and its impact on vulnerable groups in society. This report includes a section on child protection against violence and abuse.⁶³ While not specifically focused on CSEA issues, it is encouraging that the Pakistani government is taking steps to assess the impact of natural disasters on vulnerable groups in order to address any gaps and implement relevant initiatives.

Prevention

Register of Offenders

Currently, Pakistan does not maintain a national or integrated list of sexual offenders, prohibit those convicted of CSEA offences from travelling abroad, or prohibit those convicted of CSEA offences abroad from travelling into Pakistan. While domestic legislation, such as section 10 of the Balochistan Act, declares it a function of the Social Welfare Department to “maintain and update data on child abusers and persons convicted of offences against children”, and section 15(g) of the National Commission on the Rights of Child Act, 2017 declares it a function of the Commission to “maintain a database relating to children and their issues”, in practice it is unclear how consistently this data has been collected and used or how any information collected by agencies are being coordinated or shared.

Talk of establishing a register of sexual offenders has been discussed over the years, including establishing a national register of offenders under the Anti-Rape Ordinance; however, many procedural, policy and financial challenges have hindered its establishment.⁶⁴ While implementing a register of sexual offenders would serve as an effective tool in addressing CSEA issues, it would need to be implemented together with other longer-term

solutions and a societal change in CSEA and sexual education perceptions to be effective.

Child Safety Online

In recent years, Pakistan has implemented stronger measures to address online CSEA issues. In 2016, Pakistan amended its Penal Code to introduce the following new offences: section 292-A “exposure to seduction”; section 292-B “child pornography”; section 328-A “cruelty to a child”; section 369-A “trafficking of human beings” and section 377-A “sexual abuse”. In addition, while the enactment of the Prevention of Electronic Crimes Act, 2016 (the **PECA**) is primarily focused on other criminal conduct, it also contains relevant provisions relating to the protection of children from online CSEA. The relevant provisions include: section 20 “Offences against dignity of individual persons”; section 21 “Offences against the modesty of individual persons and minors”; section 22 “Child pornography”, and section 24 “Cyber Stalking”. After the Kasur incident in 2015,⁶⁵ the Federal Investigation Agency of Pakistan, which operates a National Response Centre for Cyber Crime, was given powers under the PECA to address issues of child sexual abuse nationally across Pakistan. While this Response Centre is a positive step forwards, a lack of resources, training and skills at the local law enforcement level prevents local agencies from conducting proactive investigations into online CSEA. For example, police services do not reportedly perform undercover operations or take other proactive measures to infiltrate perpetrator networks.⁶⁶ Coupled with a number of barriers to reporting crimes in general, online CSEA offences are consequently able to occur without fear of investigation or prosecution.

Recommendations

There are a number of measures which should be taken as a matter of priority to help combat CSEA offences against children in Pakistan, including:

Legal

- Harmonise country-wide laws on all issues of CSEA in line with international standards and conventions.
- Enact in law best practices contained in international conventions and treaties, which

Pakistan has signed and ratified, to ensure that they have a tangible effect on the prosecution of perpetrators, the protection of survivors and the prevention of CSEA offences in the country.

- Sign and ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

- Create new special child-sensitive criminal procedures so as to create greater respect for children's rights when prosecuting perpetrators. The special procedure should be created in line with Articles 30(1) and 30(2) of the Lanzarote Convention.

- Start treating investigations and criminal proceedings against child abusers as a priority without causing unnecessary and unjustified delays, in line with Article 30(3) of the Lanzarote Convention.

- Allow for proceedings to continue even if the survivor withdraws their statements, in line with Article 32 of the Lanzarote Convention.

- The legislature should conduct a reform with the intention of repealing or amending outdated domestic legislation that does not capture, define or provide requisite penalties and punishment for undefined CSEA offences.

- Ensure the full harmonisation of legislation regarding the definition of a child (irrespective of gender) as any person under the age of 18 years.

- Ensure the full harmonisation of laws relating to CSEA offences to ensure equal protection of children irrespective of gender.

- Amend the Zina Ordinance, 1979 (**Zina Ordinance**) and the Child Marriage Restraint Act 1929 to align the age of marriage of boys and girls by raising the minimum age of marriage for girls to 18 years.

- Remove the ambiguities in the Zina Ordinance to ensure that children are not inadvertently criminalised for their involvement in child sexual abuse.

- Under the Prevention of Trafficking in Persons Act, 2018 (**PTPA**), train officials on the implementation of provisions of the PTPA, sentence perpetrators to significant prison terms by amending

the 2018 PTPA to remove penalty provisions that allow fines in lieu of imprisonment for sex trafficking offences, and improve efforts to collect and accurately report anti-trafficking data.

- Extend the scope of extraterritorial reach under citizenship law from citizens and those in the service of Pakistan, to those who are also residing in Pakistan habitually. CSEA laws must create special provisions for such extraterritorial reach.

- Remove the double criminality requirement.

- Introduce legislation or a model law with regard to extradition and situations where multiple states claim jurisdiction, with the best interests of the child a priority.

Prosecution

- Ensure that the National Commission for Child Welfare and Development (**NCCWD**) has an adequate budget to implement the National Plan of Action against CSEA offences.

- Strengthen coordination among different governmental bodies at the federal, provincial and territorial levels responsible for the implementation and monitoring of children's rights.

- Bolster regional and international cooperation to prevent and counteract CSEA, especially with countries of origin of child trafficking victims.

- Provide training on the law and legal procedure for law enforcement agents, particularly those in Khyber Pakhtunkhwa.

- Ensure training on counteracting online child sexual abuse and identifying child survivors for officers of the National Centre for Cyber Crimes. This agency should also enhance cooperation with other national and international units on online child sexual abuse.

- Train police officers and launch criminal investigations on all reports of children involved in bonded labour.

- Actively investigate allegations of complicit government officials and prosecute and convict

traffickers, even when survivors do not participate in legal proceedings against their trafficker.

- Ensure judges award trafficking survivor compensation where appropriate, and urge legal aid offices to inform trafficking survivors of available compensation.

- Address the procedural barriers to appealing court orders across all legislation, particularly under the Punjab Destitute and Neglected Children Act 2004.

- Address the procedural gaps under the KBK Act and Balochistan Act, which do not include provisions on the criminal procedure to be taken against offenders.

- Make the use of DNA evidence in CSEA cases compulsory and streamline the investigation process to ensure that DNA samples are collected efficiently and accurately to ensure that DNA evidence is admissible in CSEA cases.

Protection

- Develop and introduce a coordinated National Sex Offender Register.

- Adopt a comprehensive National Plan of Action or national strategy addressing the issue of child trafficking.

- Adopt a provincial plan of action for each province in cooperation with local stakeholders and in conjunction with the National Plan of Action.

- Provide greater funding to ensure witness and survivor protection.

- Provide immediate counselling to survivors of CSEA and their families.

- Form a comprehensive rehabilitation and support system for survivors of CSEA.

- Collect data on the sexual exploitation of children in the context of travel and tourism in Pakistan, and implement prevention activities.

- Establish mandatory reporting systems for cases of CSEA for governmental bodies, businesses and local communities.

- Set up specialised law enforcement child protection units in each province at the district level, which focus on CSEA offences.

- Strengthen local child protection systems to ensure the protection of internally displaced children, children in refugee camps, and children in emergency and disaster situations.

- Design and implement specific care services for survivors of CSEA.

- Establish standards for institutional care and protection for organisations and professionals providing support to survivors of CSEA, including specialised programmes and services for boys.

Cultural/Education

- Provide training to stakeholders who work with and support survivors of CSEA.

- Implement specific awareness-raising activities on CSEA, reaching out to the most at-risk populations.

- Include CSEA protection messages in the school curriculum, including for boys and their particular vulnerabilities.

- Provide long-term training on the Juvenile Justice System Act, 2018, child-sensitive approaches, CSEA and child trafficking for police officers and other professionals who work with and support children in legal proceedings.

- Prioritise children's participation in the design and implementation of policies and programmes affecting their lives.

- Promote children's active participation in the fight against CSEA by allocating resources to support children's clubs and peer support programmes in schools and communities in high-risk locations



Sri Lanka

The Government of Sri Lanka and its legislative body has demonstrated a willingness to prosecute child sexual exploitation and abuse (CSEA) offences. This is demonstrated in practice as some of the offences falling under the definition of CSEA are expressly enshrined in Sri Lankan law and actively enforced through Sri Lankan courts.

As a signatory to the UN Convention on the Rights of the Child since 1991, Sri Lanka has an international obligation to ensure all children enjoy all rights enshrined in the UNCRC.¹ To further reaffirm its commitment to protecting children from all forms of CSEA, Sri Lanka ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the **Optional Protocol**) in 2006,² and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2015.³ Furthermore, Sri Lanka is a member of the South Asian Association for Regional Cooperation (SAARC) and has ratified a number of regional instruments addressing CSEA, including the SAARC Convention on Preventing and Combating Trafficking in Women and Children,⁴ and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.⁵ Sri Lanka is also a member of the South Asia Initiative to End Violence Against Children (SAIEVC), an inter-governmental body focused on protecting children from all forms of violence.⁶ Additionally, to address the sexual exploitation and abuse of children online, Sri Lanka is a member of the We Protect Global Alliance,⁷ and entered the Council of Europe's Convention on Cybercrime into force in 2015.⁸ Furthermore, in 2016 Sri Lanka became a pathfinding country of the Global Partnership to End Violence Against Children.⁹

Whilst the Government of Sri Lanka has made efforts to combat and prevent CSEA offences, prevalent gaps remain in the country's legislation, and deficiencies around gendered responses to CSEA remain a significant issue. Sri Lanka is still a nation dominated by strong cultural and religious beliefs and traditions. This in turn results in barriers for lawmakers to overcome, as in certain circumstances, particular community sects can choose to be governed by their relevant religious legislative frameworks as opposed to the national framework.¹⁰ In some circumstances, these religious governance frameworks directly contradict the national legislative

framework, which can make it difficult to prosecute CSEA offenders.¹¹

CSEA Profile

Despite some growing concern over this issue in recent years, data on CSEA in Sri Lanka is limited.¹²

According to the National Child Protection Authority (**NCPA**), Sri Lanka is a country in the midst of an epidemic of violence against children.¹³ The study showed that cases of violence against children reported to the NCPA had risen from 905 in 2010 to 2413 in 2018.¹⁴ This epidemic is not limited to physical abuse however, with 42 cases of serious child sexual abuse being reported to the NCPA in the first fifteen days of 2020.¹⁵

In July 2021 alone, four cases of extreme violence against children were reported:

- a 13 year old girl from Nawalapitiya was allegedly sexually abused by her father since she was seven years old;
- a 15 year old girl was subjected to sexual trafficking; and
- two children of the ages of 12 and 14 were allegedly abused by their father resulting in pregnancy.¹⁶

In April 2020, UNICEF and the NCPA publicly stated their concern for the rise in cases of child cruelty since the government-mandated lockdown began.¹⁷ In 2019 and 2020, 8,558 and 8,165 cases of child abuse were reported respectively.¹⁸ Child sexual exploitation and abuse accounted for approximately 14 per cent of cases,¹⁹ although it is important to remember that reported cases cannot provide an overall indication due to underreporting and that the true number is likely to be much bigger.

Sri Lanka, like many other South Asian countries, is a society in which prevalent moral values have created a conflicting response to CSEA offences and the treatment of survivors. For example, the societal value placed on religion and family – and the secrecy which stems from this – often frustrates the country's attempts to identify and effectively prosecute instances of CSEA.²⁰

Reportedly, ignorance and stigmatisation of CSEA have been present for many years in Sri Lanka.²¹ Such stigmatisation means that the sexual exploitation and abuse of boys is dismissed, with male survivors of CSEA often left to suffer in silence.²² When the sexual abuse of male children by adults is acknowledged, it is often termed as homosexuality, with the survivor considered an offender as homosexuality is currently, in practice, illegal in Sri Lanka.²³ Such children and their parents are often hesitant to take action against alleged perpetrators due to a fear of negative consequences, including the risk of harassment by the perpetrator, particularly if the perpetrator is perceived as powerful. In relation to female children, cultural concepts about virginity and the tendency to blame the female have prevented the disclosure of CSEA offences.²⁴

Regarding the profile of survivors and offenders in Sri Lanka, a 2021 study by ECPAT noted Sri Lankan support workers estimated that approximately 37 per cent of the boys that they supported were known to have experienced sexual exploitation.²⁵ Comparatively, support workers estimated that about 47 per cent of girls experienced sexual exploitation.²⁶

In the same study, it was estimated that 62 per cent of CSEA offences involved a male offender.²⁷

Regarding the relationship of the offender to the survivor, it is most common for girls to be assaulted by a parent, step-parent or other relative; for boys, it is most common for their perpetrator to be a non-parental relative or a community member.²⁸

According to the US Department of State's 2021 Trafficking in Persons (TIP) Report, traffickers in Sri Lanka exploit men, women and children into commercial sex trafficking.²⁹ It is reported that more young girls were engaged in commercial sex due to economic hardship during the pandemic, and that traffickers focused more on Sri Lankan survivors due to difficulties in recruiting from abroad.³⁰ Child sexual abuse and exploitation has also been reported at the

hands of officials in government-run shelters.³¹ According to Save the Children, the commercial sexual exploitation of children, though a known issue in the country, is hidden and its extent is unclear.³²

The TIP report also notes that the sexual exploitation of children in travel and tourism (SECTT) is a problem in Sri Lanka, especially in coastal areas where traffickers exploit both girls and boys—although tourist volumes fell during the pandemic.³³ In 2019, an independent UN expert called the issue of SECTT in Sri Lanka 'very widespread' and urged authorities to take immediate action.³⁴

The practice of child marriage in Sri Lanka contributes to the increased vulnerability of children being sexually exploited or abused. UNICEF estimates that around 16,000 male and 24,000 female children were either formally married or cohabiting in Sri Lanka as of March 2018.³⁵ Whilst these numbers represent lower rates than in other South Asian nations, the major concern from a CSEA point of view is the caveats made by Sri Lankan legislation regarding those who are considered 'children' by broad international standards, and yet are not afforded the same protections under Sri Lankan law due to their marital status. The main drivers for this practice include poverty, tradition, exceptions within the law and the cultural view of shame around pre-marital sex.³⁶ Although marriage before the age of 18 is illegal in Sri Lanka, the customary and religious practice of child marriage continues in communities in the country, and inconsistencies in laws governing child marriage in different communities contribute to its prevalence.³⁷

Criminalisation/Legislation

The effectiveness of Sri Lanka's response to CSEA offences can best be assessed in two stages: firstly, considering the legislative response of the Government, and secondly, looking at the effectiveness of the judicial system's implementation of such legislation.

Classification of Sexual Offences with Children

There are several different CSEA offences that are criminalised in Sri Lanka, some of which carry different terms depending on the age of the survivors. However, many of Sri Lanka's sexual offences laws are outdated, may be discriminatory and, in their

current state, are inadequate in criminalising all forms of CSEA.

The main criminal legislation in Sri Lanka is the Penal Code, which classifies some sexual offences against persons including children.³⁸ Overall, there is a lack of stand-alone CSEA offences in the Penal Code. Apart from a pornography-related offence in section 286A, there is only the crime of 'sexual exploitation of children' in section 360B. The remaining sexual offence crimes are general provisions with some special circumstances applicable if the offence is committed against a child. Further, the general rape provision in the Penal Code specifies rape of girls under 16 years but excludes male survivors and female perpetrators.³⁹

— Section 286A provides that any person who hires, employs, assists, persuades, uses, induces or coerces a child to participate in, or a parent, guardian or person having custody of a child allowing that child to participate in, any 'obscene' or 'indecent' exhibitions, shows, photographs or films will commit an offence. This section also provides that those who take or assist in taking, distribute or possess for distribution, show, and publish such items are also guilty of the offence of obscene publication and exhibition relating to children. Whilst this section uses the phrase 'obscene or indecent photograph or film', what constitutes an obscene or indecent photograph or film is not clearly defined. Furthermore, Section 288A criminalises hiring or employing of children to act as procurers of persons for illicit sexual intercourse.

— Sections 360A(2) and 360A(4) criminalise the procurement of any children under the age of 16 for illicit sexual intercourse, both outside and in Sri Lanka. Section 360A also criminalises the 'attempt' in relation to procurement offences, although it does not define it.

— Section 360B(1) criminalises persons who take advantage of their relationship or influence over children, or use a threat or violence, or give children or their parents any monetary consideration, goods or other benefits, to procure them for sexual intercourse or sexual abuse. Furthermore, Section 360B(1)(a) of the Code penalises any person who knowingly permits a child to be sexually abused by allowing him/her to remain in any premises where such abuse may take place, or participate in any form of sexual activity or any obscene or indecent show.

— Section 360E of the Penal Code, criminalises the solicitation of children under 18 years, or believed to be under 18 years, for the purpose of sexual abuse, although the provision does not specify whether the meeting and the abuse must have happened to constitute the crime.

— Section 363 criminalises rape, defined only as something a man can commit against a woman. Section 363(e) criminalises the sexual intercourse between a man and any girl under the age of 16, unless the girl is his wife who is over 12 years of age and is not judicially separated from the man.

— Section 364A criminalises incest.

— Section 365B criminalises 'grave sexual abuse', defined as being 'committed by any person who, for sexual gratification, does any act, by the use of his genitals or any other part of the human body or any instrument on any orifice or part of the body of any other person, being an act which does not amount to rape.'

More generally, provisions in the Children and Young Persons Ordinance⁴⁰ and the Vagrants Ordinance⁴¹ are also sources of CSEA-related legislation in Sri Lanka. A pertinent offence under the Children and Young Person's Ordinance is that which expressly criminalises the causing or encouraging of seduction or prostitution of a female child under the age of 16.⁴² Furthermore, the overall legislative provisions enshrined in Sri Lanka's constitution cover forms of sexual offences included in the definition of CSEA.

Despite these laws, as highlighted by the Human Dignity Trust, legislation in Sri Lanka 'does not expressly criminalise offences such as sexual grooming, sexual communication with a child, or causing a child to watch sexual activity,' and therefore inadequately criminalises sexual offences against children.⁴³

Furthermore, there are several statutes which govern marriage in Sri Lanka and the inconsistencies between them. However, there is no general criminal offence of marrying a child, or inducing or forcing a child to get married, established in Sri Lankan law.⁴⁴

The *Marriage Registration Ordinance* provides that no marriage in Sri Lanka will be valid unless both parties are 18 years of age.⁴⁵ However, the

Ordinance does not apply to Sri Lankan Muslims, who are subject to the Muslim Marriage and Divorce Act 1951 (**MMDA**). Section 23 of the MMDA stipulates that no marriage will be registered for a girl under 12 years of age, unless the Quazi (Islamic magistrate) for the area in which the girl resides deems it necessary to authorise the marriage.⁴⁶

Kandyan Sinhalese Sri Lankans can choose whether their marriage is governed by the Kandyan Marriage and Divorce Act (which provides a lawful marriage age of 18),⁴⁷ or the Marriage Registration Ordinance.⁴⁸ The lawful marriage age is subject to exceptions, including if the couple have cohabitated prior to the marriage, or have a child together. There are similar provisions in the Marriage Registration Ordinance and the Kandyan Act to allow marriage under the age of 18, where the child has the consent of their parent, guardian or a competent Court.⁴⁹

In addition, customary marriage is legally recognised and endorsed by case law and, for all purposes, has the same legal rights as a registered marriage in Sri Lanka.⁵⁰

The application of personal laws such as the MMDA, Thesawalamai law and the Kandyan law⁵¹ are not limited by the Constitution, even though it commits the state to protect children from exploitation and discrimination.⁵² Therefore, in practice, marriage for many children under the age of 18 is permitted in Sri Lanka. Furthermore, legislation does not criminalise child marriage, inducing or forcing a child to get married, or knowingly marrying a child.⁵³

The case of *Guneratnam v Registrar General* involved a case where a registrar refused to register the marriage of a girl under 18 years of age, which was challenged by her parents on the basis they had given their consent and therefore the marriage should be solemnised.⁵⁴ In coming to a decision, Justice Tillekawardena cited the Marriage Registration Ordinance, and held an underage marriage was void and had no legal consequence, even if the parents expressed their consent to it.⁵⁵ Despite the Court's clear pronouncement that 'parental consent cannot supersede the absolute prohibition of marriage under 18 years as a prohibited age cannot know any exceptions', it has been noted that 'it has become the practice of lawyers to interpret the breach of the section on the legal age of marriage under the [General Marriage Ordinance] as resulting in a 'voidable' marriage as

opposed to being a 'void' marriage ... [as such,] such unions will become valid after the relevant party/parties reach 18 years. Reports also indicate the incorrect practice of judges that declare an underage marriage to exist unless declared invalid by a court'.⁵⁶

However, according to reports both the MMDA and Kandyan Act are being sought to be amended.⁵⁷

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA. The Lanzarote Convention is the first international instrument that defined and called on states to prohibit grooming, defined in the Convention as "preparation of a child for sexual abuse, motivated by a desire to use the child for sexual gratification".⁵⁸

Sri Lanka is not yet a signatory to the Lanzarote Convention and has therefore not ratified it into domestic law.⁵⁹ However, Sri Lanka's legislation concerning CSEA is aligned with Articles 18, 19, 20, 21, 22, 23, 24, 25, 27 and 28 of the Lanzarote Convention.

Due to the complication concerning the definition of a child in Sri Lankan legislation, as detailed in the following section, Article 3 of the Lanzarote Convention has not been complied with. Furthermore, Article 12 of the Convention has not been fully applied in Sri Lankan law due to a lack of mandatory reporting legislation directed at professionals working with children who suspect cases of CSEA. However, Section 286C of the Penal Code does apply a duty to inform of use of premises for child abuse, and therefore Article 12 is partially implemented.

Article 26 of the Lanzarote Convention, which provides for the liability of corporate bodies for criminal acts, does not appear to have been implemented in the Penal Code.

Age of Consent & Definition of a Child

There is inconsistency and a general lack of clarity between statutes regarding the defined age of consent regarding sexual activity in Sri Lanka. This

provides a challenge to the Government of Sri Lanka in its fight against CSEA and can understandably cause confusion when attempting to prosecute CSEA offences. For example, in Section 363 'Rape', consent to sexual intercourse is given at 16 years. However, under the same section, where a woman is a perpetrator's wife, consent is given at 12 years.

Simply defining what is meant by a 'child' for the purposes of prosecuting CSEA offences in Sri Lanka is a long-winded and arduous process, with no clear authority on the matter. For example, according to the Penal Code, a child is deemed to be a person who is under 18 years. However, this directly contradicts the *Child and Young Persons Ordinance*, under which a child is defined as a person under 14 years of age and a young person is defined as a person under 16 years of age. The Constitution of Sri Lanka does not define 'child' and therefore offers no guidance on the matter.

Further, given that the age of consent under the Penal Code is generally considered to be 16 years old, consent is an irrelevant consideration if the child is under the age of 16 and if the child is between the age of 16 and 18, the child's lack of consent must be proved by the prosecution. Accordingly, certain offences have a higher penal provision if committed against those less than 16 years of age as opposed to those less than 18 years of age.

Section 23 of the MMDA contradicts the Penal Code. The age of consent under the Penal Code is 16 years, and "carnal knowledge" with a child under this age an offence. However, if the child is a man's wife, this age reduces to 12 (provided the spouses are not judicially separated). Under the MMDA, a female child can be married when they are under the age of 12 and any sexual activity with a marriage of this kind would be considered rape under the Penal Code. The Women's Action Network are campaigning to amend the MMDA, to raise the minimum age for marriage to 18 years (consistent with the Marriage Registration Ordinance and the Kandyan Marriage and Divorce Act).⁶⁰

Trafficking

Offences related to the trafficking of children are primarily criminalised under the Penal Code and the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act (the **SAARC Act**).

Sri Lanka ratified the SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution (SAARC Convention) in 2002. The purpose of the Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of the prevention, interdiction and suppression of trafficking in women and children, including the repatriation and rehabilitation of survivors of trafficking and preventing the use of women and children in international prostitution networks, particularly where the countries in the SAARC region are the countries of origin, transit and destination.⁶¹ In 2005, the Sri Lankan Government enacted the SAARC, giving effect to the SAARC Convention of the same name.⁶²

Section 360C(1)c of the Penal Code criminalises the act of recruiting, transporting, transferring, harbouring or receiving a child or doing any other act with or without the consent of a child, to secure forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation, or any other act which constitutes an offence under any law. However, according to ECPAT, the effectiveness of this law is limited as the activities are not clearly defined as constituting trafficking, nor have the terms trafficking or sexual exploitation been properly defined.⁶³

Extraterritoriality

Section 2(2) of the Penal Code provides for extraterritorial jurisdiction over CSEA offences specified in the Code. It states that nationals of Sri Lanka will be liable to punishment under the Penal Code for any prohibited act or omission committed outside Sri Lanka, whether or not they enjoy diplomatic immunity. However, these provisions do not apply to permanent residents, only nationals.

Section 9(1)(f) of the Judicature Act 1978, as amended by the Judicature Act (Amendment Act) 2018 applies extraterritorial jurisdiction to offences such as trafficking in persons, if committed by a Sri Lankan citizen whilst abroad. Furthermore, Section 3(2) of the SAARC Convention Act extends extraterritorial jurisdiction of the High Courts over trafficking committed outside of Sri Lanka, if they are committed by 'any person who is either present in Sri Lanka; or is the citizen of habitual resident of Sri Lanka; or if the offence has been committed against a citizen of Sri Lanka'.

Legislation in Sri Lanka does not incorporate the principle of dual criminality to extraterritorial jurisdiction, meaning that the act does not need to be an offence in both Sri Lanka and the country where it happened in order for the offender to be prosecuted for a crime committed overseas. However, dual criminality is required for extradition and mutual legal assistance, but may be waived if an act or omission is of a serious nature and is a criminal matter within the meaning of the relevant Act. In such instances where the age of consent is lower in another country, the law makes provision for the accused to seek an application under the Section 396 of the Code of Criminal Procedure (the **Criminal Procedure Code**).

Extradition

Extradition is governed by the Extradition Law and the Mutual Assistance in Criminal Matters Act 2002 (as amended) (the **MACMA**). The Extradition Law specifies that a treaty is not required for Commonwealth countries (section 2) but would be required for other countries ("foreign states") (section 3). The applicability of the Extradition Law depends on the publication of an Order by the Minister. The MACMA is based on the principles of mutuality and reciprocity. The scope of the MACMA was widened in the 2018 amendment to include members of the international community.

The Extradition Law 1977 (as amended) (the **Extradition Law**) contains the description of extraditable offences. Certain CSEA offences are specified in Part A, including rape, carnal intercourse with a female between 12 and 14 years, unnatural offences, procuring a girl or women to become a common prostitute, kidnapping, abduction, wrongful confinement, exposure and abandonment of a child under 12 years. Therefore, not all CSEA offences are extraditable in Sri Lanka.

Furthermore, key issues arise when seeking the extradition of CSEA perpetrators in other countries. Dual criminality is a requirement for extradition. Further, extradition can be refused if the offence is punishable by death in the requesting state, but is not so punishable in Sri Lanka. Finally, if it is somehow unjust or oppressive, or the offender is facing charges in Sri Lanka for the same or different offence, then extradition may also be difficult to obtain.⁶⁴

Statutes of Limitation

Sri Lanka does have domestic legislation which prescribes a limitation period for the prosecution of CSEA-related offences.

According to Section 456 of the Criminal Procedure Code, prosecutions for all crimes, excluding for murder and treason, must be commenced within 20 years from the time when the crime or offence was committed. The effect of Section 456 has been confirmed in the courts, with *Malka Siriweera vs OIC, Special Crimes Division Branch, Tangalle and Others* confirming that "Article 13 (3) of the Constitution guarantees to every person charged with an offence, fair trial by a competent Court, which includes giving full effect to the statutory restrictions on prosecution, including the time bar in Section 456 of the Criminal Procedure Code".⁶⁵

Reportedly, it has been observed that authorities purposefully delay the investigation and prosecution of offences over several years, particularly when powerful people are involved, in order to take advantage of the statutes of limitation and cause the cases to lapse.⁶⁶ In other circumstances, survivors may delay reporting the offences committed against them, whether due to pressure exerted by their families or the authorities, or the fact that it takes time for them to be able to face what has happened to them, and eventually have to withdraw their case as time runs out.⁶⁷

According to researchers, in 2021, a direction was issued to all High Court judges to dispose of cases pending for more than ten years to be heard and concluded within six years.

The existence of a statute of limitation in Sri Lanka's legislation therefore limits access to justice for survivors of CSEA. Survivors of CSEA offences, as well as other serious crimes, would benefit greatly from this limitation period being removed.

Outdated Terminology

The terms 'child pornography', 'child prostitution', 'seduction' and 'carnal knowledge' are referenced in Sri Lanka's legislation. It is widely accepted that these terms are outdated, and imply that children are complicit in the sexual abuse.⁶⁸ Furthermore, moralistic terms including 'indecent' and 'obscene'

are included throughout Sri Lanka's legislation, often without clear definitions which leaves a lot of room for judicial interpretation and therefore inconsistent application of the law.⁶⁹

Other

Sentencing

Generally, the threats of a substantial prison sentence and the imposition of a strong legal obligation on those who may inadvertently be involved in CSEA offences (that being to take "all steps necessary" to remove yourself and report the situation) serve to underline the Government of Sri Lanka's intention to actively combat the CSEA issue that the country faces.

— The imprisonment term for someone who has committed an offence of the sexual exploitation of children, as defined in section 360B of the Penal Code, is from five years to 20 years if the survivor is under the age of 18. There is also the option for the court to fine the assailant.

— The imprisonment term for someone who has committed an offence of rape, as defined in section 364 of the Penal Code, is from seven years up to 20 years if the survivor is under 18 years of age. However, rigorous imprisonment for at least ten years up to 20 years is applicable if the survivor is under the age of 18 years of age.

— The imprisonment term for someone who has committed an offence of grave sexual abuse, as defined in section 365B of the Penal Code (a sexual abuse act which does not amount to rape), is between seven years and 20 years where the survivor is under 18 years of age.

— The imprisonment term for someone who has committed the offence of trafficking a child under the age of 18 under section 360C of the Penal Code, is between two years and 20 years.

— The imprisonment term for someone who has committed an offence of obscene publication exhibition and relating to children, as defined in section 286A of the Penal Code, is between two years and ten years. For the purposes of this offence, a child is someone under 18 years of age.

— The imprisonment term for someone who has committed an offence of hiring, employing, persuading, using, inducing or coercing a child under 18 years of age to procure any persons for illicit sexual intercourse, as defined in section 288A of the Penal Code, is between two years and five years.

— Someone who procures someone under 16 years of age to leave or enter Sri Lanka with a view to illicit sex has committed an offence under section 360A of the Penal Code. Similarly, this section also legislates against procurement of prostitution (where the survivor is any age). Ultimately, the offence draws a punishment of imprisonment of between two years and ten years.

As noted earlier, the Children and Young Persons Ordinance and the Vagrants Ordinance criminalise certain acts associated with the exploitation of female children, particularly in prostitution. However, the penalties associated with these offences are not sufficiently stringent.

Treatment of Children of Different Genders

In summary, many of Sri Lanka's sexual offences laws are outdated and discriminatory.

Section 363(e) of the Penal Code, which criminalises statutory rape, only applies to girls. Furthermore, the very definition of rape is discriminatory as only penetrative sexual intercourse committed by men is criminalised. Additionally, Section 365B, which criminalises sexual acts other than rape, includes use of the phrase, 'does any act by the use of his genitals' indicating that the offender could only be considered male.⁷⁰ The Children and Young Persons Ordinance also relates solely to the seduction and prostitution of girls under the age of 16, and makes no reference to males.⁷¹

As highlighted by ECPAT in its 2021 report, all of these forms of legislation currently ignore the reality that boys are at risk of CSEA, and may be abused or exploited by female offenders.⁷²

According to the Penal Code, sexual activity between partners of the same sex is prohibited (Section 365A). In practice, this means that homosexuality is criminalised in Sri Lanka.⁷³ As well as impacting consensual homosexual relationships between adults, this means that children who have been

exploited or abused by perpetrators of the same sex may not report such offences to the authorities for fear of being charged with a crime themselves.

Gaps in Criminalisation

As a first step, the relevant gaps in Sri Lanka's legislative body must be addressed. These gaps are detailed throughout this chapter, and the key issues listed below require legislative reform to be effectively rectified:

— Offences such as sexual grooming, sexual communication with a child, or causing a child to watch sexual activity are not currently criminalised.

— The age of consent and marriage is not consistently applied across differing legislations (most notably some religious acts).

— Male children are notably left out of some key parts of legislation (e.g. s 364 of the Penal Code; Rape.). Law reform is required to remove this gendered treatment.

— The 20-year statute of limitation applied to CSEA offences in the Penal Code currently limits access to justice for survivors of CSEA.

— Outdated and unclear terminology is present in Sri Lankan law concerning CSEA offences, including 'child pornography', 'child prostitution', 'seduction', 'carnal knowledge', 'indecent' and 'obscene'.

— The penalties associated with the sexual exploitation of female children in the Children and Young Persons Ordinance and the Vagrants Ordinance are not sufficiently stringent.

— The gendered language contained in the *Child and Young Persons Ordinance*, as well as across the wider body of Sri Lankan legislation, presents serious implications for prosecuting CSEA offences and protecting children, in particular boys, from exploitation and abuse.

— The criminalisation of male homosexual activity may lead to male children who have been exploited or abused by male perpetrators not reporting such offences to the authorities for fear of being charged with a crime themselves.

Prosecution

It is important to note that in Sri Lanka, case law pertaining to CSEA offences is not publicly available due to the protection of children and rights to privacy.⁷⁴ Special permission must be obtained to access these cases. This places a limitation on the analysis and critique of the Sri Lankan judicial system regarding the prosecution of perpetrators and protection of survivors of CSEA under the current legislative framework.

Generally, whilst Sri Lanka has a range of issues regarding both criminalising CSEA and prosecuting the perpetrators of such offences, there have been some encouraging trends in terms of both the number of perpetrators successfully prosecuted and the chance of success when filing cases of CSEA offences. In 2020, a report made by the US Government into trafficking in Sri Lanka revealed that the Criminal Investigation Department's (CID) anti-trafficking unit initiated a total of 27 prosecutions against perpetrators, a decrease from 46 prosecutions during the previous reporting period,⁷⁵ as well as opening six sex trafficking investigations and securing three case convictions against ten traffickers.

However, many issues in the prosecution process have been identified. In a positive step for survivors, a Child (Judicial Protection) Bill is being drafted, which contains several notable improvements to the framework governing the administration of justice for children.⁷⁶

Initiating Prosecution

CSEA offences are recognised in the Criminal Procedure Code as a 'cognisable offence', being defined in the Criminal Procedure Code as the offences listed in sections 280, 288, 308, 360, 363, 364 and 365 of the Penal Code (as detailed above).⁷⁷ This means that the police do not require a warrant to arrest someone under the suspicion of perpetrating a CSEA offence.⁷⁸ Furthermore, for these offences, the police can commence an investigation on their own, before receiving a complaint.

For CSEA offences, the jurisdiction for prosecuting potential offenders is the Magistrates Courts or High Courts. As prosecution is primarily through the

Magistrates Court, the prosecution of a perpetrator of a CSEA offence commences upon a complaint being lodged with the relevant police unit. Whilst provision is also enshrined in the Criminal Procedure Code for the NCPA to prosecute complaints directly, in practice it is the police which will most commonly make this complaint. If the offence is indictable, then a non-summary inquiry will be held in the Magistrates Courts, and thereafter the case will be referred to High Courts. Nevertheless, there are also instances where complaints can be lodged by third parties, for example by a doctor or a neighbour.

Legislation in Sri Lanka only imposes mandatory reporting duties on individuals belonging to certain professions, including Internet service providers and a photo developer who comes across CSAM.⁷⁹ Failure to report in these circumstances theoretically results in punishment of up to two years and/or a fine. However, these mandatory reporting measures are not sufficient. Professionals who are the most likely to come into contact with a child being exploited or abused, such as teachers and healthcare workers, are not currently required by law to report suspected cases.⁸⁰ Furthermore, members of the public are not obligated to report CSEA, unless they are 'owners and caretakers of premises who have knowledge of child abuse on the relevant premises.'⁸¹

There are no restrictions on parents or legal guardians reporting CSEA offences on behalf of children. However, it should be noted that reporting such offences remains quite low in Sri Lanka due to a range of factors, such as the stigmatisation of these offences, the potential of social scorn and also due to a lack of awareness on how to proceed and whom to contact immediately when such a situation arises, as well as a general reluctance to get involved in lengthy court proceedings.

Investigation & Evidence

There are Women and Child Desks (WCDs) in each police station to deal with cases involving children.⁸² However, there is no duty to provide information related to legal proceedings in a child-friendly manner in Sri Lanka. To help improve the system's response to cases involving children, the Sri Lanka College of Paediatricians and Plan Sri Lanka have developed National Guideline for the Management of Child Abuse and Neglect (2014).⁸³ These guidelines provide a multi-sectoral approach for handling cases pertaining to child survivors.⁸⁴

ECPAT has argued that there is a need for a standalone police unit as part of the law enforcement to investigate CSEA offences and enforce these laws, rather than a dual-purpose unit for crimes involving women and children. The lack of such a unit has often been cited by the police force as one of the reasons for delay in investigations of these offences.⁸⁵

The establishment of the Sri Lankan Anti-Human Trafficking Task Force in 2010 is a demonstration of the progress that the Government of Sri Lanka is attempting to make. This Task Force attempts to highlight some of the roadblocks faced by the Government in prosecuting offences related to the trafficking of children. However, as some members of the Government of Sri Lanka hold negative generational and cultural attitudes towards the CSEA issue, the Task Force faces roadblocks in the form of poor coordination and infrequent meetings. As such, the Task Force's progress has been frustrated. In August 2021, the Human Trafficking, Smuggling Investigation and Maritime Crime Investigation Division was established under the CID to investigate human trafficking and initiative proceedings against perpetrators.⁸⁶

Issues such as police not taking statements from survivors according to standard procedure, not processing cases in an expedited manner, and inadequate investigation skills have been cited as reasons for CSEA survivors' and their families' dissatisfaction with the police force.⁸⁷

Police attitudes towards survivors have been cited as limiting factors in Sri Lanka's criminal justice system. In particular, referring to self-generated intimate content, including CSAM that has been leaked online, law enforcement has a history of 'victim-blaming' instead of holding adult offenders to account.⁸⁸

The *Evidence Ordinance 1896* (as amended) (the **Evidence Ordinance**) contains the relevant rules of evidence.⁸⁹

Presumption that Survivor is a Child

There is no presumption in Sri Lankan CSEA laws that a survivor is a child. The Evidence Ordinance will enable a court to decide on a child's age if it is contentious or in the absence of any evidence which conclusively proves a child's age. Section 38A of the

Evidence Ordinance provides that “where a court is required to form an opinion as to the age of a person, a statement in a certificate purporting to be issued by a Medical Practitioner as to the probable age of such person is relevant”, with a “Medical Practitioner” being defined as someone who is registered as such under the Medical Ordinance.⁹⁰

Procedure for Child to Give Evidence

Sri Lanka has taken some steps to ensure that witnesses are generally made to feel at ease with the judicial system. Under Section 3(b) of the Assistance and Protection to the Victims of Crimes and Witnesses Act 2015, a child survivor should be treated in a manner that ensures his/her best interests.⁹¹ Similarly, the Evidence (Special Provisions) Act permits children to give evidence via a video link.⁹² Through this Act, there is also a provision for a court to receive evidence of a child without requiring an oath or an affirmation to be administered to the child. Furthermore, in accordance with Section 43A of the Criminal Procedure Code, special considerations and priority are given to trials of CSEA offences.⁹³

However, in practice, the provisions put in place to protect survivors from further traumatising during their testimony or the investigation of the offences committed against them, are rarely invoked.⁹⁴ According to the Auditor General, the use of video evidence in Sri Lanka’s courts is limited, only being granted in 30-40 per cent of requested cases, despite being mandated under the law.⁹⁵ Furthermore, UNICEF has identified that professionals working in the justice sector have not been adequately trained in the application of child-friendly justice.⁹⁶

Defences

There are no close-in-age defences in Sri Lankan law. Therefore, the law does not currently provide protection where there is consensual sexual intercourse between two children or where the age gap between the survivor and the offender is less than four years. This can result in the criminalisation of children and young persons for consensual sexual intercourse.

Unwillingness to Proceed with ‘Formal’ Trial

At present there are a number of failures in the judicial system regarding child witnesses/complainants which lead to a lower likelihood that a child or their family would be willing to proceed with a formal trial. For example, criminal proceedings often take a very long time, which increases not only the financial but also emotional burden on the child and their family.⁹⁷ The long time for criminal proceedings has resulted in a significant backlog of CSEA cases in the system.⁹⁸

Furthermore, as cited above, police attitudes towards survivors are often not positive, and may encourage children to withdraw their statements or not make a report in the first place. Indeed, 92 per cent of children surveyed by Save the Children in their 2021 report responded that they would not seek legal support or complain to legal authorities if they had been sexually exploited or abused.⁹⁹ Fear of further victimisation by law enforcement or society was cited as the primary reason for this reluctance to report.

Gaps in Prosecution

Evidently, there are a number of gaps which currently limit the effectiveness of prosecutions of CSEA offences in Sri Lanka. These include:

- A lack of mandatory reporting laws directed at frontline professionals, such as healthcare workers and teachers.
- No presumption in Sri Lankan CSEA laws that a survivor is a child.
- Inadequate and slow investigation of CSEA offences.
- Negative police attitudes towards survivors. Victim-blaming and stigma are two key contributing factors to low rates of reporting, as well as incidences of survivors withdrawing cases before prosecution.
- Child-friendly justice measures, such as the use of video evidence, are limited despite laws being in place which mandate the provision of child-friendly justice.
- Professionals working with children in the criminal justice system are not sufficiently trained to be able

to implement child-friendly justice and mitigate the risks of re-traumatisation for survivors.

— A lack of close-in-age defence can result in the criminalisation of children and young persons who engage in consensual sexual activity.

Protection

Protection of Survivors During Proceedings

Protection for survivors of CSEA following the report of a crime can be provided under the Assistance to and Protection of Victims of Crime and Witness Act 2015.¹⁰⁰ However, the provision of such protection is not offered ‘by default’, according to ECPAT, and the burden is placed on the witness or survivor to actively seek protective measures in court.¹⁰¹

Section 25 of the Assistance to and Protection of Victims of Crime and Witnesses Act 2015 provides certain rights to all survivors of crimes, including the protection of their identities, privacy, conduct of proceedings in camera, and prohibition on media publications.¹⁰² Section 365(c)(1) of the Penal Code specifically prohibits the publication of matters revealing the identity of survivors of child abuse and neglect, which includes CSEA survivors. Reportedly, however, this prohibition on media publication is not strictly followed in practice. According to ECPAT Sri Lanka, ‘media organisations are not sufficiently penalised for these violations and often only receive a warning or a small fine.’¹⁰³

A CSEA survivor may seek financial assistance from the State and National Authority for the Protection of Victims of Crimes and Witnesses for any expenses incurred to attend court proceedings, medical treatment, rehabilitation or recovery.¹⁰⁴ Compensation is only afforded to a survivor when a court order is made directing the offender to make a payment.¹⁰⁵ If the offender cannot make the ordered payment, the survivor will be offered no further compensation.

Children do not have access to free legal aid or representation, and are required to find their own lawyer to protect their interests and represent them.¹⁰⁶ Reportedly, some legal services may be available by accessing free legal aid opportunities provided by the Legal Aid Commission, Bar Association or NGOs, although in the absence of

explicit legal provisions, there are likely to be inconsistencies in practice.¹⁰⁷

Protection of Children in General

The recently reconstituted State Ministry of Women and Child Development, Pre-Schools & Primary Education, School Infrastructure & Education Services (the **MWCD**), under the Ministry of Education, is the primary regulatory authority regarding child protection rights in Sri Lanka. In the MWCD, the Department of Probation and Child Care Services and the National Child Protection Authority (the **NCPA**) specifically addresses child protection matters.

The NCPA was constituted under the National Child Protection Authority Act No. 50 of 1998 (the **NCPA Act**) and given wide powers to combat child abuse and exploitation, including trafficking, commercial sexual exploitation, forced labour and illegal adoption. The NCPA cooperates with several government ministries, provincial councils, local authorities and the public and private sectors. The authority develops national policies and programmes, and monitors the implementation of all components of child protection initiatives.

In order to monitor and take action to protect children, the MWCD established Child and Women Development Unites (CWDUs), which comprise of the following professionals: Women Development Officer(s) and/or Women Development Field Assistant(s), Counselling Officer(s) and/or Assistant(s), Child Rights Promotion Officer(s) and/or Assistant(s), Early Childhood Development Officer(s) and/or Assistant(s), and a Child Protection Officer and/or Child Protection Assistant.¹⁰⁸ Sri Lanka’s national referral mechanism was established to respond to CSEA cases. At the national, district and village levels, it is composed of the NCPA, District Child Development Committees and Village Child Development Committees.¹⁰⁹

The National Policy on Child Protection 2017–2027, prepared by the NCPA, provides the overall framework of goals, guiding principles and values, policy goals and main strategies for protecting children in Sri Lanka.¹¹⁰

The National Plan of Action of Children (2016–2020), launched by the MWCD, contains provisions and activities to protect children from all forms of sexual

exploitation, including regarding trafficking, sale, commercial sex networks and child sexual abuse, and to respond to the needs of survivors through counselling, therapy and rehabilitation.¹¹¹ At the time of writing in March 2022, it is unclear whether the Ministry has produced a new National Plan of Action since the previous one expired in 2020.

Despite the legislative bodies and provisions detailed above, which provide a *prima facie* support network and layer of protection for child survivors, these measures and organisations do not always succeed in their remit of protecting child survivors of CSEA offences.

Reports of system failure and statutorily founded bodies failing to protect child survivors are, unfortunately, commonplace in Sri Lanka. In a 2020 report, the Auditor General highlighted several inefficiencies in the functioning of the NCPA.¹¹² Human resources management is weak and limits the capabilities of the NCPA,¹¹³ and the Authority's handling of child protection cases is often slow in response due to a high employee turnover.¹¹⁴ Furthermore, it has been called into question how far the National Policy on Child Protection 2017–2027 has been implemented in Sri Lanka. As stated by the Committee on Public Enterprises during an evaluation of the NCPA, 'the implementation of a national policy has been delayed for 21 years.'¹¹⁵

It has been identified that further training on sensitisation and the foundations of child protection is needed amongst existing professionals working with children in Sri Lanka.¹¹⁶

An example of an instance where system failure resulted in the rights and protections of a child survivor not being provided is the following case.

A five-year-old girl was allegedly sexually abused by her stepfather. However, the mother did not have alternative accommodation and was totally financially dependent on the perpetrator of the CSEA offence.¹¹⁷ It is the policy of the Government of Sri Lanka (via the National Policy for Alternative Care of Children in Sri Lanka) to prevent, where possible, the 'unnecessary separation of children from their families'. It is also policy to consider institutionalisation (i.e. taking the child into care) as a 'last option'.¹¹⁸ The mother and child survivor were unable, in this instance, to seek the support of the state and the child survivor was not afforded the

protection that is theoretically enshrined in Sri Lankan legislation.

One further factor which will inevitably impact on the Government of Sri Lanka's ability to afford every child survivor the protection it has enshrined, or intends to enshrine, in domestic legislation is the societal and cultural attitudes of government and health workers who will often be required to assist such survivors. Regrettably, the implementation of legislative and other protections will only protect survivors of CSEA offences insofar as the individuals in this network of organisations are willing to provide that protection.

One particularly striking example of the stigmatisation encountered by survivors of CSEA offences, and the consequent urgency with which the Government of Sri Lanka is required to tackle these views within society, is the case of a 14-year-old girl who had allegedly been sexually abused by her stepfather from the age of three. According to the judicial medical officer's report, the abuse had been occurring from such a young age that the child had never learned of the concept of consent, nor to refuse or resist when such abuse was occurring. When interviewed for the prosecution of the perpetrator, the child stated that such abuse was an everyday occurrence, not just between herself and the perpetrator, but between all members of her family. When in hospital undergoing medico-legal procedures, the child survivor was subjected to verbal abuse from one of the female nurses looking after her. It was her view that the child survivor was receiving undue attention and unnecessarily occupying a hospital bed, as she had never resisted and had, in the nurse's view, 'given consent' to the abuse.¹¹⁹

This example simultaneously shows the shortcomings in the implementation of legislative provisions and organisational efforts to protect survivors of CSEA-related offences, as well as the social stigma surrounding CSEA and the lack of awareness regarding consent. This lack of awareness of the legal definition of consent represents a major obstacle in the prosecution of perpetrators of CSEA offences. The Penal Code states that the age of consent is 16, so the child survivor in this instance was not legally able to provide consent to the abuse she endured.

Protection of Trafficked Children

The Government has made efforts to address the protection of trafficked children, including the creation of the National Anti-Human Trafficking Task Force.¹²⁰ In 2021, the Ministry of Justice handed over chairmanship of the Task Force to the Ministry of Defence. Reportedly, this policy decision was taken to establish a 'stronger institutional mechanism in direct coordination with the investigating authorities and intelligence agencies to curb human trafficking.'¹²¹

The SAARC Act empowers the government to issue directions to provide survivors of trafficking, including children, with legal advice, healthcare, accommodation, shelter, rehabilitation, counselling and other forms of support.¹²² Survivors of cross-border trafficking are also entitled to repatriation according to the SAARC Act.¹²³

Key challenges have been identified in Sri Lanka's protection of children who have been trafficked. These include difficulties in survivor identification, cumbersome complaint mechanisms, poor understanding of domestic trafficking due to inadequate knowledge and skills amongst professionals and the public, and a lack of coordination and information-sharing amongst institutions and departments responsible for children's welfare.¹²⁴

Furthermore, the UN Committee on the Rights of the Child expressed concern that, in practice, institutions supporting children who have been trafficked do not provide tailored services to them, as they should according to Sri Lanka's obligations under the UN Optional Protocol.¹²⁵ According to ECPAT, cases of children who are trafficked for sexual purposes other than exploitation (e.g. sexual abuse) in Sri Lanka are often not treated by the authorities as trafficking. Such cases are usually considered 'abductions' rather than trafficking, therefore meaning that offenders receive a lesser sentence.¹²⁶

Counselling

In 2010, the NCPA initiated Childline Sri Lanka 1929, a toll free 24-hour hotline dedicated to receiving and responding to complaints on child abuse and child rights violation.¹²⁷ It is private and confidential. However, despite the NCPA's claims that the service is available 24 hours a day, there has been some

criticism of the service, reporting that many calls go unanswered.¹²⁸

Sri Lankan legislation does not currently mandate a survivor of CSEA's right to receive counselling or other psychological support to recover from the crime committed against them.¹²⁹

According to ECPAT, male survivors of CSEA face additional barriers in accessing medical services, counselling and other support following their disclosures.¹³⁰

Protection of Children in Disaster Settings

Sri Lanka is a country that is vulnerable to extreme weather events and natural disasters, including heavy rainfall, floods, and landslides, the effects of which have been exacerbated by climate change.¹³¹ Furthermore, Sri Lanka's previously long-running armed conflict had required a highly-coordinated and effective strategy for emergency response to ensure the protection of children from violence.¹³²

According to the Red Cross, following a devastating tsunami in 2004, the Red Cross, the Ministry of Education, local organisations and PLAN Sri Lanka, worked together to strengthen child protection systems and protocols in schools.¹³³ Furthermore, UNICEF has worked with the Department of Probation and Child Care Services, World Vision Lanka and ChildFund Sri Lanka to prioritise the interests and needs of children in disaster risk reduction programmes.¹³⁴

To address the need to mitigate risks posed by disasters, Sri Lanka enacted the Disaster Management Act in 2005.¹³⁵ Whilst providing detailed provisions for the establishment of mechanisms and policies relating to disasters in Sri Lanka, the current law does not contain measures focused on the specific vulnerabilities of and issues faced by children in such scenarios.

Other

Police Training

Following extensive consultations from 2017 to 2020 with government and civil society stakeholders, the MWCD developed a set of guidelines aimed at strengthening district- and divisional-level response

to sexual and gender based violence, including CSEA.¹³⁶ As well as intended to provide guidance to members of the police, the guidelines also provide guidance to officers of the Health, Social, Economic and Educational and Justice sectors.

According to the Auditor General, the provision of ongoing training to police is limited.¹³⁷

Collection and Dissemination of Data of Child Protection

Despite being formed 20 years ago, the NCPA has yet to create a national database.¹³⁸ Therefore, the data on the general trend of child abuse in Sri Lanka does not reveal the extent to which sexual abuse and exploitation is present.

The UN Committee on the Rights of the Child has emphasised the need for Sri Lanka to set up a comprehensive data-collection system to analyse the data collected as a basis for assessing progress, and to help design policies and programmes to support the protection of children.¹³⁹ Particularly regarding online-facilitated CSEA, empirical evidence is not available due to a lack of data collection and dissemination.¹⁴⁰

Prevention

Register of Offenders

Even though there is no specific list of individuals convicted of CSEA offences, the Criminal Record Division of the Sri Lanka Police Department maintains records of all convicted persons. In terms of the NCPA Act, the NCPA is required to create a database with the names of those who were convicted of sexual offences.¹⁴¹ However, there is no clear indication that this has been done so to date.

The Sri Lankan Establishments Code suspends convicted offenders from government jobs.¹⁴² Most entities, including government entities, require a police report to be submitted as part of a background check when applying for employment, and, while it is not a specific requirement, it is general practice that convicted offenders do not gain employment in government jobs. However, current legislation does not require a background check for those who are specifically applying to or working in a role with children.¹⁴³

Child Online Safety

Through their status as a member of the Global Partnership to End Violence Against Children, the WeProtect Global Alliance and the Council of Europe's Convention on Cybercrime, the government of Sri Lanka has several obligations to uphold in ensuring children's safety online.

Section 286A of the Penal Code criminalises 'obscene publication and exhibition relating to children' under 18 years of age. Section 286B mandates a duty to report CSEA content for persons providing 'service by means of a computer,' such as cybercafés. Section 286C related to the duty to inform of use of premises for child abuse.

Other laws could be interpreted as to criminalise the production and distribution of CSEA content. For example, Section 2 of the Obscene Publications Ordinance criminalises the publication of an 'obscene article' electronically. Section 3 of the Computer Crimes Act 2007 also prohibits using a computer to access illegal content, and Section 7 makes it an offence to download, upload or make copies of illegally-acquired content. However, these Acts do not specifically address online-facilitated CSEA and therefore do not sufficiently criminalise such offences.

In 2021, Save the Children released a research report on online violence against children in Sri Lanka.¹⁴⁴ The research was carried out by the University's Social and Policy Analysis and Research Centre and was the first national research project on the cyber exploitation of children covering not only Sri Lanka but the entire South Asia region. The research was commissioned by the MWCD with the technical and financial partnership of Save the Children, World Vision Lanka, and the Global Partnership to End Violence Against Children.¹⁴⁵

The report found that, whilst 'existing provisions in the Penal Code adequately provide legal relief against the online sexual exploitation of children', there are several gaps in current Sri Lankan legislation against online-facilitated CSEA. For example, digitally-generated images or realistic images of non-existent children are not currently criminalised.¹⁴⁶ Furthermore, even if the Penal Code prohibits the distribution of obscene publications of a child, it fails to address intent to distribute CSAM via computer systems. Finally, it does not appear as

though the live streaming of CSEA or CSAM is currently criminalised under Sri Lankan law.

In September 2020, the Cabinet of Ministers approved a proposal to draft a new bill which would address offenders who distribute or publish CSEA content and CSAM online.¹⁴⁷ According to the UN Committee on the Rights of the Child, this new bill will aim to formally define the terms surrounding online child sexual exploitation, as well as dealing with various methods of transmitting or circulating CSEA material, such as the sharing, hosting or streaming such material on the internet.¹⁴⁸ This seems to be a positive step towards updating Sri Lanka's legislation against the distribution of CSEA content online. However, civil society organisations have expressed hesitancy towards this bill's introduction, as it has the potential to impact freedom of expression for adults, particularly marginalised groups.¹⁴⁹ These critics recommend that precautions be taken to specify that the bill should focus on children specifically, as well as hold perpetrators to account. As of March 2022, the exact contents of the bill are unclear as it has yet to be passed.

Distribution of CSEA Content Online

Further to the enforcement of the legal provisions on child sexual abuse and obscene publications in the Penal Code, the Cyber Crime Unit of the NCPA addresses online violence against children in Sri Lanka.¹⁵⁰ The unit mainly conducts investigations, raises awareness on online safety for children through training programmes and educational initiatives, and reports and monitors online forms of CSEA by way of daily and monthly reports on cases.¹⁵¹ In May 2020, Save the Children provided the Cyber Crime Unit with advanced equipment to monitor and protect children from these crimes.¹⁵²

The Sri Lanka Computer Emergency Readiness Team (**CERT**) and Information and Communication Technology Agency of Sri Lanka (**ICTA**) are also taking active steps to combat online CSEA.¹⁵³

Additionally, in 2021, the Police Child and Women's Bureau in Colombo set up the National Centre for Missing and Exploited Children, a special unit to monitor CSAM.¹⁵⁴

Awareness & Education

The NCPA regularly conducts awareness campaigns, including publishing literature/reports and conducting training programmes throughout Sri Lanka, including training programmes for government officials such as the police.¹⁵⁵ These awareness activities focus on the rights of children to be protected from abuse and the methods of preventing child abuse.¹⁵⁶

The UN Committee on the Rights of the Child recommended in its most recent report that Sri Lanka increases awareness-raising activities in all languages to ensure that, among adults and children, there is widespread familiarity with and understanding of the importance of children's rights.¹⁵⁷ A particular emphasis is placed on the need to increase awareness amongst the travel and tourism industry concerning the sexual exploitation of children in travel and tourism settings (SECTT).¹⁵⁸

The focus group surveyed as part of the 2021 Save the Children report highlighted the way forward to limit the distribution of CSEA content online and protect children. The group stated that 'existing laws should be further improved, new laws be implemented effectively and...children be made aware of the laws and how to seek protection under the said laws.'¹⁵⁹

Recommendations

There are several measures that should be taken as a matter of priority to help combat CSEA offences against children in Sri Lanka, including:

Legal

- Harmonise Sri Lankan laws on all issues of CSEA in line with international standards and conventions, including the Lanzarote Convention.

- Criminalise offences such as sexual grooming, sexual communication with a child, or causing a child to watch sexual activity which are not currently addressed in Sri Lankan law.

- Comprehensively criminalise issues of child sexual abuse materials (CSAM), whether through amending the provisions of the Penal Code, Computer Crimes Act and Obscene Publications

Ordinance, and by enacting the proposed bill by the Cabinet of Ministers.

— Enact further laws to specifically protect against online-facilitated CSEA, potentially within the scope of the existing *Computer Crimes Act No. 24 of 2007*.

— Harmonise laws for male and female CSEA offences, penalties and punishment as they currently diverge significantly, creating gaps in protecting the survivors. This includes the inconsistent age of consent to sexual activity, which needs to be addressed. Making laws gender-neutral, where possible, will allow for the prosecution of offences involving both female and male child survivors and male and female perpetrators.

— Enact criminal offences for marrying a child, or inducing or forcing a child to get married in Sri Lankan law.

— Apply extraterritorial jurisdiction over CSEA offences committed overseas by permanent residents of Sri Lanka.

— Amend extradition law to ensure that all CSEA offences are extraditable, and remove the condition of dual criminality that is currently applied.

— Replace outdated and unclear terminology currently present in legislation, notably ‘child pornography’, ‘child prostitution’, ‘seduction’, ‘carnal knowledge’, ‘indecent’ and ‘obscene’, with preferred and clearly defined terms.

— Amend or repeal the laws against homosexuality in the Penal Code so that male child survivors cannot be treated as offenders.

— Remove the current limitation period for the prosecution of CSEA-related offences.

— Implement laws and policies to prevent convicted offenders from interacting with children.

— Enact a defence for children or young persons, where the age gap between the offender and the survivor is less than four years, engaged in consensual sexual activity, to prevent the further criminalisation of children.

Prosecution

— Improve efforts to vigorously investigate and prosecute suspected traffickers and ensure survivors are not penalised for the unlawful acts traffickers compel them to commit.

— Reduce delays in the legal system to improve access to justice for survivors of CSEA, including expediting child abuse cases currently before the Courts, without negatively impacting the outcome of the case, for example, delays in investigating and arresting perpetrators and prolonged litigation.

— Training on the law and legal procedure should be provided for law enforcement agents to improve the capabilities of law enforcement to identify, report and take legal action in cases of CSEA and child trafficking.

— Continuous development of skills and training should be provided to the relevant stakeholders in the Criminal Justice Sector such as the police, judiciary, child counsellors and other stakeholders.

— Bolster regional and international cooperation to prevent and counteract CSEA, especially with countries of origin of child trafficking survivors.

— Address the use of DNA and reliance on physical evidence in CSEA cases to improve delivery of justice for survivors.

— Clear and comprehensive procedures should be introduced regarding obtaining video evidence and presenting such evidence in court.

— New technology should be introduced to assist the law enforcement authorities such as lie detectors, and a special unit should be established which is active 24x7 and easily accessible to the public via a hotline and a fast-working team who actively track and take action to stop the spread/sharing/uploading of CSAM.

Protection

— Enact mandatory reporting laws directed at frontline professionals, such as healthcare workers and teachers.

— Strengthen the coordination among the different governmental bodies at the federal, provincial and territorial levels responsible for the implementation and monitoring of children’s rights.

— Provide greater funding to ensure witness and survivor protection.

— Provide immediate counselling to survivors of CSEA and their families.

— The protection of children from harm, including CSEA and trafficking, must be integrated into disaster risk management and response.

— Monitoring and data collection strategies for overseeing the prevalence of CSEA, human trafficking and child marriage in the country should be improved.

Prevention

— Develop and introduce a coordinated National Sex Offender Register.

— Develop a strict mechanism to prevent convicted offenders from interacting with children in the future.

— Establish legislation requiring a criminal background check for every person applying to or currently working in a role with children.

Cultural/Education

— Provide training to stakeholders who work with and support CSEA survivors.

— Implement specific CSEA awareness-raising activities, reaching out to the most at-risk populations, and addressing prevalent manifestations of CSEA, including but not limited to child marriage, SECTT, gender-based violence, the abuse of boys, and child trafficking.

— Include CSEA protection messages in the school curriculum, including for boys and their particular vulnerabilities.

SPOTLIGHT

Missing Children: Increased vulnerability to CSEA and complications in assessing risk

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Missing children
face greater
vulnerability
and increased
risk from sexual
exploitation and
abuse...

Every day, in every country around the world, children go missing.

In Australia, for example, an estimated 25,000 young people are reported missing every year;²⁹⁷ in India, an estimated 111,569 children were reported missing in 2016;²⁹⁸ in Canada, there were 40,425 missing children reports in 2019;²⁹⁹ and according to figures released in 2013, in South Africa a child goes missing every five hours.³⁰⁰ In many countries, statistics on missing children are not even available, and when they are available, they can be inaccurate due to under-reporting, under-recognition, inflation, incorrect database entry of case information, or the deletion of records following the solving of a case.

No matter how long a child is missing, they are at risk. Missing children face greater vulnerability and increased risk from sexual exploitation and abuse,

human trafficking, illegal employment, involvement in criminal activity, deterioration in physical and emotional health, risk of physical assault or injury, and in some circumstances, death.³⁰¹ One study in the UK concluded that 25% of young runaways suffered some form of abuse while they were missing, 13% of them were physically hurt, and 8% were sexually assaulted.³⁰² In Canada, slightly more than half of the reported child sexual exploitation cases involved a young person who had at some time been reported missing.³⁰³ Recent studies have suggested that a missing child is believed to be at risk from sexual exploitation, irrespective of the length of time that they are away from home or a caring environment.³⁰⁴

The reasons a child goes missing may vary considerably. They could be runaways, victims of family or non-family abductions, or they may simply be lost and will find their way home soon.³⁰⁵ However, the reasons behind a child's disappearance are far less important than the potential harm that may come to them if a coordinated response is not made once they are reported missing.

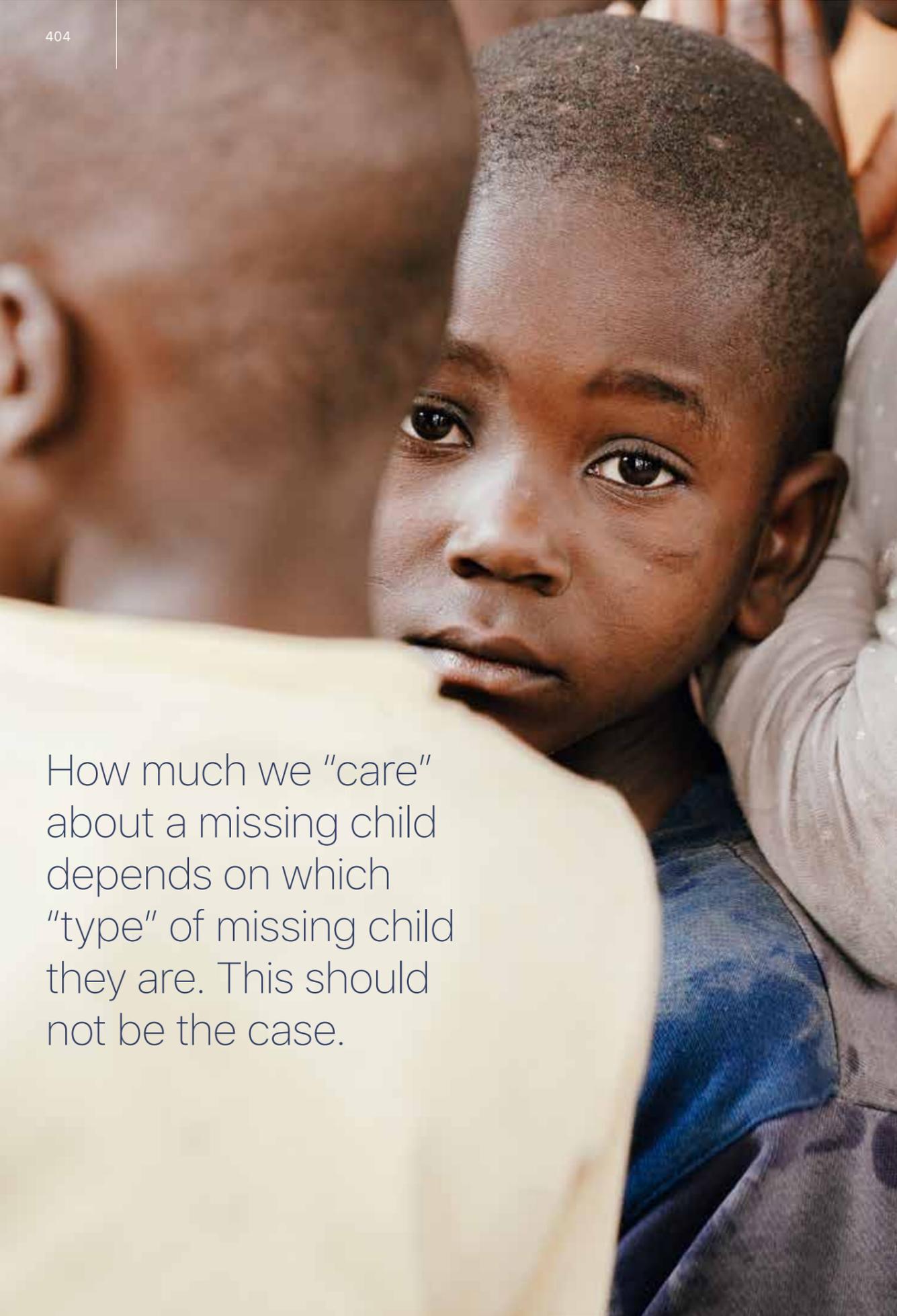
The issue of missing and abducted children is complex and multi-faceted. It is a global issue which is currently lacking a global response: there is no harmonised, international strategy addressing the problem of missing children and child abduction.

Most importantly, there is no agreed definition of what constitutes "missing". There is no international convention specific to missing children.

The exception is the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which is limited to jurisdictional issues involving the abduction of a child by a non-custodial parent. While international legal instruments, such as the United Nations Convention on the Rights of the Child (the **CRC**), provide a universal definition of "child," there is no similar global consensus on how to investigate cases involving missing and abducted children. Even national strategies, when they do exist, vary from country to country. In large countries there may be notable differences between domestic jurisdictions on how law enforcement, or others charged with investigating a missing child case, respond to a case. The lack of a universal definition and a common response results in the absence of reliable statistics on the global scope of the problem.

Missing children may be under-reported (i.e., a child is not reported missing by his or her parent or legal guardian), particularly in countries where there is mistrust of law enforcement or where procedures for reporting a child as missing are unclear. Missing children may be under-recognised given that the definition of "missing child" when it exists varies between countries and also within national borders. Moreover, many countries lack the necessary resources to capture and compare information related to missing and abducted children, as most do not have a centralised registry or database for these types of cases.

Like many organisations, ICMEC broadly defines a "missing child" as "any child under the age of 18 whose whereabouts are unknown." In theory, a broad definition is better than a narrow one as it allows for every missing child case to be treated with the same urgency and care. From a child-protection perspective, this is precisely what we want to happen. In practice, however, every single agency, organisation, and even most individuals sub-categorise "missing" into several groups: runaway, parentally abducted, stranger abducted, or lost, among others. These categories serve to inform the initial response to the individual missing child.



How much we “care” about a missing child depends on which “type” of missing child they are. This should not be the case.

The categorisation of missing children does more than inform an initial response; it is, in fact, central to how cases are managed from beginning to end. It can reflect both individual and institutional bias and be detrimental to the safety and well-being of the child, simply put, how much we “care” about a missing child depends on which “type” of missing child they are. This should not be the case.

Risk assessments are utilised by professionals, including law enforcement, in missing child cases. The use of these forms is supposed to minimise subjective responses to missing children, designate an appropriate level of risk to a missing child, and formulate a corresponding response. Beyond the fact that risk assessment data is not being captured in a consistent and comprehensive way to accurately analyse, assess, and leverage outcomes, there are a host of issues introduced to the concept of “risk” and the use of risk assessments in missing child cases.

First, in some federalised countries such as the U.S., there is no standardised, nationally recognised missing child risk assessment form to guide law enforcement in their work. This can result in law enforcement, who rarely receive sufficient training to employ a trauma-informed, and child-centred approach, relying on experience and personal judgement to designate risk, leaving far too much room for implicit bias and non-evidence-based practice. Furthermore, there is no international standard on the use of risk assessment forms, or on the content of the form itself.

Second, there is a resounding lack of research not only on risk assessment forms, but on risk assessment outcomes. Until such time that a scientifically sound analysis is done on the utility of risk assessments, we cannot rely on them to overcome personal or institutional bias in missing children cases.

Third, just as the concept and definition of “missing” differs between, and within, countries, the concept of “risk” varies depending on a litany of factors such as culture, public perception, availability of resources, historical experience, personal judgement, and adherence to particular ideologies. Without an agreed concept of “risk,” some missing child cases that involve potentially extremely high risk to the individual child may be neglected, while other cases involving a child with more protective factors may receive an overabundance of resources.

Lastly, a risk assessment is only useful when it is individualised to the child. Additionally, it must take into account current and cutting-edge research on what constitutes vulnerability. In 2020, 91% of known missing children in the U.S. were endangered runaways, and yet this category of missing has been historically responded to less urgently than other categories of missing. In the short-term, a runaway child might be recovered in less than 24 hours, but in the long-term, they may be returning to an unsafe home, school, or community environment, may be exploited or trafficked, or may be suffering from severe mental health issues and not receiving the care they need and deserve. The more we highlight the link between missing and exploitation, the more robust missing child responses will be.

To accurately determine risk, the way that we look at “risk” and “missing children” needs to be transformed.

At ICMEC, we firmly believe that one missing child is one too many, and we are committed to improving the global understanding of, and response to, missing children. This includes the development of a robust, child-centred, definition of what constitutes a missing child and undertaking a comprehensive global statistical analysis of the number of missing children.

Country Reports: The Pacific



REGIONAL SNAPSHOT

The Pacific

Areas of concern

Terminology and societal stigma

Legislation criminalising CSEA across the Pacific region uses, at times, dated terminology such as “defilement”, “carnal knowledge” and “child pornography”.³⁰⁶ Many of these terms do not place the emphasis on the perpetrator’s actions, and instead emphasise the victim as having been “damaged” in a moral sense, or even “legitimise” some CSEA offences by implying consent, especially in the use of “child pornography”.

In many countries in the region, there is a lack of clarity regarding CSEA offences; in particular, the language used to describe CSEA offences is not clearly explained and there is limited uniformity across legislation regarding the definition of a “child”.³⁰⁷

Combined with a pervasive culture of shame, silence and the parental desire to ensure that their children are perceived as “clean” by the wider community, outdated terminology discourages the reporting of abuse and has seen traditional mediation and compensation processes, as opposed to enforcement of the criminal law, become prevalent in many communities across the region.³⁰⁸ In parallel with this issue, the patriarchal society that exists in the Pacific region contributes to CSEA’s prevalence as it is a major cause of violence against women and children.

“Cultural norms continue to silence official reporting of violence and crimes committed against children.”

Researcher for Papua New Guinea

Protection from convicted CSEA offenders and the sexual exploitation of children in travel and tourism (SECTT)

Registers of child sex offenders have been established across some countries in the Pacific region. However, Fiji and Papua New Guinea have notably not yet established such registers, nor are there any laws in either country that exclude convicted CSEA offenders from activities or employment involving contact with children.³⁰⁹

A significant area of concern across both regions is the sexual exploitation of children in travel and tourism (SECTT). Australian and New Zealand citizens and residents are reported to be frequent flyers to areas in the Pacific region, with those individuals seeking anonymity and access to the sexual exploitation of children.³¹⁰ Under Australian law, citizens listed on a child protection offender register can still leave Australia if they report their travel details to the police and receive permission from the applicable authorities. New Zealand legislation, however, lacks any restrictions on New Zealand citizens who are CSEA offenders from travelling overseas.

Stronger legal frameworks across both regions are necessary to better safeguard children in the Pacific and in other nations from known sexual offenders.

Protection against CSEA facilitated by the internet

Online CSEA is on the rise due to the increasing numbers of young people who have access to the internet. In particular, the recent introduction of superfast internet in Pacific countries has meant that some countries, which are already combatting some of the highest rates of violence against women and girls in the world, are also now dealing with these crimes reflected in the online space,³¹¹ calling for the establishment of effective legislative regimes targeting online CSEA.

Regional trends

- Sexual exploitation of children in travel and tourism (SECTT)
- Child trafficking for sexual exploitation and forced labour
- Online CSEA
- Familial abuse

Risk factors

- Increasing accessibility to technology
- Ability for offenders to travel overseas
- Pervasive gender norms
- Under-reporting
- Limited and incomplete data on CSEA offences
- Widespread poverty (Pacific region)



“Online spaces are not regulated...crimes against children that occur in cyberspace are not intercepted by police.”

Researcher for Fiji

Criminal legislation governing online CSEA is in force across the Pacific and Oceania regions, and the introduction of new laws targeted at online CSEA and investigative units is a positive step forward. However, a lack of required resourcing, funding and specialist training/skills needed to keep up with the rapid evolution of the internet throughout the region results in the ineffective monitoring and enforcement of online CSEA crimes.

Australia



Significant progress has been made to prevent, detect and combat child sexual exploitation and abuse (CSEA) in Australia. However, it is still a prevalent issue and a growing concern for the Australian Commonwealth Government. The government has started to take measures to deliver on commitments made in response to the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission)¹. The measures go further in scope than just institutional abuse and endeavour to address child sexual abuse in all settings. One of those measures includes the implementation of a new National Strategy to Prevent Child Sexual Abuse (the CSA National Strategy) which will provide 146 million AUD over four years for the first phase of the CSA National Strategy. The CSA National Strategy will be a ten-year, whole-of-nation framework to establish a coordinated and consistent approach to prevent and better respond to child sexual abuse in Australia.²

CSEA Profile

Although it is difficult to know the true extent of CSEA in any context in Australia, the Personal Safety Survey (PSS) of 2016 surveyed adults on their experience of abuse in childhood and found that approximately 1.4 million Australian adults experienced sexual abuse during childhood—about 7.7 per cent of all adults.³

Recent studies indicate that the overwhelming majority of CSEA incidents were perpetrated by an adult known to the child (86 per cent of people who reported experiencing childhood sexual abuse).⁴ Most sexual abuse is carried out by males⁵, with some estimates suggesting male perpetrators make up 90–95 per cent of all perpetrators of CSEA in Australia⁶, and more commonly by a male relative, a family friend, an acquaintance or neighbour, another known person, or the father or stepfather.⁷ Only an estimated ten–15 per cent of child sexual abuse in Australia is perpetrated by strangers.⁸

Women were more likely than men to experience repeated childhood sexual abuse.

An estimated 62 per cent of women (406,500) and 40 per cent of men (103,000) who experienced childhood sexual abuse were sexually abused more than once.⁹

Australia's dark history of institutional child abuse came to light in the last decade, when widespread allegations of abuse in educational institutions, religious groups, the foster care system, sporting organisations, State institutions and youth organisations were made, leading to the establishment of the Royal Commission.¹⁰ The Royal Commission report, published in 2017, found that ritual sexual abuse happened in many institutions in the country meant to care for children and made various recommendations.¹¹ Aboriginal and Torres Strait Island communities are overrepresented in this report, making up around 14 per cent of survivors who gave testimony.¹²

It is important to consider this chapter in Australian history together with the recent discussions in the Australian public domain regarding survivors of child sexual assault in institutional settings, as it informs trust and the perception of responses to child sexual abuse as well as the government's role in such incidents to this day.

More recently, in late 2021 the Australian Institute of Health and Welfare released a report which provided a clearer picture of child abuse in Australia's foster care system. According to the report, 1,442 children had their in-care abuse claims substantiated in 2020/2021,¹³ however the full scale of CSEA within the system remains unknown.

In terms of commercial child sexual exploitation, a focus of Australian lawmakers is on preventing Australian child sex perpetrators from committing sex crimes against children abroad.¹⁴ Australian nationals make up a significant number of perpetrators of sexual exploitation of children in foreign jurisdictions, with Australian law making it a crime for Australians to engage in child sexual abuse overseas with penalties of up to 25 years imprisonment and up to 500,000 AUD in fines for companies.¹⁵ In early 2022, a Brisbane man who abused children during trips to the Philippines after communicating with them on social media from Australia was jailed for eight years.¹⁶ In 2021, a former State government official and priest was jailed for 17 years for committing child sex abuse on trips to Southeast Asia.¹⁷ According to the US Trafficking in Persons Report, 'traffickers exploit a small number of children, primarily teenage Australian and foreign girls, in sex trafficking within the country.¹⁸ The traffickers sometimes use violence and intimidation to hold children (mostly girls) captive and manipulate them through drugs and claims of debt.¹⁹ Despite these recorded incidents of commercial child sexual exploitation happening in the country, Australia is designated a Tier 1 country, meaning the government meets the minimum standards for eliminating trafficking and continues to make sustained efforts on its anti-trafficking capacity.²⁰

Amongst law enforcement and organisations working in the child protection space, a major focus is currently on child sexual abuse material (**CSAM**) offending, which is on the rise due to increasing numbers of young people accessing the internet. In 2020, the Australian Federal Police (**AFP**) led Australian Centre to Counter Child Exploitation (**ACCCE**) received more than 21,000 reports of online child sexual exploitation.²¹ The COVID-19 pandemic has also been highlighted as an exacerbating factor, with the AFP and ACCCE observing an increase in online offending, and highlighting how restrictions are an opportunity for perpetrators to find more children to victimise online. The AFP note that the amount of child abuse material being shared on the dark net is increasing, as Australian law enforcement officers are seeing sites hosting CSAM crashing due to the increased volume of traffic. Furthermore, the AFP are aware of forums on both the dark and clear net where offenders discuss tactics to groom children, including sharing experiences, providing advice and exchanging ideas on how to establish relationships with children online.²²

A joint investigation between Australian and international authorities, which began after police received intelligence that thousands of offenders were using a cloud storage platform to share child abuse material online, began in 2019 and has recently resulted in at least 117 Australian men being arrested, facing a combined total of 1,248 charges. In that time, 153 children have been removed from harm across multiple countries, including 51 in Australia.²³

Forced marriage, a form of modern slavery, occurs across a variety of communities, and within a range of cultures and ethnicities in Australia.²⁴ For the 2020/2021 Financial Year, the AFP received 224 reports relating to allegations of human trafficking and slavery type crimes, which included 79 reports of forced marriage (35 per cent of all reports) and 12 reports of child trafficking (five per cent of all reports). 64 per cent of forced marriage reports were children under the age of 18 years and 70 per cent related to attempted/offshore marriages. There were 12 reports of child trafficking for the same period.²⁵

In the first six months following the announcement of the COVID-19 pandemic in Australia there was a 62 per cent reduction in the number of forced marriage reports received by the AFP. This may be attributed to international travel restrictions that have limited the opportunity to facilitate the movement of people into and out of Australia for exploitation. There are however concerns the COVID-19 pandemic increased the risks of CSEA, human trafficking and modern slavery for individuals (including children) in vulnerable circumstances, including financial hardship and family violence risks. The removal of oversight following the closure of schools and other community services also increased the numbers of CSEA and other offences.²⁶

Changing patterns of migration in Australia has meant that the prevalence of female genital mutilation (**FGM**) in the country is increasing.²⁷ The rate of migration into Australia from 30 countries where FGM is commonly practised increased at an average of five per cent per year between 1998 and 2017.²⁸ In 2019, it was suggested that there could be more than 50,000 women and girls living in Australia who may have endured FGM.²⁹

Criminalisation/Legislation

The Commonwealth of Australia is a federation comprising a Federal jurisdiction and State and Territory jurisdictions. The Federal Parliament legislates across the whole of the Australian Commonwealth in certain areas, such as postal, telephonic and other similar services.³⁰ The State and Territory Parliaments legislate across their individual States and Territories (excepting those areas exclusive to the Federal Parliament outlined at section 51 of the Australian Constitution). The States and Territories are New South Wales (**NSW**), the Australian Capital Territory (**ACT**), the Northern Territory (**NT**), South Australia (**SA**), Queensland, Western Australia (**WA**), Tasmania and Victoria.

Australia also governs a number of external territories, but except for Norfolk Island, each is subject to the legislation of a governing Australian State or Territory. Where relevant, the laws of Norfolk Island are included in this narrative.

Australia is an international signatory to:

- the Convention on the Rights of the Child, which was ratified in Australia in December 1990.³¹
- Australia also signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (**Optional Protocol**).³²
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which was ratified by Australia on 14 September 2005.³³
- In November 2012, Australia ratified the Council of Europe Convention on Cybercrime (the **Budapest Convention**) as a non-member of the Council of Europe party.³⁴
- WePROTECT Global Alliance.³⁵
- Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse agreed by the Five Country Ministerial (Australia, New Zealand, UK, Canada and the USA).³⁶

There is no 'one' governing piece of legislation relating to CSEA in Australia. As well as Federal

legislation, each State and Territory criminalises child sexual abuse and child sexual exploitation in some way.

Classification of Sexual Offences with Children

Summary

The Federal *Criminal Code Act 1995* (**Cth Criminal Code**) is the Federal law that covers offences relating to child sexual exploitation and the sexual abuse of children outside Australia. Each State and Territory has its own legislation relating to CSEA crimes.

Several Federal laws governing Australia's Internet Service Providers (**ISPs**) and Internet Content Hosts (**ICHS**) also penalise acts relating to CSAM.

While there is overlap and similarities between CSEA legislation across Australia, there are differences in language, definitions of CSEA crimes, operation and penalties in each jurisdiction. What is illegal in one jurisdiction may not be in another. It is not possible to cover all relevant pieces of legislation in this report but we do summarise the main CSEA laws governing Australian jurisdictions.

Which law enforcement agency is responsible for investigating alleged offences will depend on the nature and location of the crime. Child sex offences, both in person and online, committed outside Australia will be investigated by the AFP. Child sexual abuse offences committed domestically will be investigated by the relevant State or Territory police. CSAM online offences can be prosecuted under both Federal and State/Territory law, thus warranting investigation by either the AFP, the State/Territory police forces or a combination of policing agencies. Joint Anti Child Exploitation Teams (**JACETs**) operate across Australia to share intelligence and work together to investigate and prosecute child exploitation matters and remove children from harm.³⁷

For the purposes of this section, we have separated offending into the physical act of child sexual abuse, child exploitation, commercial sexual services, the possession of child-like sex dolls, intimate image sharing and forced marriage.

Royal Commission

As mentioned above, in November 2012 the Australian Government announced the Royal Commission and the final report made a large number of recommendations regarding child sexual abuse in Australia.³⁸ In light of the findings from the Royal Commission, amendments to legislation were made across many Australian jurisdictions to strengthen the laws against CSEA.

The Federal government passed the *Combatting Child Sexual Exploitation Legislation Amendments Act 2019 (Cth) (CSE Amendment Act)* in 2019. The CSE Amendment Act amended the Federal *Crimes Act 1914 (Cth Crimes Act)* and Federal Criminal Code to improve the Federal framework of CSEA offences for the protection of children and to strengthen Australia's existing child sex tourism regime. Changes included amendments to offences for failing to protect or report CSEA offences,³⁹ possession or control of child abuse material obtained or accessed using a carriage service,⁴⁰ persistent sexual abuse of a child outside Australia,⁴¹ forced marriage⁴² and restricting the defence of marriage for child sex offences.⁴³ Reference to the term 'child pornography' was removed in the Cth Crimes Act, Cth Criminal Code and the Federal *Customs Act 1901 (Cth Customs Act)* with references amended to the term 'child abuse material'.⁴⁴

Amendments were also made to the Cth Criminal Code and Cth Customs Acts (and operational changes to the Cth Crimes Act, the *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979*) regarding the possession and importation of child-like sex dolls.⁴⁵

The *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2020 (SCACCPM Act)* was passed with a key focus on combatting 'the evolving use of the internet in child sexual abuse and address community concern that the sentencing for child sex offences is not commensurate to the seriousness of these crimes'.⁴⁶

The SCACCPM Act amended the Cth Crimes Act regarding video recordings and cross examination to increase the protection of vulnerable witnesses, including children, giving evidence in criminal proceedings including child sexual abuse, trafficking

and modern slavery offences.⁴⁷ A presumption against bail for certain child sexual offences and a presumption in favour of cumulative sentences were also introduced.⁴⁸

The SCACCPM Act amended the Cth Criminal Code by increasing penalties for sexual offending against children and strengthening offences including grooming of third parties through a 'carriage service' or 'postal service' when an element of the offence occurs overseas. It also amended offences relating to providing an electronic service such as creating or administering a website or dark web service, and grooming (to make it easier to procure a child under 16 to engage in sexual activities overseas).⁴⁹ Changes were also made across various States and Territories.

Child Sexual Abuse

Division 272 of the Cth Criminal Code criminalises sexual offences committed by Australians against children (under 16 years) and young people (at least 16 years but under 18 years) outside Australia. Offending can occur in person or virtually with offenders also being liable for causing a child to engage in sexual intercourse or sexual activity (cyber-sex).⁵⁰ The operation of the Cth Criminal Code for child sexual abuse occurring outside of Australia is detailed in the section on extraterritoriality. Division 474 sub-division F of the Cth Criminal Code creates an offence to engage in sexual activity with a child using a carriage service or causing a child to engage in a sexual act with another person using a carriage service.⁵¹ The purpose of this offence is to ensure that engaging in sexual activity with a child online is criminalised in a comparable way to equivalent 'real life' activity.⁵²

All State, Territory and Norfolk Island laws criminalise sexual intercourse with a young person or child, although penalties differ between the jurisdictions and depend on the age of the young person or child.⁵³ Sexual offending involving a young person not amounting to intercourse is also illegal in each jurisdiction but the description of acts differ including terms such as 'acts of indecency', 'sexual assault' and 'sexual conduct'.⁵⁴

ACT, NSW, NT, WA and Victoria have particularised crimes for sexual intercourse and sexual conduct not amounting to intercourse with a young person (aged

under 18 years) who is in the alleged offender's special care, supervision or authority.⁵⁵

Each jurisdiction also has higher penalties for persistent child sexual abuse offences, a term used to show the illegality of the offending and that there is no consent involved⁵⁶ (although some jurisdictions still refer to sexual relationships), covering offending involving at least two instances of sexual abuse by the same person against the same child. The NSW, Queensland, SA and ACT jurisdictions all require more than one unlawful sexual act.⁵⁷ In Victoria, Tasmania, NT and WA at least three different occasions of sexual abuse are required.⁵⁸

A change from the number of occurrences of child sexual abuse from three to 'more than one' was recommended by the Royal Commission during which evidence was presented of how children found it difficult to distinguish between instances of offending.⁵⁹ This impacted the ability to particularise charges of continued child sexual abuse.

In all jurisdictions it is an offence to procure a child to engage in an unlawful sexual act or to expose them to indecent material⁶⁰ and most criminalise 'grooming' (the exception being WA and the NT), where an adult develops a relationship of trust with a child with the intent to later engage in sexual activities, online or in person⁶¹ (in NSW and Queensland, it is also an offence for another person to engage in sexual activities with the child).⁶² The Cth Criminal Code also specifies offences of grooming another person to make it easier to procure a child under the age of 16⁶³ and sending indecent material to someone younger than 16 by a carriage or postal service.⁶⁴ SA also criminalises making a false representation in a communication with a child under 17 years of age to meet or arrange to meet the child, or to commit an offence against the child.⁶⁵

Commercial Sexual Services

The solicitation of sexual services from a child is criminalised in each State and Territory, sometimes under the relevant Crimes Act or Criminal Code or a separate Act regulating sex work. In general, separate offences criminalise causing a child to provide commercial sexual services,⁶⁶ obtaining payment reasonably expected to be from sex services provided by a child,⁶⁷ or in the ACT and Victoria, to permit a child on premises of a brothel or escort agency.⁶⁸ In Tasmania, self-employed sex

workers cannot have a child on premises while sexual services are being provided.⁶⁹ There are similar offences in WA.⁷⁰

Child Abuse Material Offences

Each jurisdiction in Australia has offences relating to CSAM, referred to as either 'child exploitation material' or 'child abuse material'. Although the definitions range between each jurisdiction, generally they refer to material showing a child engaging in sexual conduct; a child in the presence of another engaging in sexual conduct; or a child who appears to be a survivor of sexual abuse, torture or cruelty, in such a way that reasonable persons would consider offensive.⁷¹

For ease of reference, we have used the term 'child abuse material' even where the term 'child exploitation material' is referred to in legislation.

All jurisdictions criminalise the production, distribution and possession of child abuse material⁷² and most criminalise the act of involving a child in the production of child abuse material.⁷³ It is an offence in Victoria, Tasmania and SA to access child abuse material.⁷⁴

The Cth Criminal Code addresses offences relating to child abuse material in various sections. Division 273 of the Cth Criminal Code makes it illegal to possess, control, produce, distribute or obtain child abuse material outside Australia.

Division 471 Subdivision B of the Cth Criminal Code outlines offending relating to use of postal or similar service for child abuse material and includes using a postal service to carry child abuse material⁷⁵ and possessing, controlling, producing, supplying or obtaining child abuse material through a postal service.⁷⁶

Division 474, Subdivision D of the Cth Criminal Code sets out the offences relating to use of a carriage service for child abuse material including using a carriage service for child abuse material⁷⁷, possessing or controlling material obtained through a carriage service⁷⁸ or possessing, controlling, producing, supplying or obtaining child abuse material through a carriage service.⁷⁹

The Customs Act governs Australia's exports and imports according to the Federal power to legislate on matters of trade and commerce.⁸⁰ Section 233BAB penalises anyone who imports child abuse material into Australia or exports it.⁸¹

Legislation in Victoria, Queensland and SA include offences relating to 'administering' a website that contains child abuse material and for encouraging the use of such a website.⁸² The *Modern Slavery Act 2018* (NSW), which took effect on 1 January 2022, also creates an offence for administering a digital platform used to deal in child abuse material.⁸³

Queensland also criminalises obscene publications and exhibitions by someone that depicts or represents a child, by way of publicly selling, distributing, or exposing for sale any obscene book or other obscene printed or written matter, any obscene computer generated image or any obscene picture, photograph, drawing, or model, or any other object tending to corrupt morals.⁸⁴

Norfolk Island legislation refers to 'child pornography' and 'pornographic performance' in Part 3.7 of the *Criminal Code 2007* (NI) which deals with offences relating to child pornography, including using children for the production of child pornography or pornographic performances.⁸⁵ It is also an offence to trade in or possess child pornography.⁸⁶ The use of electronic means to 'deprave' a young person is also criminalised on Norfolk Island.⁸⁷

Child-like Sex Dolls

The possession, importation, distribution, and production of child-like sex dolls has been specifically criminalised in a number of Australia's jurisdictions.

Research by the Australian Institute of Criminology (AIC) demonstrated that:

- there was a possibility that child sex offending might increase due to the use of child-like sex dolls;
- people using child-like sex dolls may become less aware of the seriousness of the harms caused by child sexual abuse; and
- the objectification and grooming of children may occur due to the use and availability of child-like sex dolls.⁸⁸

The CSE Amendment Act expanded the definition of 'child sexual abuse' to include child-like sex dolls⁸⁹ to prevent the 'purported sexual abuse of children through the use of child-like sex dolls' and to 'reduce the risks that these behaviours may escalate the risk posed to real children.'⁹⁰ Division 173A of the Cth Criminal Code makes it illegal for a person to possess a doll or other object where that doll or object resembles a person under the age of 18 years (or a body part of such a person), and a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse.⁹¹ Division 2, section 233BAB(5) of the Cth Customs Act penalises the importation of child-like sex dolls or objects.

Queensland legislation specifically refers to the production, supplying or possession of child abuse objects (including a doll, robot or other object)⁹² while SA penalises the production, dissemination or possession of child-like sex dolls.⁹³ In 2016 a man in NSW was sentenced to two years and six months imprisonment for offences relating to possessing and accessing child abuse material, including a child-like sex doll. The prosecution was initiated under the *Crimes Act 1900* (NSW). Legal argument took place over whether possessing or disseminating child-like sex dolls was an offence under NSW law. The District Court ruled that a child-like sex doll falls within the definition of child abuse material in section 91FB of the *Crimes Act 1900* (NSW) and therefore possession and dissemination of a child-like sex doll is an offence under NSW law.⁹⁴ This ruling indicates that where child-like sex dolls/objects are not specifically particularised in a State or Territory's legislation they may nevertheless be interpreted by the Courts to be included in the meaning of child abuse material.

Intimate Image Sharing

Australian jurisdictions do not have a consistent approach in addressing the possession, production or sharing of intimate images by young people, also referred to as 'sexting'.

There are various legal intricacies with intimate image sharing including where content is taken and shared consensually, content re-shared without permission or images received without soliciting.

SA, Victoria and NSW have defences (or, in the case of SA, an allowance) for the possession of intimate

images where the material is a 'selfie' of that person, where the image is child abuse material because the person is a child.⁹⁵ In Victoria there is a defence where a child (16 or 17 years old) voluntarily shares an image with another person who is not more than two years older than them. In those circumstances neither the person sharing nor the person receiving the image would be guilty of an offence as long as it was not shared further.⁹⁶

Consent to intimate image sharing is not related to the age of sexual consent. Offending relating to child abuse material does not relate to the age of the offender but rather that of the survivor. The age of the 'victim' for child abuse material offences in Australia varies.⁹⁷ In Queensland, WA and NSW the relevant age of a child is under 16 and in SA the age is 17, which is the same age for sexual consent within those jurisdictions.⁹⁸ However the Cth Criminal Code and legislation in ACT, NT, Tasmania and Victoria, the age of a child for child abuse material offending is under 18 years.⁹⁹ A child in those jurisdictions can consent to sexual intercourse at 16 (17 in Tasmania) but still be considered a 'victim' of child exploitation if images are shared when they are younger than 18.

In WA, Victoria, Queensland, the ACT, NSW and the NT there is also an offence for distributing an intimate image without consent.¹⁰⁰¹⁰¹ However in WA, NT, NSW (s 91O Crimes Act) and Queensland (s 223 Criminal Code) a person under the age of 16 cannot consent to the distribution.¹⁰² A person who has engaged in indecent filming of a person, or who distributes an image obtained by indecent filming, may also contravene section 26D of the *Summary Offences Act 1953* (SA). The victim can be a person of any age, but the maximum penalty is increased if the victim is a child.

Forced Marriage

Australia criminalises forced marriage under Federal law, which is considered a form of child sexual abuse if the survivor(s) are under the age of 18 (the legal age of marriage in Australia). Upon application a person who has turned 16 but is not yet 18 can be authorised to marry,¹⁰³ but it is illegal for anyone under the age of 16 to marry.

Under the Cth Criminal Code a forced marriage refers to a marriage that either party did not freely and fully consent to because of the use of coercion,

threat or deception (whether against the victim or another party), or because they were not able to understand the nature and effect of the marriage ceremony, or if the survivor was under the age of 16.¹⁰⁴ Division 270, section 270.7A(4) of the Cth Criminal Code provides that a person under 16 years of age is presumed, unless the contrary is proven, to be incapable of understanding the nature and effect of a marriage ceremony. The legislation covers forced marriages that occur in Australia or overseas if the alleged offender is a citizen or resident of Australia at the time.¹⁰⁵

A person commits an offence if their conduct causes another person to enter into a forced marriage.¹⁰⁶ A person will also commit an offence by being a party to the forced marriage (e.g. a family member facilitating the marriage).¹⁰⁷ The maximum penalty for a forced marriage increases from seven years to nine years if the child is under 18.¹⁰⁸ If a child is removed from Australia for the purpose of a forced marriage, this may also constitute trafficking in children, which has a higher penalty of 25 years imprisonment.¹⁰⁹

The *Modern Slavery Act 2018* (Cth) and the *Modern Slavery Act 2018* (NSW) include forced marriage as a type of slavery that organisations subject to those Acts must report on if found in their supply chains (see section 4 on Modern Slavery Acts).¹¹⁰

Lanzarote Convention

Australia's laws are largely aligned with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**). However, some areas of non-compliance remain and are outlined below (noting that this is not an exhaustive list):

Article 3 of the Lanzarote Convention defines a child as under 18 years of age. All Australian State and Territory legislation should be considered in light of this definition and amended as necessary.

The benchmarks set in Chapter IV (Protective measures and assistance to survivors) and Chapter V (Intervention programmes or measures) of the Lanzarote Convention are not fully translated into the Australian context. Survivors of CSEA in Australia generally need to navigate a complex and difficult health bureaucracy to access effective support. Furthermore, Australia has not broadly adopted the kinds of multidisciplinary child advocacy centres that

have developed in other countries that integrate forensic, health and welfare services as a “one-stop shop” for children.¹¹¹ There has also been a lack of comprehensive service planning for adult survivors of child sexual abuse who are frequently unable to access effective mental health care or psychosocial supports.¹¹²

Age of Consent & Definition of a Child

The age of consent for sexual activities in most Australian States and Territories is 16 years.¹¹³ The exceptions are SA and Tasmania where the age of consent is 17 years.¹¹⁴

In all Australian jurisdictions except Queensland, SA and Tasmania, it is an offence for a person in a supervisory role/position of authority to engage in sexual activities with a person under their special care who is younger than 18.¹¹⁵ Queensland legislation provides a stricter penalty (life imprisonment) for a child under the age of 16 in an offender’s care (not of lineal descent).¹¹⁶

Consent is not a defence in any jurisdiction regarding incest where the alleged offender knows the familial relationship.¹¹⁷

Trafficking

Australia's Federal laws criminalising human trafficking are contained in Division 271 of the Cth Criminal Code. Child trafficking offences prohibit organising or facilitating the transport of a child into or out of Australia (Division 271, section 271.4) or within Australia (Division 271, section 271.7) where the perpetrator intends or is reckless as to whether the child will be used to provide sexual services or will be exploited. The elements of these offences are different from the elements of trafficking in adults as these offences do not require force or deception. A number of States and Territories also criminalise trafficking by prohibiting intentionally or recklessly causing someone to enter into or remain in sexual servitude, or conducting a business involving such, which becomes an aggravated offence if the person is under 18 (penalties again differ according to jurisdiction and the age of the child/young person).¹¹⁸

Australian Federal law also criminalises live online child sexual abuse (**LOCSA**), also referred to as cybersex trafficking. Section 272.8(2) of the Cth

Criminal Code provides that a person commits an offence if the person engages in conduct regarding another person (a child under 16), and that conduct causes the child to engage in sexual intercourse outside Australia but in the presence of the person. Section 272.9(2) also establishes an offence relating to causing a child to engage in sexual activity, other than sexual intercourse in the presence of a person outside of Australia.

In 2020, the SCACCPM Act increased the penalties for Australians who direct and live-stream the sexual abuse of children pursuant to sections 272.8(2) and 272.9(2) of the Cth Criminal Code. The Act makes it clear that a person in Australia who watches a livestream of child sexual abuse should be treated the same as a person who commits in-person sexual abuse of a child.

The Federal and NSW Modern Slavery Acts include trafficking as a type of slavery that organisations subject to those Acts must report on if found in their supply chains (see the following section on Modern Slavery Acts).¹¹⁹

Modern Slavery Acts

On 1 January 2019, the *Federal Modern Slavery Act 2018 (Cth MSA)* was enacted. The Cth MSA established a new mandatory slavery reporting requirement for large businesses operating in Australia (those with an annual consolidated revenue of more than 100 million AUD). These entities are required to report annually on their actions taken to assess and address modern slavery risks in their operations and supply chains by completing an annual Modern Slavery Statement.¹²⁰

The Cth MSA defines modern slavery broadly to include conduct that would amount to slavery, servitude, the worst forms of child labour, forced labour, human trafficking, debt bondage, slavery like practices, forced marriage and deceptive recruiting for labour or services.¹²¹

In NSW, the *Modern Slavery Act 2018 (NSW MSA)* was passed in June 2018. In November 2021, the NSW Parliament passed amendments to the 2018 Act in the form of the *Modern Slavery Amendment Act 2021 (NSW)*,¹²² which commenced on the 1 January 2022.¹²³ The NSW MSA relies on the Cth Criminal Code definition of slavery.¹²⁴ The changes include penalties for administering or encouraging

the use of a digital platform used to deal with child abuse material.^{125 126} Moreover, the NSW MSA clarifies the intended extraterritorial application of the Act to permit prosecution of conduct occurring outside NSW but amounting to a modern slavery offence in NSW.¹²⁷ Persons who disclose information relating to a modern slavery offence will not be held liable for the disclosure, whereas previously this protection was subject to the duty of confidentiality.¹²⁸

However, the 2018 Act’s supply chain transparency provisions have been omitted¹²⁹ to avoid duplication with the Federal government’s scheme.¹³⁰ Furthermore, the ‘Modern slavery risk order’ provision, which would have acted to prohibit a convicted person of certain modern slavery offences from engaging in further modern slavery offences, has been repealed.¹³¹

Extraterritoriality

A child sex offence committed by an Australian citizen or resident outside Australia can be prosecuted by Australian authorities.

Relevantly, Divisions 272 and 273 of the Cth Criminal Code create extraterritorial jurisdiction where a child sex offence or an offence involving child abuse material is committed outside Australia by a person who is: (i) an Australian citizen; (ii) a resident in Australia; (iii) a body corporate incorporated by or under a law of an Australian jurisdiction¹³²; or (iv) any other body corporate that carries on its activities principally in Australia.

A sexual offence under Division 272 of the Criminal Code occurs where a person engages in sexual intercourse or sexual activity with a child who is under 16 years of age, or a young person aged less than 18 years where the person committing the offence is in a position of trust. The specific sexual offences are sexual intercourse with a child (section 272.8), sexual activity other than sexual intercourse (section 272.9), aggravated offences (section 272.10), persistent sexual abuse of a child (sexual offending on more than one occasion) (section 272.11), sexual intercourse or activity with a young person where the person committing the offence is in a position of trust (sections 272.12 and 272.13), procuring a child to engage in sexual activity (section 272.14), grooming a child to engage in sexual activity (section 272.15), or grooming a person to make it

easier to engage in sexual activity with a child (section 272.15A).

Divisions 272.18–272.20 of the Cth Criminal Code make it an offence to benefit from, encourage or prepare for sexual offences against children outside of Australia. The last offence of preparing for sexual offences against children (or young people between 16–18 where the offender is in a position of trust or authority) ensures persons planning their own participation in child sex offences will be subject to criminal charges. Law enforcement agencies also have the chance to intervene at an earlier stage on evidence of a person’s intent to travel overseas to sexually abuse children.¹³³

The CSE Amendment Act narrowed the defence of marriage for people in positions of trust or authority who sexually offend against young people (aged 16–18) outside Australia. Pursuant to the amended Division 272.1 of the Cth Criminal Code, a defendant must now not only prove they were in a marriage with the young person that was valid and genuine but also that the child is aged over 16 years. This amendment acknowledges that the legal age of marriage varies in other jurisdictions and ensures Australia’s overseas child sex offences more closely align with Australia’s child abuse and forced marriage legislation.¹³⁴

It is an offence under Division 271A, section 271A.1 of the Criminal Code for a person who is an Australian citizen and who is listed on a State or Territory child protection offender register to leave Australia without permission from Australian authorities. A court may also order a person charged with CSEA offences to surrender their travel documents to prevent travel outside Australia until a hearing and determination of the matter.

Division 273, section 273.6 of the Cth Criminal Code, creates an offence for a person to possess, control, produce, distribute or obtain child abuse material, or to facilitate the production or distribution of such material, while that person is outside Australia. Division 273, section 273.7 creates an aggravated offence where a person commits a Division 273, section 273.6 offence on more than three separate occasions and the offending involves more than two people.

Divisions 272 and 273 of the Cth Criminal Code include a double jeopardy provision which prevents a person who has been convicted or acquitted in a

country outside Australia of an offence regarding any conduct from being convicted of an offence under either Division regarding that conduct.

A person may also commit a telecommunications offence under Division 474 of the Cth Criminal Code if they use technology to enable an offence to occur remotely.

There are high maximum penalties for extraterritorial CSEA offences to reflect Australia's abhorrence of the exploitation of children. Maximum penalties range from 30 years' imprisonment for persistent sexual abuse of a child outside Australia,¹³⁵ and seven years' imprisonment for using a carriage service to transmit indecent communication to a person under 16 years of age.¹³⁶

In November 2021, an Australian man was arrested at Sydney Airport and extradited to Victoria to face CSEA charges which included five charges of engaging in sexual intercourse with a child outside Australia.¹³⁷ The Victorian JACET became aware of the allegations against the man during an investigation into another Australian citizen. During the investigation, the police interviewed various boys who allege the man sexually abused them or engaged in sexual activity in their presence in Manila between 2016 and 2020. The man is facing 12 charges in total:

- five counts of engaging in sexual intercourse with a child outside of Australia;¹³⁸

- two counts of causing a child to engage in sexual intercourse in the presence of the defendant while outside Australia;¹³⁹

- four counts of engaging in sexual activity (other than sexual intercourse) with a child while outside Australia;¹⁴⁰ and

- one count of cause a child to engage in sexual activity (other than sexual intercourse) in the presence of the defendant and outside Australia.¹⁴¹

The maximum penalty for each of these offences ranges from 20 to 25 years' imprisonment.

Extradition

Extradition in Australia can refer to either interstate extradition or international extradition.

Extraditing persons from one State or Territory to another (interstate extradition)¹⁴² means once a warrant for a person's arrest has been issued in one Australian jurisdiction, the authorities of the second jurisdiction may apprehend the alleged offender without separate endorsement of the warrant.¹⁴³ This process allows for the extradition of alleged CSEA offenders within all Australian jurisdictions despite nuances in the laws between States and Territories.

Australia has two distinct international extradition regimes: one for New Zealand and one for other extradition countries.

The extradition regime that exclusively applies between New Zealand and Australia is known as the 'backing of warrants' system.¹⁴⁴ The process for extradition to New Zealand from Australia is similar to the process for Australian interstate extradition but an Australian Judge or Magistrate must separately endorse a warrant from New Zealand (and vice versa).¹⁴⁵ Once the warrant has been endorsed, any Australian police officer may apprehend the offender. There is no separate consideration of whether the offence is an extradition offence, nor is there a requirement for a dual criminality test to be met. This greatly streamlines the process associated with extradition for CSEA offences.¹⁴⁶

The process of extradition to Australia from other countries is more complex.¹⁴⁷¹⁴⁸ While a bilateral extradition treaty is not expressly required (see, e.g. *Extradition (Cybercrime) Regulation 2013* (Cth)), the process is less straightforward without one, given the absence of any real obligation on the other country to cooperate.¹⁴⁹ The offender's conduct must also constitute an extradition offence in Australia,¹⁵⁰ known as the dual criminality principle. This principle can cause issues regarding Australian CSEA offences given the disparities in offences between the jurisdictions,¹⁵¹ because the conduct giving rise to the extradition offence must also be an offence in the Australian jurisdiction conducting the extradition proceedings.¹⁵²

Extradition from Australia is only possible for offences set out in the relevant extradition treaty or that are punishable by a sentence of at least 12

months imprisonment in both the country that the alleged offender is being extradited from and Australia.¹⁵³ Examples of CSEA-related offences in extradition treaties include:

- the content based offences relating to the production or transmission of 'child pornography' as set out in Article 9 of the Budapest Convention;¹⁵⁴ and

- the offences relating to the sale of children, child prostitution and 'child pornography' in Article 3 of the Optional Protocol.¹⁵⁵

The advantage of this approach is that, even where a dualist country has not yet enacted aspects of a treaty into law, the offence may still be considered an extradition offence.

Australia will not extradite an alleged offender if there is a likelihood that the death penalty will be invoked.¹⁵⁶ This demonstrates a commitment to human rights in Australian extradition law, but may be a sentencing barrier for CSEA crimes (although not unique to the Australian context).¹⁵⁷

Statutes of Limitations

All jurisdictions have their own legislation which sets out procedures regarding the prosecution of criminal offences. Most jurisdictions differentiate between "summary offences" (or "simple offences") and "indictable offences" in its procedures.

In general, summary offences are offences that are less serious and carry lower maximum penalties, which can be dealt with in the absence of a formal jury trial. Most jurisdictions within Australia have applicable limitation periods for summary offences.

Indictable offences are more serious and are commenced by way of indictment. CSEA offences predominately fall in this category. Australian jurisdictions have not imposed a limitation period for the prosecution of indictable offences and therefore there is no statute of limitation for indictable CSEA offending in Australia.

Outdated Terminology

The CSE Amendment Act amended all references of 'child pornography material' to 'child abuse material'

in the Cth Criminal Code and the Cth Crimes Act.¹⁵⁸ This change demonstrates the seriousness and gravity of child sex abuse and removes the connotation of consent through the use of the word 'pornography'.¹⁵⁹

Several State jurisdictions have made similar changes for the same reasons. However, ACT, SA and NT legislation still refers to pornography ('pornographic performance' or 'material of a pornographic nature') in child exploitation offences.¹⁶⁰ WA still includes child pornography in the definition of child exploitation material.¹⁶¹ Legislation in the Norfolk Islands still uses the term child pornography.¹⁶²

The Criminal Code in Queensland still refers to "carnal knowledge" with children. This includes carnal knowledge with or of children under 16 years and procuring a young person for carnal knowledge.¹⁶³ Carnal knowledge is defined as penetration to any extent and includes anal intercourse.¹⁶⁴

Gaps in Criminalisation

A number of gaps or differences have been identified in Australia's laws that apply to CSEA as highlighted above. These include:

- Differences across Australia's nine criminal codes in criminalising CSEA, including regarding CSEA offence types, language, definitions of CSEA crimes, and penalties.

- Differences regarding the age of criminality concerning child abuse material, the age of sexual consent generally and in some cases the age of consent for intimate image sharing.

- The complicated and sometimes limited extradition processes to Australia from other countries, depending on whether or not there is an extradition treaty or other agreement in place and the principle of dual criminality.

- Outdated terminology in some State and Territory legislation, including terminology that "legitimises" some CSEA offences.

Prosecution

Initiating Prosecution

The prosecution of CSEA offences is largely similar across Australia's State and Territory jurisdictions. Generally, the process begins with a report to the relevant authorities and a police investigation into the claim. This report does not have to be filed directly by the survivor as anyone can bring a matter to the police to be investigated and prosecuted.

Each State and Territory has dedicated child abuse and/or sex crimes investigation teams who, where necessary, may be called upon to provide a specialist response. This is most common in circumstances where the allegations are complex, particularly serious, or involve high-risk offenders.

The prosecution of extraterritorial crimes are initiated in a largely similar way. Reports can be made to State/Territory or federal police, Crime Stoppers or the ACCCE. Ultimately, the AFP is the body largely tasked with carrying out the investigation of extraterritorial CSEA offences and the Commonwealth Director of Public Prosecutions is tasked with prosecuting the crimes.

Investigation & Evidence

In particular, an area where law enforcement encounter significant barriers in investigation and evidence gathering is when combatting live online child sexual abuse (LOCSA). Communications regarding purchasing live shows are often encrypted, and they are usually not downloaded or stored as the low cost of LOCSA makes it possible for offenders to view the shows regularly without the need and risk of downloading them. Therefore, law enforcement must capture the data surrounding the negotiation and ordering process, and/or the visual broadcasting of these child shows in real time. Offenders may also seek to purchase live adult shows, which is not an offence under Australian law, as without the ability to prove the offender was purchasing a show involving a child, the offender potentially has a 'legitimate' defence.¹⁶⁵

A particular focus at present is on the efficient and effective use of digital forensic expertise and empowering investigators to be able to undertake more detailed investigations of electronic devices

without the aid of digital forensic specialists. Similarly, AIC is currently recommending law reform to ban end-to-end encryption (**E2EE**) and encourage stronger legislation around live child sexual abuse online.

Furthermore, the ability of offenders to rapidly find and download CSAM has meant it is now common for offenders to consume and then delete material with no need to store files. With little need to store CSAM, the detection of material on devices and the quantity found during search warrants has decreased.¹⁶⁶ Similarly, the use of VPNs and other E2EE services limits the access of investigators to private messages and other digital content. This can lead to lighter sentences, as judges are still very focused on comparative sentencing focussing on the number of files.¹⁶⁷

Procedure for the Child to Give Evidence

Generally, the steps taken and the level of care given to child witnesses is the same across State and Territory jurisdictions. In NSW, children under the age of 16 are deemed 'vulnerable persons'.¹⁶⁸ Essentially the *Criminal Procedure Act 1986* (NSW), grants special provisions to vulnerable persons who are called to be witnesses to ensure that their experience is not traumatic. These special provisions can include, but are not limited to:

- giving their evidence in chief by way of pre-recorded police interview; and

- giving their cross-examination by way of closed-circuit television.¹⁶⁹

These provisions granting permission for evidence to be given via pre-recording or video link is standard across jurisdictions. Often, children are also granted the assistance of a support person. These special provisions aim to ensure the child feels as comfortable as possible during the prosecution process whilst also ensuring they are never required to be in the same room as the accused.

In WA, there are guidelines that must be adhered to when cross-examining child witnesses. These include, but are not limited to:

- not using difficult to understand legal jargon;

- addressing the child by the name they prefer; and

- asking questions in a logical and chronological sequence.

These procedures are in line with some of the recommendations made in the Royal Commission's final report.

Corroboration

Historically in Australia, children and sexual assault complainants were considered to be unreliable without corroboration and judges were required to give juries a corroboration warning in circumstances where children were giving uncorroborated evidence. This warning acted as a means to inform the jury that it was unwise to convict the accused without corroboration as children and sexual assault complainants were deemed unreliable witnesses.

In what is a positive step for complainants, every Australian jurisdiction (including the Commonwealth for extraterritorial crimes) has since enacted legislation removing this requirement for judges to give a corroboration warning.¹⁷⁰ However, only NSW, Victoria, the ACT and the NT prohibit judges from warning or suggesting that it would be unwise to convict on uncorroborated evidence on the basis that the child is an unreliable witness.

Admissibility of Evidence as to Character

Importantly, there are provisions in all Australian jurisdictions that deem certain evidence pertaining to an individual's character as inadmissible (albeit with differing levels of protection for survivors).¹⁷¹ In particular, Australian legislation restricts the admission of evidence variously described as being of:

- the general reputation of the complainant regarding chastity;¹⁷²

- sexual reputation;¹⁷³

- a child witness's or child complainant's reputation regarding sexual activities;¹⁷⁴

- disposition of the complainant in sexual matters,¹⁷⁵ or evidence that raises inferences about a complainant's general disposition;¹⁷⁶

- sexual history;¹⁷⁷

- sexual experience,¹⁷⁸ or sexual experiences;¹⁷⁹ and

- 'experience regarding sexual activities',¹⁸⁰ 'sexual activity'¹⁸¹ or 'sexual activities'.¹⁸²

These restrictions provide a means to ensure that juries do not incorrectly attribute weight to aspects of evidence that are not relevant or material to the case at hand.

Defences

There are several defences that an accused person may seek to rely upon when being tried for some CSEA offences. As the State and Territory jurisdictions each have separate pieces of legislation in this context, there are differences between each in the prosecution of CSEA offences, including defences that may be relied upon by the accused perpetrators. Ultimately however, there are some common themes.

Consent

Recent law reform in some jurisdictions has introduced statutory defences to sexual offending against children in special circumstances. These circumstances broadly allow for consent to be given by children if:

- there was a 'reasonable belief' that the child is over a certain age; or

- the accused person is within a specified number of years of the child's age ('similar age' defence).

The defence of reasonable belief the child was of consenting age applies in ACT, Victoria, Queensland, Tasmania, WA and the NT, but the application of each defence depends on the jurisdiction. For example, there is no age restriction on the 'victim' in the ACT if there was consent and the defendant believed on reasonable grounds that they were over the age of 16.¹⁸³ However, in Victoria and Queensland, the child consenting must be at least 12 years of age,¹⁸⁴ in Tasmania 13 years of age,¹⁸⁵ and in NT 14 years.¹⁸⁶ In WA, the consenting child must be at least 13 years old, the defendant must hold a

reasonable belief they are over 16 and they must be no more than three years older than the child.¹⁸⁷

A similar age defence applies in the ACT, NSW, VIC, SA and Tasmania. Again, each jurisdiction has different applications. In the ACT, VIC, and NSW the consenting child must be within two years of the alleged offender with the child being older than 10, 12 and 14 years respectively in each State.¹⁸⁸ In SA, it is a defence if the consenting child is 16 or over and the alleged offender is younger than 17.¹⁸⁹ In Tasmania, consent can be a defence if the child is aged between 12–14 years and the alleged offender is no more than three years older or the consenting child is aged 15 years and the alleged offender is no more than five years older.¹⁹⁰

Mental Illness

Mental health impairment or cognitive impairment is a defence to CSEA offences. However, the court will require reports on the accused from psychiatrists, psychologists or other medical experts. These experts are often called to give evidence. In NSW, a person who had a mental health, or cognitive impairment, or both, at the time of carrying out an act that would otherwise be an offence will not be held criminally responsible if "the impairment had the effect that the person did not know the nature and quality of the act; or that it was wrong because the person could not reason with a moderate degree of sense and composure about whether the act was wrong."¹⁹¹ The defence has similar wording in Victoria.¹⁹²

If the judge or jury is satisfied that the defence of mental health impairment or cognitive impairment has been established, then a special verdict of "act proven but not criminally responsible" must be returned. This means that the court will usually detain the offender and order an assessment by an independent body (in NSW it is by the Mental Health Review Tribunal (MHRT)) who will keep the offender detained until they are no longer a serious risk to themselves or others.

Under Federal, ACT, NT, Queensland and WA laws, the defence of insanity is enshrined in the Criminal Codes where a person is not criminally responsible if, at the time of the act or omission giving rise to the offence alleged, the accused was in such a state of mental impairment, mental disease or natural mental infirmity as to deprive him or her of capacity to

understand what he or she was doing, or of capacity to control his or her actions, or of capacity to know that he or she ought not to do the act or make the omission. Tasmania also has slightly different wording, including in the definition of acts or omissions which were made under an impulse which, by reason of mental disease, the accused was in substance deprived of any power to resist.

It is important to note that regarding the defence of insanity, the definition of "disease of the mind" is a legal term, not a medical one, and is a question of law for the judge. If the judge finds the existence of disease of the mind, then the jury will decide whether or not the accused was "insane" at the time of the act or omission.

Unwillingness to Proceed with 'Formal' Trial

A study looking into the experiences of child complainants of sexual abuse found that the overwhelming area for concern for all children when navigating the criminal justice system was cross-examination and the behaviours of defence counsel.¹⁹³ There are guidelines and protective measures put in place to ease some discomfort, however, this issue is still the largest area of concern regarding a child's (and their family's) willingness to proceed with trial for CSEA offences.

Notably, the study used case studies to extract quotes from child complainants telling their stories. A common theme was that the children found cross examination disturbing and challenging because they felt they were being accused of lying. One 13-year-old child from NSW was quoted as saying the opposing counsel "*was really mean... yea he kept saying 'you're lying, you're lying, I know this is lies'. I felt pretty upset because I knew it was the truth*".¹⁹⁴ In addition, a 14-year-old child from Queensland was quoted saying "*every second word was you're lying. I was getting really annoyed with him. I said, I'm telling the truth. ...And he was like, I put it to you blah blah blah*".¹⁹⁵

Ultimately, the focus group of 63 child complainants who had been through the criminal justice system were asked whether, if given the opportunity again, they would report their claim. Of these children, 46 per cent answered 'no' or 'not sure' despite a majority of the interviewed complainants actually getting convictions over their perpetrators (63.5 per cent). The parents of these children expressed similar

views whilst observing how their children were treated by the criminal justice system. Shockingly, despite vulnerable witness protections for children in the cases that are brought before a court, children are questioned for three times as long as they were in similar cases in the past.¹⁹⁶

The conviction rate of 63.5 per cent in the above study does somewhat accurately reflect the current rate of convictions of CSEA offences in Australia despite the small sample size. The 2016 PSS estimated that about 1.4 million Australian adults (7.7 per cent) experienced sexual abuse before the age of 15.¹⁹⁷ According to ABS Recorded Crime - Victims data, in 2018, police recorded around 7,900 sexual assaults against children aged 0–14.¹⁹⁸ In 2017, 954 persons appeared in court charged with at least one child sexual offence and ultimately, 64.3 per cent were found guilty.¹⁹⁹ However, the difference between the number of reports to police and the number of cases tried in court is staggering.

Gaps in Prosecution

Evidently, there are some gaps to be addressed in the prosecution of CSEA offences in Australia:

- In matters regarding the age of consent, a perpetrator is permitted to use the defence that they believed the child to be over 16. This leniency could undermine genuine cases of abuse and exploitation, and prevent survivors from receiving justice.

- Limited implementation of child-friendly justice measures, despite many policies enacted, and general distrust of the criminal justice system has resulted in survivors of CSEA under-reporting offences committed against them and being unwilling to pursue prosecutions. Therefore, offenders of CSEA often go unpunished.

- There is no age restriction on the 'victim' in the ACT if there was consent and the defendant believed on reasonable grounds that they were over the age of 16.

- Currently, judges in SA, Queensland, WA and Tasmania are not prohibited from warning a jury or suggesting to a jury that it would be unwise to convict on uncorroborated evidence on the basis that the child is an unreliable witness.

- Evidence of CSEA crimes being prosecuted extraterritorially is difficult to find. The Commonwealth Department of Prosecutions (CDPP) publishes case reports on their website, but it appears to be a non-exhaustive list as there are none for the crime of CSEA offences committed abroad.²⁰⁰

Protection

Each jurisdiction in Australia has mandatory reporting requirements for child sexual abuse. Offences are contained in each State's and Territory's child welfare legislation, and most have offences in their respective criminal codes. Child welfare legislation relates to the physical offending of child sexual abuse whereas the criminal codes may require both physical sexual abuse and offending online to be reported.

Child welfare legislation in each State and Territory provides broadly that if a mandatory reporter suspects on reasonable grounds that child sexual abuse has, is, or is likely to occur, they must report it. Who is classed as a mandatory reporter is different in each State and Territory, and is as broad as including 'all adults' or defined by a list of professions or voluntary roles. Commonly, each jurisdiction includes adults in professions that care for children such as doctors and nurses and employees, and volunteers of organisations providing health, welfare and education services.²⁰¹

The Cth Criminal Code includes an offence if a person fails to protect a child at risk of child sexual abuse (remove them from harm) if the person is a Federal officer, and the child (under 18 years of age) is under that person's care in their capacity as a Federal officer.²⁰² The criminal codes in ACT, Queensland and Victoria also contain failure to protect offences.²⁰³ The particulars of the offences vary between jurisdictions but generally relate to adults in institutions and organisations with children in their care. In SA, the Statutes Amendment (Child Sexual Abuse) Act 2021 introduces a new failure-to-protect offence, which will commence on 1 June 2022.²⁰⁴

The Cth Criminal Code contains an offence for a Federal officer not to report a child sexual abuse offence.²⁰⁵ The criminal codes in NSW, ACT, Queensland, Victoria and Tasmania penalise adults who do not report child sexual abuse.²⁰⁶ A new

offence for a failure to report will also be introduced in SA effective from 1 June 2022.²⁰⁷

Protection of Children in General

The protection of CSEA survivors in Australia is underpinned by broad government frameworks and overseen by the AFP.

The National Framework for Protecting Australia's Children 2009-2020 (**National Framework**) was endorsed by the Council of Australia Governments in 2009, and commits Federal, State and Territory governments to a long-term goal plan to promote and enhance the safety and wellbeing of Australia's children.²⁰⁸ While the National Framework is not specifically focused on CSEA, it sets out strategies to overcome CSEA as a key supporting outcome. However, this framework is outdated and a successor is currently being finalised.²⁰⁹

On a practical level, the AFP plays a significant role in protecting children in Australia by partnering with a variety of law enforcement agencies, international agencies, government departments, and industry and not-for-profit organisations. The AFP is responsible for the investigation of crimes associated with CSAM and travelling sex offenders.

The AFP Child Protection Plan 2020–2022 covers the remit and roles of AFP Child Protection teams including AFP Child Protection Operations, JACETs, ACCCE, and the Northern Territory Child Abuse Taskforce (**NTCAT**).²¹⁰ The Plan focusses on AFP Child Protection efforts and commitment to reducing the incidence and impact of crimes against children and holding those responsible for such crimes accountable.²¹¹

Statutory child protection is also the responsibility of State and Territory governments. Departments responsible for child protection assist vulnerable children who are suspected of being abused, neglected or harmed, or whose parents are unable to provide adequate care or protection.²¹² Their functions involve investigating, processing and overseeing the management of child protection cases. In 2019–2020, sexual abuse accounted for nine per cent of the types of abuse substantiated through investigations of which a higher proportion of girls (13 per cent) were survivors compared to boys (six per cent).²¹³ Services for vulnerable children

include investigation, care and protection orders, out-of-home care or intensive family support services.²¹⁴

Other child protection measures in Australia include Working With Children Checks and Police Checks, which are different types of pre-employment screening programs to ensure child-safe working environments in Australia. Pre-employment screening of adults and volunteers, who encounter children as a result of their job, is mandatory and legislated for across most States and Territories in Australia. However, there is no national framework setting out the requirements for obtaining these checks and each State and Territory has their own procedures and requirements.²¹⁵

According to the AIC, all Australian States and Territories have mandatory reporting legislation for child-focused professionals. NSW, for example, has the Kids Helpline which takes calls from children reporting child sexual abuse. Both children and adults have access to compensation via State/Territory crime compensation schemes. Survivors of Federal sex offences (including exploitation and slavery) do not presently have access to redress schemes, however the Attorney General's Department is currently conducting a scoping study to identify options for such a scheme.

Protection of Children Online and Offshore

The AFP Child Protection teams focus on targeting Australians engaged in the sexual abuse of children offshore as well as those involved in the production and supply of child abuse material including "live online" child sexual abuse.²¹⁶

The AFP is also involved in many crime prevention and awareness raising initiatives, particularly regarding keeping young people safe online. For example, ThinkUKnow is a law enforcement led program, delivered nationally to educate the community about preventing online child sexual exploitation (see further 'Prevention' below on this program).²¹⁷ The program addresses topics including online grooming, preventing inappropriate contact, sexting, image-based abuse, sexual extortion, and avenues for seeking help.

The AFP is also a member of the Virtual Global Taskforce (**VGT**) which is an alliance of law enforcement agencies worldwide which collaborate to counter online child abuse. The VGT was established

in 2003 as a direct response to investigations into online child sexual abuse around the world.²¹⁸ The VGT's aims are to make the internet a safer forum by identifying and helping children at risk, as well as targeting perpetrators.²¹⁹

The AFP continues to counter child exploitation in collaboration with domestic and foreign law enforcement agencies through the AFP-led ACCCE, Child Protection Operations (**CPO**) and the AFP's International Network. The International Network works to detect, deter, prevent and disrupt crime and harm, including child exploitation, at its source. As part of the International Network, the AFP has members deployed to 35 posts across 29 countries, including a Regional Social Media Advisor and two Digital Forensics Specialists who support 'Posts' across Asia and South East Asia. The Regional Social Media Advisor is deployed to the Kuala Lumpur Post and the two Digital Forensics Specialists are deployed to Bangkok and Jakarta Posts. Under the CSA National Strategy, the Australian Government announced new funding that will enhance the AFP's presence in the Philippines to support the Philippines law enforcement efforts to combat LOCSA. The funding will also strengthen Indo-Pacific law enforcement and justice agencies' response to child sexual exploitation in the region.²²⁰

Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission also led to several protective measures for CSEA survivors.

The National Redress Scheme was established in response to the Royal Commission, and started on 1 July 2018 for ten years.²²¹

The goal of the scheme is to provide support to people who experienced institutional child sexual abuse by doing the following:

- acknowledging that many children were sexually abused in Australian institutions;
- holding institutions accountable for this abuse; and
- helping people who have experienced institutional child sexual abuse gain access to counselling, a

direct personal response from an institution (e.g. an apology) and a Redress payment.

As at 12 November 2021, the Scheme had received 12,612 applications, made 7,882 decisions and led to 575.3 million AUD in total Redress payments.²²²

National Principles for Child Safe Organisations

The National Principles for Child Safe Organisations (**National Principles**) was endorsed by members of the Australian Government in 2019 and aims to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing.²²³

The Royal Commission recommended that all institutions in Australia engaging in child-related work be required to implement ten child safe standards which have been incorporated into the National Principles. These principles provide guidance on key actions and performance measures in implementing the standards and its scope goes beyond child sexual abuse to cover other forms of potential harm to children and young people.²²⁴ Organisations are not legally required to implement the National Principles but are encouraged to become "organisations of choice" for children, families and communities.²²⁵

The National Principles also form the basis for the Commonwealth Child Safe Framework which is a government policy that sets minimum standards for creating and embedding a child safe culture and practice in Commonwealth agencies.²²⁶

Protection of Trafficked Children

The National Action Plan to Combat Modern Slavery 2020–25 was launched in 2020 to outline Australia's strategic response to modern slavery and build on Australia's initiatives under the National Action Plan to Combat Human Trafficking and Slavery 2015.²²⁷ While there is no explicit focus on CSEA survivors, Australia is holistically committed to combating issues surrounding human trafficking and slavery domestically, regionally and internationally.

In the domestic space, the Support for Trafficked People Program is a key component of Australia's anti-human trafficking strategy and the National Action Plan to Combat Modern Slavery 2020–25.²²⁸

The Support Program is administered by the Department of Social Services and delivered nationally by the Australian Red Cross. This program aims to assist clients in meeting their safety, security, health and well-being needs, and develop options for life after they leave the program. In addition to Australia's Action Plans, the Australian Border Force chairs the Interdepartmental Committee on Human Trafficking and Slavery, which comprises of 11 agencies that oversee Australia's response to human trafficking.²²⁹

In the Asia-Pacific region, Australia works collaboratively with other countries to combat human trafficking. For example, Australia and Indonesia co-chair the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*. Australia's aid program also supports a number of aid projects in the Asia region, including the Australia-Asia Program to Combat Trafficking in Persons.²³⁰

In the international space, Australia has ratified the United Nations Convention against Transnational Organized Crime (**UNTOC**) and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**Trafficking Protocol**). Australia also participates in international forums such as the United Nations Commission on Crime Prevention and Criminal Justice, the United Nations Human Rights Council's Universal Periodic Review process, the United Nations Committee on the Elimination of Discrimination against Women and the UNTOC Conference of Parties, to better address and prevent trafficking.²³¹

As the mandated lead investigative agency to combat human trafficking, slavery and slavery-like practices in Australia, the AFP is focused on the prevention, disruption, and investigation of modern slavery and human trafficking practices—including forced marriage—and the protection and support of survivors. Over 45 per cent of reports of forced marriage in the 2020–21 financial year involved disruption or intervention strategies that prevented an offence from occurring, or support being provided to survivors who did not wish to engage with the AFP.

By taking this survivor-centric approach to human trafficking and modern slavery matters, the AFP considers disruption and intervention outcomes, which result in the removal of survivors from harm, as

significant an outcome as a successful prosecution. This places less emphasis on legal prosecution of offenders which, whilst advantageous for the survivor, fails to hold the offender effectively accountable.

In response to the above, the National Action Plan to Combat Modern Slavery 2020–25 sets out the nation's strategic direction. An action item under this plan requires responsible agencies to undertake a targeted review of the modern slavery offences in Division 270 and 271 of the Criminal Code.

The AFP is also exploring a consultation strategy that involves engagement and seminars with the judiciary, with the support of the CDPP and the Australian Border Force (**ABF**). The CDPP is exploring the possibility of consulting selected members of society to identify deficiencies in the legislation and compare with best practice in other parts of the world.

The AIC has noted that, regarding child trafficking and forced marriage, many cases may be identified by schools, health professionals and child protection agencies. As such, training programs aimed at giving these professionals better awareness of the indicators of these offences would assist with survivors being correctly identified and referred appropriately.

Counselling

The AIC has noted that there is a lack of support services and compensation for survivors of online child sexual abuse. In response, they are currently advocating for more programs to be developed to provide expert counselling and other similar services for the survivors of these crimes.

There are no structured or specialised programs designed specifically to assist survivors of CSEA. Support services differ and include a range of State, Territory and Federal government and non-government organisations. All State and Territory governments manage a Victims' Register and Victims' Support Service, and are also supported by NGOs such as the Victims of Crime Assistance League.²³²

The Victims' Registers contain information about adult offenders, young offenders and forensic patients who have been found guilty of a crime or

have been sentenced and are currently in custody. Eligible survivors may receive information about offenders including sentence details, security classifications and any impending release or escape from custody.

For example, the NSW Government runs a Victims Services program through its Communities and Justice Department which aims to help people who have experienced violent crime in Australia. Victims Services offers counselling, financial assistance for immediate needs, financial assistance for economic loss and recognition payments for such survivors. Recognition payments for CSEA survivors range from 1,500 to 10,000 AUD, and survivors of sexual assault who were children when the incident happened have no limitation period for applying.²³³ Survivors can also apply for up to 22 hours of counselling to help with their recovery and this has no limitation period.

Similar services are offered in other States and Territories. For example in Victoria, the Victims Services, Support and Reform (**VSSR**) in the Department of Justice and Community Safety delivers a range of support services for survivors of crime, including the Victims of Crime Helpline, Victims' Registers, Child Witness Service and Intermediaries Program. In Queensland, the Victim Assist Queensland service also provides support for survivors through financial assistance and court support.²³⁴

Several non-governmental organisations including crisis lines also offer free counselling for sexual assault survivors and CSEA survivors specifically.

Protection of Children in Disaster Settings

The bushfire disaster of 2019/20 highlighted the need for more support for children and young people in Australia before, during and after disasters, and an urgent review of government policies.

In 2020, UNICEF Australia and Royal Far West produced a report seeking to address the existing disadvantages and disaster related challenges faced by children and young people in Australia.²³⁵

Key recommendations made by the report include:

- The need for a review to be commissioned which looked at relevant policies and frameworks that guide disaster planning, response and recovery efforts to ensure that the unique needs of children are specifically identified and addressed.

- Mental health and wellbeing programs in rural and remote communities which are more susceptible to natural and climate-related disasters must be established and properly resourced.

- Efforts for communities to be educated about the impact of disasters on children should be increased.

- The establishment of a panel of preferred providers that are 'fit for purpose' to respond quickly so that relief and long-term recovery programmes are in place for children in the event of a natural disaster or emergency event.

Prevention

In May 2021, the Australian Federal Government announced 146 million AUD in funding, over four years, as the first phase of the CSA National Strategy.²³⁶ The CSA National Strategy, created following recommendations in the Royal Commission, is a whole of country collaboration to enable a consistent approach to prevent and address child sexual abuse in Australia.

The CSA National Strategy is put into practice through 'measures' set out in action plans. The first two action plans—the First National Action Plan²³⁷ and the First Commonwealth Action Plan,²³⁸—will run for four years from 2021–2024. Both action plans cover five main themes, being:

- awareness raising, education and building child safe cultures;

- supporting and empowering victims and survivors;

- enhancing national approaches to children with harmful sexual behaviours;

- offender prevention and intervention; and

- improving the evidence base.²³⁹

Each measure under the action plans is assigned to one or more relevant themes. The First National Action Plan sets out 29 measures that the Australian Federal, State and Territory governments will deliver together.²⁴⁰ The First Commonwealth Action Plan sets out 33 measures that focus on solely federal government priorities and responsibilities.²⁴¹

Under the First National Action Plan and First Commonwealth Action Plan, the initial funding of the CSA National Strategy has been allocated in various areas including: to the AFP to combat child sexual abuse and deploy new frontline operational activities;²⁴² to support detection and disruption programs run by the Australian Transaction Reports Analysis Centre (**AUSTRAC**), the Australian Border Force, the Australian Criminal Intelligence Commission (**ACIC**) and the Department of Home Affairs;²⁴³ to fund work with Indo-Pacific partners on regional policy and legislation;²⁴⁴ to create initiatives to build relationships with digital industries to lead a coordinated and collaborative approach to offending on online platforms; to strengthen legal assistance and the capacity to prosecute CSEA crimes;²⁴⁵ funding for the National Indigenous Australians Agency to co-design place-based Aboriginal and Torres Strait Islander healing approaches to support survivors of CSEA;²⁴⁶ programs to enhance safeguarding in sport; and the implementation of targeted online education programs via the eSafety Commissioner.²⁴⁷ It has been noted that there is a lack of national investment in victim support services, at least for the next four years. However, the Australian Government has committed to funding a support service for non-offending family members of child sexual abuse survivors, as well as a website and referral service for adults survivors, and a phone line to provide specialist legal advice to survivors of sexual abuse.²⁴⁸

In addition, the CSA National Strategy provides additional funding to the National Office for Child Safety, which implemented following recommendations made in the Royal Commission. The National Office for Child Safety takes a national leadership role in delivering the CSA National Strategy as well as other initiatives introduced in response to recommendations made in the Royal Commission.²⁴⁹ Those initiatives include the National Principles for Child Safe Organisations;²⁵⁰ the Child Safe Sectors Leadership Group;²⁵¹ and the Commonwealth Child Safe Framework.²⁵²

In 2019, the Australian Government also committed 22.5 million AUD over five years to establish a National Centre for the Prevention of Child Sexual Abuse (**CSA Centre**).²⁵³ It is anticipated that each State and Territory Government will also assist in funding the National CSA Centre. The establishment of the CSA Centre is in response to a recommendation of the Royal Commission that a centre be established to “*raise awareness and understanding of the impacts of child sexual abuse, support help-seeking and guide best practice advocacy and support therapeutic treatment.*”²⁵⁴

The CSA Centre is yet to open. The Blue Knot Foundation, the Healing Foundation and the Australian Childhood Foundation have been selected to establish and deliver the National Centre.²⁵⁵

On 9 December 2020, the Australian Federal Government launched the National Action Plan to Combat Modern Slavery 2020–2025.²⁵⁶ The five-year plan addresses all forms of modern slavery including trafficking, forced marriage and sexual exploitation.

An early intervention service, like the Stop it Now! telephone and online service, could be implemented in Australia to support the prevention of child sexual abuse. Evaluations in the United Kingdom and the Netherlands have shown that these types of services work and a recent study by Jesuit Social Services recommended that, in line with the Royal Commission on Institutional Child Sexual Abuse, a Stop It Now! program should be established in Australia.²⁵⁷

Register of Offenders

Each of the Australian States and Territories has legislation creating a child sex offenders register on which certain offenders must be listed.²⁵⁸ The laws state what information an offender must report to the relevant authority, how often, the particulars of travel and prescribes various offences should reporting obligations not be met. So long as the offender reports their travel details to the police of the relevant jurisdiction and has been given permission from a competent authority as according to s 271A.1 of the *Passports Legislation Amendment (Overseas Travel by Child Sex Offenders) Act 2017* (Cth), the offender may travel overseas. The intent of the registers is to reduce the likelihood that an offender will reoffend, and to make investigation of any further alleged offences easier by allowing police to know an

offender's location and other information at any given time.²⁵⁹

The Federal government does not maintain a stand-alone registry at a national level, but does maintain a National Child Offender System (**NCOS**) that allows limited 'authorised' police in each State and Territory to upload and share child offender details with each other jurisdiction²⁶⁰ (see further 'Accessibility of registries in other jurisdictions' below).

Registrable Offences

There is overlap and differences between each State and Territory as to what constitutes a 'registrable offence' sufficient to place an offender on the relevant registry, usually classified according to seriousness as a class 1 or class 2 offence. Each jurisdiction does however include the CSEA offences discussed in this narrative as 'registrable offences'.²⁶¹

Information to be Provided

Generally, each jurisdiction requires a registered offender to provide details of their residence, name and date of birth, employment details, any club memberships where children also attend, distinguishing features such as tattoos, details of any motor vehicles used by the person, details of any carriage service used by the person, details of any computers, internet providers and email addresses used by the person, the details of any children with whom the person is residing or with whom the person has regular unsupervised contact, whether the person intends to travel outside the jurisdiction regularly, if they have been found guilty of a corresponding offence in a different jurisdiction and any internet user names, instant messaging user names, chat room user names or any other user name or identity used by the offender through the internet or other electronic communication service (Queensland also requires social media usernames and passwords).²⁶² However some jurisdictions require additional information to be provided, primarily regarding 'reportable contact' between an offender and a child.²⁶³

Travel Details

There are similarities and differences in each State and Territory on what and when offenders have to

report their travel details, but generally offenders must report travel details if travelling domestically outside of the jurisdiction or internationally,²⁶⁴ when they return²⁶⁵ or if they decide not to leave,²⁶⁶ and if outside the jurisdiction, their travel details if deciding to stay more than seven days,²⁶⁷ and any changes.²⁶⁸ Several jurisdictions also require the offender must also provide their passport on return from international travel,²⁶⁹ or provide international travel plans to the AFP.²⁷⁰

Between 13 December 2017 and 31 July 2019, 42 registered offenders were stopped at the border by the ABF as they did not have permission to travel. Between 1 August 2019 and 31 March 2020, two registered offenders were stopped at the border.²⁷¹

Since the border closures as a result of the COVID-19 pandemic, no registered offenders have been stopped at the border by ABF for not having permission to travel.²⁷² In the near future, the ACCCE Prevention and Engagement team will resume the delivery of a prevention and deterrence campaign within the Australian airline industry, targeting travelling child sex offenders (**TCSO's**).²⁷³

The AFP continues to share information, via notifications, with foreign partners/destinations about TCSOs to deter and stop them offending.

Time and Duration of Reporting

Most jurisdictions require offenders to report any changes to their information immediately, and otherwise on a yearly basis.²⁷⁴ The period of time for which an offender is obliged to do so is usually eight years for a class 2 offence, 15 years for a class 1 offence or two class 2 offences, and for life if convicted of multiple offences.²⁷⁵ However, in Queensland this information must be reported monthly,²⁷⁶ for five years,²⁷⁷ ten years²⁷⁸ or for life depending on the severity of the offence.²⁷⁹

Accessibility of Registries in Other Jurisdictions

The information on the offender registers can generally only be accessed in limited circumstances by police officers authorised by the respective Police Commissioners, including any information from another jurisdiction's register also available on the first state's register²⁸⁰ (although some states grant access to additional organisations or particular

individuals).²⁸¹ Persons who have access to the register must keep the information confidential unless directed otherwise by the Commissioner or by any Act or law.²⁸² The registers are not available to the public at all.

Child Online Safety

Cth Criminal Code and Telecommunications Act

The Cth Criminal Code places legal obligations on ISPs, which is anyone who supplies an internet carriage service (a carriage service which allows people access to the internet)²⁸³ to the public,²⁸⁴ or an ICH (a person who hosts internet content in Australia, being information kept on a data storage device and accessible using an internet carriage service but does not include ordinary email).²⁸⁵ Most relevantly, ISPs and ICHs commit an offence if they are aware that their service(s) can be used to access material they have reasonable grounds to believe is child abuse material and do not refer the details to the AFP within a reasonable time after becoming aware of the material.²⁸⁶

The *Telecommunications Act 1997* (Cth) requires carriage service providers to do their best to prevent telecommunications networks from being used in the commission of offences against Australian laws, and to help the relevant authorities (e.g. the police) in these cases as much as reasonably necessary.²⁸⁷

eSafety Commissioner

The eSafety Commissioner has functions to enhance online safety for children. The recently enacted *Online Safety Act 2021* (Cth) (**Online Safety Act**) includes an Online Content Scheme allowing the Commissioner to take action against CSEA material and a regime to develop new industry codes and standards to ensure the technology industry provides greater transparency around their safety features, policies and practices.²⁸⁸

The Online Safety Act came into force on 23 January 2022. It requires that bodies or associations that represent sections of the online industry develop industry codes to govern participants' online activities of the respective sections.²⁸⁹ Examples of what might be included in the codes are procedures to deal with certain types of content, including the producer's obligations, how to ensure online accounts for

services are not provided without the consent of a parent or carer, how end users can use online content filtering software or otherwise limit their access to illegal material and promoting awareness of the risks of using social media and other services.²⁹⁰

The industry codes and standards should build on the Basic Online Safety Expectations set out in the Online Safety Act including that service providers will take reasonable steps to ensure end users can use the service in a safe manner and that material depicting abhorrent violent content will be minimal.²⁹¹ The eSafety Commissioner can request to see a code,²⁹² or can determine a standard without reference to the online industry if a code is not adequately drafted for community safeguards or is otherwise deficient.²⁹³ The Commissioner can fine participants who do not obey a direction from the Commissioner to comply with a particular code or standard.²⁹⁴

The eSafety Commissioner has also created a provider guidance initiative, called Safety by Design²⁹⁵ which, among other things, sets out three principles that can be used by online platform and service providers to incorporate, assess and enhance user safety.²⁹⁶ The three core Safety by Design principles are service provider responsibility, user empowerment and autonomy, and transparency and accountability.²⁹⁷ Safety by Design works to promote and embed safety into the operations of online platforms,²⁹⁸ aiming to put user safety at the centre of product development and design.²⁹⁹ A primary consideration in developing this initiative and the core principles was the protection of young people and children online, in particular, regarding risks of CSAM.³⁰⁰

The Online Content Scheme, in Part 9 of the Online Safety Act, also allows the eSafety Commissioner to take action against certain material, including material that could be classified as child exploitation and abuse material.³⁰¹ The eSafety Commissioner can give notices to a number of online service providers (including social media service providers)³⁰² to take all reasonable steps to remove 'intimate images' within 24 hours.³⁰³³⁰⁴ The definition of 'intimate image' does not refer solely to children but rather includes the depiction of a person's private parts or a depiction of a private activity.³⁰⁵ A link deletion notice may be issued to the provider of an internet search engine, or an app removal notice to

the provider of an app distribution service, requiring the provider to stop downloads of an app which facilitates certain material on social media or the internet more broadly.³⁰⁶

The eSafety Commissioner's website also includes details on how to report CSAM, the investigation of which is in partnership with law enforcement and the global network INHOPE.³⁰⁷

In June 2021, following the Federal government's response to the 'Protecting the age of innocence' report, the eSafety Commissioner was tasked with developing a roadmap for a mandatory age verification regime relating to children's access to online adult content pornography.³⁰⁸ The purpose of this will be to provide advice to the government on how best to establish a system that seeks to minimise children's access to, and protect them from, online adult content pornography in Australia and the intrinsic harm it can cause.³⁰⁹ The age verification technology seeks to protect both children who accidentally encounter online adult content pornography and children who actively seek out pornographic material.³¹⁰ The eSafety Commissioner is currently reviewing submissions and engaging with stakeholders, and intends to present its roadmap in December 2022.³¹¹

There have been some links made of children viewing adult content pornography and the increase of child-on-child sexual abuse. Organisations such as eChildhood in Australia are addressing the issue of children accessing adult content pornography and the affect it is having on their wellbeing and sexual development.³¹²

Australian Centre to Counter Child Exploitation

In 2018 the AFP-led ACCCE was established. ACCCE works to create meaningful partnerships and encourage collaboration across government, law enforcement (AFP and the State and Territory police forces), non-government organisations and other partners in Australia's efforts to prevent and disrupt online child sexual exploitation.³¹³

The AFP and State and Territory police forces are the investigative powers, but ACCCE assists through intelligence gathering, research and developing deterrence and prevention strategies.³¹⁴ ACCCE's resources, including in online covert engagement and victim identification, allows the organisation to

proactively target organised child exploitation networks, as well as being a resource themselves for other law enforcement agencies aiming to prevent child exploitation.

ACCCE receive incoming requests for information and reports of child exploitation, triage and further add to the reports where possible, before referring the report to the relevant authority³¹⁵ (AFP, State/Territory police forces or JACETs). Reports of online child sexual exploitation or online grooming, inappropriate, offensive or illegal content, image-based abuse, and travelling child sex offenders can be made to ACCCE, along with a number of other crimes.

Included in the organisation of ACCCE is the Online Child Safety Team, which coordinates and designs the implementation of targeted prevention strategies using data from the Intelligence Fusion Cell, which supports the triage and evaluation of reports, discussed below.³¹⁶ Also involved with the Online Child Safety team is the Child Protection Triage Unit, which liaises with the AFP, JACETs, State and Territory Police and international partners.³¹⁷

ACCCE partners with a number of non-government organisations in their efforts to prevent CSAM. They conduct various working groups across Australia with relevant stakeholders from the public and private sectors and civil society including prevention, research and legal working groups.³¹⁸

Australian Criminal Intelligence Commission

The AFP and the ACIC have recently been given new powers to aid in online child safety (among other areas). In early September 2021, the *Surveillance Devices Act 2004* (Cth) and the Cth Crimes Act were amended by the Surveillance Legislation Amendment (Identify and Disrupt) Act 2021 (**SLAID Amendments**) to allow the AFP and the ACIC to apply for three new warrants from a judge (see below for further detail). As an overall summary, these warrants allow for the collection of intelligence on harmful criminal networks operating online, including on the dark web and when using anonymising technologies. These new powers significantly boost the capacity of law enforcement agencies to identify and disrupt serious criminal activity occurring online regarding a range of crime types, including human trafficking.³¹⁹

First type of Warrant: Data Disruption Warrants allow covert access to computers to add, copy, delete or alter data in order to frustrate the commission of an offence,³²⁰ if the AFP or ACIC have a reasonable suspicion a relevant offence has been or is about to be committed and that the disruption of data held in the computer is likely to substantially assist in frustrating the commission of those offences.³²¹ A relevant offence includes any Federal offence punishable by three or more years in prison,³²² which includes offences relating to child abuse material.

Second type of Warrant: Network Activity Warrants allow the AFP and ACIC to collect intelligence on criminal networks by accessing their devices and networks, if there is a reasonable suspicion the group is using the same electronic service or communicating electronically to engage or facilitate a relevant offence. There must be a reasonable suspicion that this access will substantially assist in the collection of intelligence about the network of people that is relevant to the prevention, detection or frustration of the offences.³²³

Third type of Warrant: Account Takeover Warrants allow control of a person's online account through the modification of data for the purposes of gathering evidence about serious offences.³²⁴ A serious offence includes dealings in child abuse materials.³²⁵ There needs to be a reasonable suspicion on the part of the AFP or the ACIC that such an offence has been committed, and that taking control of the online account is necessary in order to obtain evidence as part of the investigation into the offence.³²⁶

The SLAID Amendments enable law enforcement to more effectively address the technical challenges facing priority crime types, including child protection and be complimentary to the existing powers and frameworks. Furthermore, the SLAID Amendments look to be a useful tool for investigators, particularly the enhanced ability to take over accounts and, as prosecution is not always possible, the power to disrupt networks will frustrate offenders ability to operate freely across those networks.³²⁷

Financial Institutions

In 2017, AUSTRAC established the Fintel Alliance with the aim of increasing awareness of criminal exploitation in the financial sector and to assist law enforcement investigations. Along with AUSTRAC, the Fintel Alliance includes Australian Federal and

State governments, intelligence and law enforcement agencies and private sector businesses including Australia's major banks and remittance server providers. The Fintel Alliance also works with International partners to share information including in the area of child sexual exploitation.

Partners of the Fintel Alliance are able to receive information from AUSTRAC, but also share best practice for targeting criminal activity including money laundering, child sexual exploitation and terrorism financing.³²⁸ Addressing the increase in sexual exploitation of children for financial gain, the Fintel Alliance works with law enforcement and industry partners to proactively identify financial transactions that may relate to child sexual exploitation.

In November 2019, the Fintel Alliance released an activity indicators report focused on combating the sexual exploitation of children for financial gain. The report noted that when only using financial data it is hard to determine if transactions relate to illegal child exploitation purchases or other illegal or legitimate purchases.³²⁹ The report identified a number of specific financial and environmental indicators of child sexual exploitation that the financial industry can use to identify and report transactions potentially relating to the purchase of CSAM.³³⁰ The reporting of suspicious transactions can assist law enforcement to identify, investigate and prosecute offenders.

One of AUSTRAC's most recent risk assessments into Australia's major banks, observed a 945 per cent increase in the reporting of suspected child-related offending since the establishment of the Fintel Alliance.³³¹ The intelligence obtained through AUSTRAC and the Fintel Alliance initiatives indicates that Australia's major banks are still being used to facilitate payments for access to child abuse material, as well as to facilitate 'grooming' and child sex tourism.³³² The partnerships within the Fintel Alliance are important to keep identifying innovative solutions to detect, disrupt and prevent child sexual exploitation.

Financial institutions are also engaging more in awareness building of CSEA offences and providing funding for CSEA research. For example, on 11 October 2021 Westpac announced its latest 'Safer Children, Safer Communities' grant recipients which includes a number of multi-year funded CSEA research projects.³³³

Awareness & Education

The Federal government has several programs and resources available through several agencies. ThinkUKnow is an AFP-led education program, in partnership with ACCCE, which has resources available for both educators and parents and carers around online child sexual exploitation, as well as offering presentations for both adults and children.³³⁴ ACCCE also has a number of its own resources available to parents and carers, parents and children together, and a list of education resources from other organisations.³³⁵

ACCCE has created a podcast 'closing the net' which showcases the work of ACCCE and agencies detecting and disrupting child exploitation. By providing listeners with an understanding of child exploitation the goal is to increase conversation about the subject and create education and awareness of the crime.³³⁶ In September 2021, ACCCE and a number of partners launched a national campaign called 'Stop the Stigma'. The campaign engaged survivors, parents of survivors, medical professionals and law enforcement to discuss their experiences relating to CSEA. The campaign aimed to increase the discussions and therefore awareness around this type of offending and to reduce the stigma of the offending.³³⁷

The eSafety Commissioner has created several factsheets and videos available for children, young people, parents and educators around internet safety, including resources specific to the COVID-19 pandemic, and offers advice on what to do if a young person receives unsafe or unwanted contactor wants to explore online dating (increasing the risk of grooming).³³⁸

In July 2021, the 'Best Practice Framework for Online Safety Education' was launched which is Australia's first national framework for schools and teachers designed to help educators equip young people with the necessary skills to safely navigate being online. The framework is designed to assist children within different age groups with a targeted needs approach and is broader than just education relating to child sexual exploitation.³³⁹

The eSafety Commissioner, in partnership with the AFP and the Alannah and Madeline Foundation, has also created the PlayingITSafe initiative.³⁴⁰ PlayingITSafe is an online initiative that supports

parents, carers, educators and children. The portal contains a range of online guidance materials and play-based learning resources, with the aim of supporting and promoting online safety.

The eSafety Commissioner also endorses and lists a number of external online safety providers that meet the Commissioner's online safety education standards, so schools know the providers are appropriate for the students.³⁴¹ Organisations can apply to the Commissioner to be listed as a Trusted Provider, demonstrating their capability, experience and evidence-based online safety content.

The AIC as part of the Federal Government regularly publish concise papers, 'Trends and issues in crime and criminal justice'. These papers are designed to inform policymakers, researchers and the wider community on current research, including regarding CSEA. For example, a recent paper discusses five key cyber strategies used to combat CSAM, being: peer-to-peer network monitoring; automated multi-modal child abuse material detection tools; using web crawlers to identify child exploitation sites; pop-up warning messages; and facial recognition.³⁴²

State and Territory governments also produce CSEA education resources for parents, carers and teachers. For example, the Western Australian Department of Education has created a guide for parents on identifying abuse and promoting protective behaviours in children,³⁴³ and the Victorian Department of Education and Training have created a PROTECT guide, to assist educators in identifying and responding to child abuse.³⁴⁴ ACT Policing have designed a program called "Constable Kenny", which provides parents, carers and teachers with resources and education on, among other things, cyber-safety and online grooming, and how to develop protective behaviours in children.³⁴⁵

There are many Australian NGOs that offer resources on awareness and education around CSEA, trafficking and forced marriage. There are national programs, programs specific to certain States and Territories and International organisations that operate within Australia and provide their education and training programs. These include:

— Bravehearts offer a range of programs for children including targeted programs aimed at personal safety for younger children, staying safe online and a program targeted at consent and

building safe relationships for older children. Bravehearts offers training for educators, parents and carers and organisations.³⁴⁶

— The Alannah and Madeline Foundation run an education initiative called eSmart, which includes the eSmart Digital Licence to teach children how to interact safely online. eSmart Schools and Libraries provide a prevention and risk management framework for Australian schools and libraries.³⁴⁷

— Safe4Kids develops quality, innovative child abuse prevention educational programs, training and teaching resources.³⁴⁸

— Foundation Against Child Abuse (which partners with the Alannah and Madeline Foundation) provides education and awareness, among other services, to combat online child sexual exploitation.³⁴⁹

— Life Education provides programs aimed at children aged 3–14 years on a range of topics including programs on safe and healthy relationships, consent and cyber safety.³⁵⁰

— The National Association for Prevention of Child Abuse and Neglect provides education workshops and resources on both childhood physical and sexual abuse.³⁵¹

— Ozchild has published a Cyber Safety Manual to help carers of children in out of home care understand the significant risks posed by social media.³⁵²

— Act for Kids provides therapy support and education to children and families who experience, or are at risk of experiencing, child abuse.³⁵³ In particular, it runs education services on protective behaviours and creates resources on child sexual abuse.

— The Carly Ryan Foundation (CRF) was created by Carly Ryan's mother, Sonya, to promote internet safety after Carly was murdered by a predator pretending to be an 18 year old boy online.³⁵⁴ CRF provides a number of resources, seminars and workshops for families, schools and organisations on online safety and the use of the internet, including an online safety contract children agree to follow for their safety online.

— The Daniel Morcombe Foundation, established in honour of Daniel Morcombe, who was abducted and murdered at 13 years old, has created a “Safe Bedrooms” program, which provides parents and carers with resources and guides on how to recognise, react and report online grooming.³⁵⁵

— Anti-slavery Australia (ASA) and My Blue Sky (Australia's dedicated forced marriage portal providing information, support and legal advice to people in or at risk of forced marriages) have recently announced a new education and prevention project 'Speak Now' that aims to prevent forced marriage and other forms of modern slavery in the home.³⁵⁶ In February 2022, ASA announced a new initiative, *Seeking Freedom*, which aims to protect and realise children's rights regarding modern slavery. This initiative will include education and awareness-raising campaigns to increase the identification of children subject to human trafficking and other forms of slavery.³⁵⁷

— The ZOE Foundation Australia focuses on increasing knowledge about trafficking, through implementing advocacy and education programs across Australia and South East Asia.³⁵⁸ The ZOE Foundation Australia runs community outreach programs and public awareness campaigns, including creating school-specific curriculums and online resources on preventing child trafficking.

Recommendations

There are a number of steps which should be taken to help combat CSEA offences in Australia.

Legal

— Introduce uniformity in legislation in Australian jurisdictions relating to CSEA, including regarding CSEA offences, definitions of CSEA offences, and penalties.

— Introduce uniformity in Australian jurisdictions regarding the age of criminality regarding CSAM and the age of consent including regarding intimate image sharing.

— Streamline the extradition process to Australia from other extradition countries.

— Adopt modern terminology in some State and Territory legislation, in place of terminology that refers to, e.g. “pornography” which in some cases is not a crime for adults. Instead, reference should be made to CSEA so that it is clear that the offences are in a different and more serious category.

— Introduce laws which prohibit end-to-end encryption and other forms of encryption that prevent police from accessing online data that can be used as evidence to prosecute perpetrators.

— Introduce laws which establish that the Department of Community & Justice (DCJ) can be held vicariously liable for a foster carer's criminal actions whilst responsible for the care of a child.

Prosecution

— Law makers to address the reasons why nearly 90 per cent of sexual assault survivors don't engage with the justice system.

— The justice system to consider significant changes to how child victim-survivor cases are dealt and examine and address unfair and brutal cross-examination tactics used by barristers in the court system.

— Require that laws in all Australian States and Territories prohibit judges from warning a jury or suggesting to a jury that it would be unwise to convict on uncorroborated evidence on the basis that the child is an unreliable witness.

— Encourage continued focus on the efficient and effective use of digital forensic expertise and empowering investigators to be able to undertake more detailed investigations of electronic devices without the aid of digital forensic specialists.³⁵⁹

— While regular, small-scale payment transactions to countries known for LOCSA activities can potentially be viewed as suspicious, this information should be combined with other intelligence in order to work towards proving the elements of any offence.³⁶⁰

— As survivor cooperation to provide evidence in forced marriage cases is weak, particularly where these incidents involve family members and extraterritorial evidence can often lack the strength required to attain convictions, there needs to be

greater cooperation between survivors and the judicial system as well as between origin and destination countries to ensure that the best evidence is brought to light.

— Address challenges to prosecution identified by the AFP including addressing: (a) the vulnerable circumstances of survivors, many of whom are young; (b) isolation as a result of language barriers, cultural differences and not understanding they have rights in this country; (c) insufficient evidence to support charging and prosecution (further complicated where such evidence might be located overseas); (d) the reluctance of survivors to assist with investigation when perpetrators are family members or part of their community; (e) perpetrators' education to ensure they are aware that forced marriage is illegal; (f) survivors' awareness when it comes to support services that are available.

Protection

— Introduce uniformity in mandatory reporting laws in each jurisdiction.

— Introduce a national framework setting out the procedures and requirements for obtaining Working With Children Checks and Police Checks.

— Establishment of broad aftercare measures across States and Territories for all the psychosocial needs of CSEA survivors, whether the matter is prosecuted or not. This includes services to manage the proactive detection and removal of their abuse content, mental health support, psychosocial support and case management regarding their broader welfare needs (including, e.g. housing, employment and education).³⁶¹

— Provide greater support to the families of offenders to aid in decreasing recidivism.³⁶²

— Legally require organisations to implement the National Principles.³⁶³

— Investment to support permanent, stable care solutions for children, e.g. investing in families who are financially struggling so that they can provide a safe and caring environment for children as well as looking at how to place more children in permanent alternatives like adoption or long-term guardianship with another family.

— Implement recommendations by UNICEF Australia and Royal Far West regarding strengthening support for children and young people in Australia before, during and after disasters.

Prevention

— Introduce uniformity between the Australian jurisdictions regarding child sex offender registers, including what constitutes a registerable offence, what information needs to be provided and the timing and duration of reporting.

— Fast track the implementation of the early intervention telephone and online service (such as Stop it Now!) to which the Australia Government has committed.

— Focus efforts on early intervention for young people and adults who are worried about their thoughts and behaviours regarding children, but who haven't yet abused.

— Encourage the Australian Federal government to introduce a stand-alone national child sex offender register

— Introduce prevention programs that target CSAM on the darknet.

— Introduce support services, including counselling services, and compensation for survivors of child sexual abuse and online sexual child exploitation.

— Provide continuous training to persons who may be able to identify indicators of child trafficking, forced marriage and foster care abuse (e.g. school staff, health professionals and child protection agencies).

— Update the method in which foster carers are vetted by DCJ, e.g. requiring potential foster carers to undergo preliminary criminal checks and ongoing drug and alcohol checks. In addition, ensuring foster carers are financially stable from the outset (without the money that is paid by the government considered in the assessment).

— While Australian law prevents registered child sex offenders from departing Australia without permission, there is still a challenge in detecting and disrupting contact and online offenders who have not previously been convicted, and this issue should be addressed.³⁶⁴

Cultural/Educational

— Provide continuous training and support (financial and counselling) to persons whose work focuses on the prevention of CSEA and who provide support to survivors of CSEA.

— Introduce training and education programs for perpetrators and their families, with the aim of decreasing recidivism.

— Introduce support to persons who experienced abuse during their childhood, as some studies have shown that they are increased risk of experiencing violence later in life,³⁶⁵ including for survivors from an Aboriginal and Torres Strait Islander background.³⁶⁶

— Introduce support programs for the families of survivors.

— Introduce national support programs for the non-offending partners and family of child exploitation offenders.³⁶⁷

— Introduce and advertise national education and support programs which assist young people who wish to prevent or respond to forced marriage and trafficking such as ASA's My Blue Sky.

— Introduce family mediation programs in the criminal justice system, to assist the consideration of family dynamics and to help maintain familial relationships of survivors of child trafficking and forced marriage (where that is considered important to the individual).

— Introduce training and education programs that provide early intervention support for young people displaying harmful sexual behaviours.³⁶⁸




 Fiji

Fiji has demonstrated some willingness to combat CSEA by enacting legislation aimed at exposing and criminalising it. The Fijian Government has passed legislation including the Crimes Act 2009 (the Crimes Act), which aims to codify the laws in force by specifically defining forms of CSEA, including human trafficking, the Cybercrime Act 2021 (the Cybercrime Act), and the Online Safety Act 2018 (the Online Safety Act), which seek to address the grooming of children online and sharing of graphic images of children by paedophiles, among other things. Although these enactments are a positive development in addressing CSEA, more needs to be done to ensure that these legislative provisions and powers are effectively utilised to ensure the conviction of offenders. However, a lack of effective policing and prosecution is rendering them ineffective in their aim.

Fiji has entered into some international agreements and protocols dealing with CSEA which have not yet been implemented into local laws, so further legislation is required in order to allow the spirit of these treaties to be honoured. In addition, more needs to be done to address the factors giving rise to CSEA in the first place, such as poverty, homelessness, a lack of education regarding CSEA and a lack of support for survivors to avoid recurring offences.

Given the anecdotal evidence as to how visible many CSEA crimes are in Fiji, it seems that much could be accomplished by simply increasing the powers, resources and the motivation required to prosecute these offences. The legislation criminalising these activities is largely there, and the sentences provided for reflect the gravity of the crimes, but without enforcement at ground level and coordination between police and prosecutors, this legislation is rendered toothless.

CSEA Profile

Accurately determining the scale of the problem of CSEA in Fiji is a challenge due to the sparse and incomplete data on CSEA, both in the Pacific at large and in Fiji specifically. In Fiji as in many other Pacific microstates, there are several obstacles (geographical, logistical, social and cultural) to collecting the data necessary to establish the scale of the problem of CSEA. Nevertheless, some organisations have produced reports analysing the extent of CSEA in Fiji and the Pacific region, whose

findings, coupled with anecdotal evidence, suggest that these forms of violence are prevalent in Fiji. For example, according to a UNICEF report, 16% of girls in Fiji experience sexual abuse before the age of 15.¹

The most reported CSEA crimes in Fiji are those committed by family members, some of these being multiple offences over a long period of time, and many only being reported years after the abuse occurs.² Disturbing cases have been reported of sexual abuse by family members of young babies.³

Reports argue that the problem of CSEA is exacerbated in Fiji due to the cultural acceptance of violence, the intergenerational transfer of violence, as well as the strength of the patriarchal society, all of which play roles in creating the conditions in which children and girls in particular are made vulnerable to CSEA.⁴ A majority of perpetrators of CSEA are male.⁵ The unwillingness to report or talk about CSEA is exacerbated by cultural taboos surrounding issues, such as sex, rape and domestic violence, and by the fact that children are often victimised by family members or for the benefit of their family, e.g. in order to earn income for their family.⁶

Civil Society Organisations (CSOs) dealing with children have produced copious research showing that children on the streets are being sexually abused on a commercial basis, but that such offences are largely not being prosecuted.

Reports on the issue of the sexual exploitation of children in travel and tourism (SECTT) in Fiji have

found that, among the South Pacific islands, Fiji is particularly reliant on its expanding tourism industry,⁷ with tourism accounting for 38% of Fiji's Gross Domestic Product.⁸ However, with the growth of tourism, there has also been an increase in SECTT. It has been found that in areas with a greater number of events and hotels, there is more child sexual exploitation.⁹ Foreign perpetrators of CSEA are reported to travel to countries like Fiji seeking anonymity and access to the exploitation of children for prostitution.¹⁰ The crime is typically fuelled or enabled by weak law enforcement, corruption, ease of travel and poverty.

Observers report a practice where taxi drivers in Fiji transport child survivors to hotels in popular tourist areas at the request of foreigners.¹¹ Women are also known to act as agents for local perpetrators by arranging meeting points for female children and older men for exploitation purposes.¹² Perpetrators are often closely linked or introduced to a local "middle-man".

The underlying factors contributing to the risk of this commercial form of CSEA are a lack of job opportunities, which create financial hardships for families and lack of funding for children's education, inability to afford basic daily needs, as well as a cycle of abuse and neglect already present in some families. Therefore, those at highest risk of being sexually exploited or abused are children from economically disadvantaged families, those who live with an extended family, those who live on the streets, and those who suffer parental neglect or who live in violent and 'broken' family households.¹³

Human traffickers are known to exploit domestic and foreign child survivors (often from Thailand and China) in Fiji, and also to exploit child survivors from Fiji abroad.¹⁴ This form of CSEA takes place in illegal brothels, local hotels, private homes, yachts and massage parlours.¹⁵ Traffickers are known to utilise websites and mobile phone applications to advertise survivors for commercial sexual exploitation.¹⁶

A growing number of homeless children in urban areas in Fiji has given traffickers and perpetrators greater access to these children who might otherwise not have ventured far from traditional village and family-based structures.¹⁷

Traffickers reportedly exploit Fijian and Chinese children in Chinese-operated massage parlours and brothels, particularly in urban areas of Fiji such as Suva.¹⁸ Anecdotal reports also indicate that traffickers transport Chinese survivors into Fiji on small boats, avoiding ports.¹⁹

These observations indicate that commercial CSEA and child trafficking is treated as a lucrative business. It is gradually becoming more organised and complex in nature, resulting in an increase in the probability of more widespread harm to children.

The Fijian traditional practice of sending children to live with relatives or families in larger cities may expose these children to higher risks of CSEA and trafficking, as they may be subjected to engage in sexual activity in order to receive food, clothing, shelter or tuition fees.²⁰

Various NGOs and members of civil society have identified the staggering rate of trafficking of children in Fiji, and observers have noted that CSEA on a commercial basis is "highly visible" in various locations in Fiji.²¹ However, a disproportionately low number of police investigations are instigated and criminal charges brought against traffickers and other perpetrators of CSEA.²²

While there is evidence of the prevalence of CSEA and child trafficking in Fiji, no in-depth research has yet been carried out, nor has there been work to understand the profile of survivors.²³ However, existing information on the problem of CSEA in Fiji suggests that girls are affected by CSEA more than boys. Additionally, some of the participants in the 2019 ECPAT report highlighted the fact that LGBTQ children are especially vulnerable to abuse.²⁴ It is possible that CSEA involving male survivors may be underreported due to the cultural taboos preventing boys speaking out about abuse.²⁵ Frontline workers have reported that there were increases in the number of commercial sexual exploitation cases among young boys in Nadi in 2013–16.²⁶ This could suggest that CSEA involving male survivors is on the rise in Fiji, or that boys are feeling more comfortable coming forward about their experiences in recent years.

The exact prevalence of child marriage in Fiji is unknown as no statistics are currently available.²⁷ The legal age for marriage is 18 for both males and females. However, it has been reported that Fijian

girls from impoverished backgrounds often find themselves forced into marriage at an earlier age due to financial constraints. In 2015, for example, the Fiji Times attested that "low literacy, poverty and limited income opportunities have seen a rise in cases of young girls being forced into marriage by their families living in a community outside Lautoka City."²⁸

Criminalisation/Legislation

Classification of Sexual Offences with Children

The Crimes Act is the main piece of legislation under which CSEA offences are criminalised in Fiji; however, there are gaps in this legislation in that it does not cover all aspects of CSEA offences.

CSEA is not codified as a specific set of criminal offences in Fiji. The Crimes Act criminalises certain offences of a sexual nature against any person, regardless of age. Some of these offences are based on a lack of consent, in which respect CSEA offences are criminalised by virtue of the child being deemed unable to consent due to their age. In Chapter III, Part 12 (Offences Against the International Order), the Crimes Act criminalises rape,²⁹ sexual slavery,³⁰ enforced prostitution,³¹ sexual violence,³² sexual servitude,³³ and trafficking in children.³⁴ These offences carry a maximum prison sentence of 25 years.

This Chapter also addresses deceptive recruiting for sexual services,³⁵ which carries up to a nine-year sentence if the survivor is under 18, and the aggravated offence of people smuggling for exploitation,³⁶ which carries a maximum sentence of 20 years or 1,000 penalty units (a system used in Fiji to calculate penalty fines whereby one penalty unit has a fixed dollar value).

The Chapter on Sexual Offences criminalises rape, for which the maximum penalty is life imprisonment; attempted rape (maximum of ten years), sexual assault (maximum of up to 14 years), abduction of a person under 18 with intent to have "carnal knowledge" (maximum of five years), indecent assault (maximum of five years), "defilement" of children under 13 (maximum of life imprisonment, or five years for an attempt), "defilement" of young persons between 13 and 16 (maximum of ten years), a householder permitting defilement of a child (maximum of 12 years), a householder permitting

defilement of a person under 16 (maximum of ten years), conspiracy to defile (maximum of ten years), incest by a relative (maximum of 20 years, or life imprisonment if the survivor is under 13).³⁷ Further, under Part 13 (Prostitution Offences), detention with intent or in a brothel (maximum of 12 years), as well as selling and buying minors under 18 for immoral purposes (maximum of 12 years) are criminalised.³⁸ The recent enactment of the Cybercrime Act has also criminalised online CSEA. This is considered further below.

Until recently, there was a concerning lack of legislative provisions governing offences involving online CSEA. However, on 12 February 2021 the Fijian Government passed the Cybercrime Act, which contains almost all of the provisions of the Convention on Cybercrime of the Council of Europe (the Budapest Convention). The Cybercrime Act prescribes comprehensive powers of the executive to investigate criminal activities online, including online CSEA. It also extends the provisions of the Juveniles Act 1973 to cover use, procurement and distribution of pornographic activity involving juveniles online. The penalty on conviction for this offence is a fine of up to 50,000 FJD or imprisonment of up to 15 years for an individual, or a fine of up to 200,000 FJD for a body corporate.

Under the Online Safety Act, complaints can be made to the Online Safety Commissioner regarding harmful online content, who may then refer complaints to the police.

Although the enactment of the Cybercrime Act is a hugely significant and very welcome step in the move towards battling CSEA in Fiji, concerns remain as to whether the police and enforcement agencies will have sufficient capacity, training and impetus to enforce the Act to its full potential. Monitoring online criminal activity is likely to be resource intensive and require specialist training and skills, so funding and the establishment of specialist bodies will be necessary to allow the investigative powers to be utilised effectively.

Overall, despite the fairly wide-reaching codification of CSEA offences, there are areas of the law which are lacking, and it has been noted that significant shortfalls exist in terms of enforcement. For example, no offences of grooming or sexual communication with a child currently exist in Fijian law.³⁹

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA. Although not a signatory, Fijian law largely follows the provisions of the Lanzarote Convention. For example, regarding certain offences listed in the Crimes Act, a child is a person under 13 years old (defilement of children),⁴⁰ or under 16 (permitting defilement of a child on premises).⁴¹ However, the age of sexual consent is 16. The Lanzarote Convention states that countries should decide the age below which it is prohibited to engage in sexual activities with a child. The Crimes Act and the Cybercrime Act do largely criminalise the offences envisaged in Articles 18–24 of the Lanzarote Convention (regarding substantive criminal law). However, some further amendments would be beneficial to the Crimes Act to bring this further into line with the Lanzarote Convention, e.g. regarding sexual abuse of particularly vulnerable children due to mental or physical disability, a situation of dependence, or authority or influence of the perpetrator. The wording of the Crimes Act, which refers to the “defilement of intellectually impaired persons” where the person is suffering from “mental sub-normality”, is outdated and unacceptable.

Sentencing should also be reviewed to ensure that it aligns with proposals in the Lanzarote Convention, and continual reviews should take place to ensure that actual sentences are not unduly lenient.

Age of Consent & Definition of a Child

Despite the age of majority in Fiji being 18 years, the age of consent to any form of sexual activity is 16. The law stipulates that any child under the age of 13 is incapable of giving consent.⁴² Sexual activity with a child between the ages of 13 to 16 is also illegal, and consent is not a defence against this charge; however, there is a statutory defence if the accused reasonably believed or was made to believe that the survivor was over 16 years.⁴³

This does not require the survivor to have actually lied about their age; the defence can be based on the perpetrator’s belief based on the child’s appearance or behaviour of the child. There have been cases where the issue of consent seemed to be seen as irrelevant given the survivor’s look/demeanour.⁴⁴

The law is silent on the years between the ages 16 and 18, and as such children over 16 are effectively treated as adults.

Trafficking

Domestic trafficking in children carries a maximum prison sentence of 12 years. Both trafficking offences are based on the transportation of a child with the intention that the child provides sexual services or is exploited.⁴⁵

The offences of trafficking and sexual servitude require the survivor to have been forced into sexual activity. As such, there is no minimum age of consent concerning these offences. The issue of consent for these offences was addressed in *State v Raikadroka*, where two accused were charged under the Crimes Act for the offence of slavery with an alternative charge of aggravated sexual servitude and domestic trafficking in children, after they were alleged to have enslaved minors and domestically trafficked them for sexual purposes. It was held that because the survivors were minors, the elements of the offence were established, and the issue of consent (the survivors seemingly had the option of leaving) was irrelevant. The judge explained that consent was not a defence to the charge of trafficking and sexual servitude. In addition, force and threat have been defined by the authorities also to mean a lack of option on the part of the workers to go anywhere else. Sociologists have referred to the phenomenon as “situational coercion”.⁴⁶ This case was one of the very first cases relating to domestic trafficking in children. There is not a great deal of jurisprudence in this regard; however, the emergence of new cases paves the way for more cases of a similar nature to be prosecuted. It signifies that there is a possibility of more cases being investigated and prosecuted, although the reality is that the number of cases being investigated versus cases being prosecuted in court presents a stark disconnect.

Extraterritoriality

There is no specific law which generally criminalises CSEA committed by Fijian nationals overseas which would also be viewed as a crime in Fiji.

The Crimes Act, however, does extend jurisdiction so that sexual servitude offences are deemed a crime in Fiji whether or not the conduct constituting the offence takes place in Fiji.

This should be extended to all CSEA offences in order to allow wider prosecution.

Extradition

The Extradition Act 2003 (the **Extradition Act**) provides for extradition from Fiji to other countries with whom Fiji has entered extradition treaties and to designated Commonwealth countries (39 of 54 are listed as such in the schedule to the Act).

An offence committed in another country is only an extradition offence if:

- in the case of an offence against the law of a treaty country, it is an offence which is provided for by the extradition treaty;
- in the case of an offence against the law of a designated Commonwealth country, it is an offence which: (i) falls within one of the descriptions set out in the Schedule, which includes CSEA offences such as rape, indecent assault, trafficking for immoral purposes and unlawful detainment of children; and (ii) is punishable under that law with imprisonment for a term of 12 months or any greater punishment; and
- in any case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Fiji if it took place in Fiji or, in the case of an extra-territorial offence, in corresponding circumstances outside Fiji.

To prosecute a Fijian national for offences committed outside Fiji, the accused national would require to be extradited to Fiji. The ability to require such extradition would again depend on the other country being a designated Commonwealth country or a treaty country (and any treaty including the offence in question).

Statute of Limitations

Under Fijian law, some offences are subject to a statute of limitations. Under Section 219 of the CPA, a six-month limit is placed on summary offences which do not exceed the prescribed term of six months’ imprisonment. These summary offences include all offences under the criminal laws of Fiji, including CSEA offences. The limitation period applies after charges have been laid. However, if a

delay cannot be avoided, courts may choose to waive the limitation.

Despite this statute of limitations, CSEA offences are unlikely to be affected by the limitation period. Under the Crimes Act, CSEA offences that are usually prosecuted in Fiji include indecent assault, sexual assault, rape, trafficking and sexual slavery, all of which carry sentences which are heavier than six months. Consequently, in CSEA cases the statute of limitations is usually unlikely to affect the prosecution.

Outdated Terminology

Terms such as “gross indecency”, “indecent assault” “defilement” and “carnal knowledge” are referenced in Fiji’s legislation.⁴⁷ These terms could be considered harmful, as they reinforce gender-stereotypical views and about sexuality and who can be a survivor of sexual abuse, and emphasise the importance placed on a child’s virginity, as well being moralistic.⁴⁸

Other

Juvenile Offenders

A child under 10 years cannot be arrested or prosecuted for any offence in Fiji, whilst a child between the ages of ten and 13 can be prosecuted for an offence if the prosecution can prove that the child knew that his or her conduct was wrong.⁴⁹ A child between the ages of 12 and 17 can be prosecuted under any provision of any Act in force in Fiji.⁵⁰ However, because of their age the law may accord them some protection.

Regarding the sentencing of juveniles, young offenders are not generally imprisoned and a child under 14 cannot be imprisoned for any offence. If detention is required for children between the ages of 14 and 17, they are usually sent to an approved institution.

However, an offender between the ages of 14 and 17 can be imprisoned if a court certifies that the juvenile is either too unruly or too dangerous to be detained in an approved institution.

A juvenile is anyone under [18⁵¹ or a person who has not reached 17] years and includes a child and a young person. The Juvenile Act and Prisons Act

have differing definitions in terms of the age of majority, however the Constitution and Crimes Act have in recent times (post-2009 and -2013) legislated 18 as the age of majority. The Crimes Act places differing criminal culpability for different age groups (no criminal culpability for those under 14 years old). Despite this inconsistency, in day-to-day legal practice the age of majority is accepted as 18 years.

A young person is not required to answer any questions asked of them whilst at the police station unless their parent(s) or a lawyer are present in the room.⁵² However, a young person may waive this right and allow the police to question them without an adult's supervision.

The police are not permitted to take fingerprints or photographs of a child under the age of 14 except on the order of a magistrate.

Treatment of Children of Different Genders

CSEA offences in Fijian law are gender neutral and therefore treat survivors of different genders equally.

Protection of survivors or others who report CSEA offences from personal liability

The fiduciary duty placed on certain professionals to report suspected CSEA offences discussed above to some degree helps prevent CSEA offences from occurring. Section 8 of the CWA indemnifies such professionals from any civil, criminal or administrative liability for reporting such offences. This is likely to encourage these professionals to report CSEA, as they are protected from personal liability.

Despite the indemnity afforded to professionals who report CSEA, no such provision exists for the survivors of CSEA who go on to report the offences which have taken place. This is an issue particularly in instances where survivors of CSEA may have assisted in the exploitation of other survivors.

As mentioned above, a child under ten cannot be held criminally liable, and children aged ten to 14 can only be held criminally liable if they knew their conduct was wrong.⁵³ Therefore, survivors of CSEA over 14 who may have assisted in the exploitation of other survivors can be held criminally liable. Whilst no prosecutions have ever been brought in Fiji in such circumstances, addressing this issue by

providing immunity for CSEA survivors under the age of 18 may encourage children to report more instances of CSEA.

Gaps in Criminalisation

It is clear therefore that certain gaps remain in Fiji's criminalisation of CSEA offences, including:

- The use of outdated and moralistic terminology throughout Fiji's legislation against CSEA offences, such as "defilement" and "carnal knowledge".
- The outdated language used to refer to disabled persons in The Crimes Act, 2009.
- Potential need to review sentencing for CSEA offences to ensure they are not unduly lenient for these crimes of a serious nature and are in line with the Lanzarote Convention's recommendations.
- In matters regarding the age of consent, a perpetrator is permitted to use the defence that they believed the child to be over 16. This leniency could undermine genuine cases of abuse and exploitation, and prevent survivors from receiving justice.
- Enforcement, training, capacity and impetus to act have been identified as limitations to the criminalisation of CSEA offences, in particular those criminalised in the Cybercrime Act.
- There is no extraterritorial jurisdiction over crimes of child sexual abuse or exploitation, other than sexual servitude.
- No protections are afforded to children over 14 who report CSEA from personal liability, as well as those aged between 10–14 years who were aware that their participation was wrong. This could potentially punish those who were survivors of CSEA or grooming themselves.

Prosecution

The criminal trial procedure for the prosecution of CSEA offences in Fiji does not vary from that of any other offences under the criminal statute. The criminal trial procedure is governed by the Criminal Procedure Act 2009 (the **CPA**) and criminal charges are laid under the Crimes Act.

Initiating Prosecution

Although theoretically the police can instigate investigations into suspected CSEA, an official investigation can only proceed and charges be laid where the survivor(s) provides statements to the police. There is a lack of impetus at present for police to screen for potential CSEA offences in vulnerable areas of the community.⁵⁴

The Child Welfare Act 2010 (CWA) places a fiduciary duty on professionals who work with children to report instances of CSEA. Such professionals include medical and legal practitioners. It is currently unclear whether this obligation actually leads to a greater number of prosecutions, due to the requirement that a survivor must provide a statement to the police regardless of who reported the offence. To improve the number of successful prosecutions brought for CSEA offences, this rigid requirement for the survivor to provide a statement should be removed, which would allow third parties to initiate the prosecution on behalf of a child survivor.

If a perpetrator is not a Fijian national, Section 128 of the CPA requires the sanction of the Director of Public Prosecutions (DPP) before a prosecution can be initiated. The survivor need not be a Fijian national for the prosecution of CSEA in Fijian courts, provided that the crime was committed on Fijian territory.

Prosecution Process

As with any other criminal offence committed under Fijian law, following the complaint the police will investigate, arrest the accused persons and lay appropriate charges. The statement of the survivor often forms the basis of the arrest. The offence is then tried in a criminal court.

Concerns have been raised over the training and skills of prosecutors regarding the prosecution of sexual offences.⁵⁵ In the recent case of *State v Lagolevu*,⁵⁶ the court observed that often in rape cases, the prosecutors' main focus is simply to get the relevant complainant to say that there was penetration. The consequence of this is that the details of the circumstances surrounding the offence are ignored. This, in turn, has two important consequences. Firstly, where defence counsel successfully highlights that certain information was overlooked leading to inconsistency in the case, it

can be detrimental to the prosecution case. Secondly, the overlooked circumstances of the offence could demonstrate aggravating factors that may be relevant in the sentencing of the offender. As such, it is important that prosecutors realise the importance of presenting the whole case to the court, in the interests of securing convictions of CSEA offenders. The upskilling of prosecutors is therefore critical to ensuring the successful prosecution of CSEA offences.

Investigation & Evidence

The current shortcomings in the expertise and training of police mean that procedural failings during the investigation can result in prosecutions being dropped or unsuccessful, e.g. during the gathering of statements and DNA evidence.⁵⁷

Presumption Survivor is a Child

The law does not provide for any presumption that the survivor is a child, in situations where this is unknown and no birth certificate is available.

Corroboration

Section 129 of the CPA provides that corroboration of the complainants' evidence is not required for the conviction of an offence of a sexual nature, and that the judge or magistrate is not required to give any warning to the assessors relating to the absence of corroboration.

This ought to encourage more convictions to be secured than would otherwise be the case, provided that other rules and procedures on gathering evidence in early stages of the investigation are adhered to.

DNA

DNA testing is used across a range of criminal investigations in Fiji. However, its use is not mandatory, and the Fijian Constitution regarding the right to remain silent and not to give self-incriminating evidence means that no adverse inference may be drawn from a refusal to agree to DNA testing. Failure to obtain valid consent for DNA testing would make the evidence inadmissible and could result in the collapse of the prosecution's case.

The police have called for the Registration Act (the **Registration Act**) to allow DNA samples to be provided by offenders to police for the purpose of ongoing identification.

Defences

Part 6 of the Crimes Act sets out defences to criminal charges, including:

- a lack of capacity (see below re juvenile offenders);
- mental impairment;
- self-induced intoxication; although this cannot be used to establish that there was no element of fault, it can be taken into consideration in determining whether conduct was accidental or whether the person had mistaken belief regarding facts, e.g. as to the age of a survivor;
- involuntary intoxication, which is a defence where the intoxication resulted in the criminal conduct;
- a mistaken belief as to facts, although where the offence carries strict liability the accused must show that: (i) they had considered whether or not the facts existed, and proceeded with a mistaken but reasonable belief about those facts; and (ii) had those ‘facts’ existed, the conduct would not have constituted an offence;⁵⁸
- duress, being a threat to cause death or serious harm.

State v Werelagi

*State v Werelagi*⁵⁹ is one of the few cases where the accused was charged with and prosecuted for aggravated sexual servitude and domestic trafficking of children. In this case, the survivor was a 15-year-old female and the accused was a member of the transgender community. The age of the survivor (a minor) is what aggravated the offence.

The charge of domestic trafficking in children includes elements of the facilitation of minors, for use for sexual exploitation. The elements for this offence include the survivor being under 18 years old and the accused being found guilty of facilitating movement of a minor to be used for sexual exploitation.

The court explained that there was a presumption in this offence whereby if the accused admitted to being a sex worker, and if they had possession of a minor, then it is presumed that the child would be used for sexual exploitation. This presumption, of course, may be rebutted by the accused.

In summary, the court found that the prosecution had met all the elements of the offence, namely that the accused by use of force or a threat of force caused a child under the age of 18 to enter or remain in a condition to commercially use her body for the sexual gratification of others and that he intended to cause that sexual servitude.

Further to this, the court found that the accused facilitated the transportation of a child under the age of 18 from one place to another in Fiji with the intention that the child would provide sexual services, to meet the elements of offence for the charge of domestic trafficking of children.

The case was heard before a single trial judge. In Fiji there is a trial system whereby assessors (usually three) hear the trial and provide a judgment. They are only judges of fact and not law. The presiding judge is not bound by the findings of assessors and can override their decision. In this particular case, the three assessors gave a guilty verdict on all counts. The judge agreed.

This case is significant for the prosecutorial capabilities of the Office of the DPP in Fiji, and shows that the police are finally starting to investigate and lay charges for this offence. Given that CSEA in Fiji is a very well-known problem (children being sexually exploited on streets are visibly evident especially on weekend nights), this case brought national headlines to the problem of CSEA in Fiji. This case is one of the very few which have been brought to court, even though there have been multiple researches conducted by Save the Children Fiji, the UN and others which conclude that CSEA is rife in Fiji, with the majority of survivors being female children. The number of cases being brought to court should be reflective of the lived realities for survivors of CSEA, of whom the majority are female children.⁶⁰

Unwillingness to Proceed with ‘Formal’ Trial

As sex is a taboo subject in Fiji, children are expected to be seen and not heard, and child

discipline often takes the form of physical abuse, the fear of the legal process and of being stigmatised for the sexual abuse means that CSEA is a highly under-reported crime in Fiji.⁶¹

Gaps in Prosecution

Evidently, there are various gaps and factors that impact the prosecution of CSEA in Fiji. These include:

- The need for alleged CSEA survivors to provide a statement, no matter who reported the offence, which limits the effectiveness of investigations if the survivor does not feel able to talk about what happened to them.
- In practice, due to a lack of impetus for police to screen for potential CSEA offences in vulnerable areas, CSEA offences are only ever investigated when survivors come forward. Due to the taboo nature of CSEA, social stigma, resistance to formal trial and the age of the survivors, these crimes are under-reported in Fiji and therefore a limited number of investigations are conducted.
- There is an identifiable need for prosecutors to be trained and upskilled, as well as those belonging to law enforcement, in order to improve the effectiveness of investigation and prosecution procedures.

Protection

Protection of Survivors During Proceedings

Minors are required to have an appropriate adult present with them during interviews at police stations. The Department of Social Welfare (**DSW**) usually fulfils this role where an appropriate adult is not present. Whilst it is practice for an appropriate adult to be present, this does not prevent the police from taking the complaint. However, the state is likely to face challenges which it must defend as to why an appropriate adult was not present during the giving of a statement.

In instances where child survivors are involved in a trial, special measures may be taken, although these are at the discretion of either the magistrate or the prosecution. These measures include the placing of protective screens and in-camera proceedings which

are available for prosecutors on request when prosecuting CSEA cases. In a recent case, *State v Paki*, the trial judge explained the effect of using a screen for a child survivor during a trial. Notably, the judge explained that the use of the screen was a precautionary procedure to relieve the complainant of mental pressure, but also that no inference should be made that the protection of the witness was warranted due to the accused’s behaviour.⁶² The use of such measures to protect child survivors during trials should continue to be used and encouraged.

Protection of Children in General

In Fiji, a National Service Delivery Protocol (**NSDP**) provides guidelines for the standard operating procedures for interagency responses to gender-based violence (**GBV**). CSEA against female children falls under the umbrella of GBV for the purposes of the NSDP. The police, the Judicial Department, the Legal Aid Commission and the Fiji Women’s Crisis Centre (**FWCC**) are among the organisations bound by the NSDP. Unfortunately, no data is published by any body as to how many survivors of CSEA are referred to agencies that support survivors of GBV.

Fiji’s National Gender Policy sets out the Government’s commitment to policies in relation to GBV, including those aimed at curbing GBV through education, encouraging reporting of GBV crimes, eradicating barriers to justice for survivors of GBV, and assessing the need for training of the judiciary. It also states that the Government will approve guidelines for establishment of shelters for survivors of GBV and safe houses for children in accordance with DSW minimum standards.

In Fijian family courts, CSEA applications are expedited and treated as a matter of urgency. The DSW assists with these trials by acting as guardian at law for children involved in family proceedings.

Protection of Trafficked Children

There is no sufficient proactive screening for survivors of trafficking. Only one survivor of trafficking (of any age) was identified by the Government and provided with assistance in the last reporting period, and none in the previous year. Informal guidance is provided to officers as to how to identify survivors, but there are no formal procedures across all agencies, and there does not appear to be

widespread training amongst labour inspectors, customs officials or immigration authorities on survivor identification. Although the Government nominated the Ministry of Defence and National Security as the agency responsible for coordinating survivor services, the actual provision of services was not mandated, nor was associated funding made available, so in reality survivors have needed to rely on NGOs for survivor services.

Fiji has acceded to the United Nations Convention against Transnational Organized Crime (the **Palermo Convention**), but it has not domesticated its provisions into national law. Legislation should be passed urgently to domesticate the provisions of the Palermo Convention, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol). This would also require the Government to provide an urgent increase in the capacity of enforcement bodies to implement the laws.

The Crimes Act created a number of offences designed to fulfil Fiji's obligations under the Palermo Convention and two of its three protocols, the Trafficking Protocol and the protocol against the smuggling of migrants by Land, Sea and Air. Although Fiji has not signed these international conventions, by criminalising human trafficking and smuggling under domestic law, Fiji has shown a commitment to effectively address this global problem.⁶³

In 2019, the police established a Human Trafficking Unit (**HTU**) which has increased in number from four to seven officers. However, this resource remains insufficient to adequately conduct investigations. The duration of HTU training for officers and prosecutors is reportedly one day, and as such is insufficient. Law enforcement officers were stated to be unaware of the definition of trafficking, the procedures for interviewing survivors or how to proactively identify survivors.⁶⁴ One perpetrator was convicted of child sex trafficking in that same period, the first such conviction since 2014, and was sentenced to 14 years' imprisonment.

Based on the Trafficking in Persons Report (2021), police initiated investigations of ten suspected trafficking cases between 1 April 2020 through to 31 March 2021, an increase compared to two investigations in 2019. Furthermore, in the same period it was noted that the government initiated

prosecutions of two suspected sex traffickers (one prosecution in 2019), but did not convict any traffickers (compared to one conviction in 2019).^{65/66}

Counselling

The Fijian Government offers some direct support and protection to vulnerable children susceptible to being survivors of CSEA. In particular, the Fijian Ministry of Women, Children and Poverty Alleviation (**MWCPA**) has established a national toll-free child helpline, 1325, which is staffed 24 hours a day, seven days a week by counsellors. This helpline is managed by a CSO, the Medical Services Pacific. This helpline is publicised via television, radio and social media platforms such as its official Facebook page. Robust medical and psychosocial support is provided by the state as well as various CSOs (including the FWCC, Save the Children Fiji and Medical Services Pacific).

Protection of Children in Disaster Situations

Stress, tension and anxiety induced by natural disasters has been shown to increase GBV and violence against children.⁶⁷ In Fiji, however, there is no targeted scheme or legal framework to address child protection in disaster situations. There are no specific special protection arrangements or services put in place in the event of disaster. CSEA offences and corresponding penalties will apply equally in disaster situations.

Since the declaration of Covid-19 as a national disaster, campaigns have been run to highlight awareness of toll-free telephone helplines.

The Natural Disaster Management Act 1998 (the **NDM Act**) deals with the management of natural disasters and establishes a National Disaster Management Office (**NDMO**). It does not make any special provision regarding safeguarding children from CSEA during emergency/disaster situations. However, it does provide additional powers for making of regulations for matters such as evacuations, temporary acquisition of control of property, entering and searching premises, provision of shelter and prohibiting unjustified exploitation of disaster for profit, which could potentially be used for child protection purposes. It also envisages co-ordination between the NDMO and NGOs/international organisations in providing disaster relief.

The NSDP does operate in disaster situations and contains a specific Referral Pathway Developed for Emergencies or Disasters.

Other

Registration of Births and Adoptions

The Births, Deaths and Marriages Registration Act (Cap 49) requires the father (or if unable then the mother) to register the birth of a child within two months. However, failure to register within this time only results in a fee being payable for subsequent registration, or inability to apply for school registration or citizenship, so is perhaps unlikely to deter any perpetrator of CSEA wishing to conceal the birth of a child.

The Adoption Act 2020 incorporates the terms of the Hague Convention on the Protection of Children and Co-operation regarding intercountry adoption.

Prevention

Register of Offenders

The law in Fiji does not currently provide measures to exclude convicted offenders from activities involving contact with children, nor does it require the maintenance of a register of convicted sex offenders. In December 2020, the Fijian Parliament drafted the Registration of Sex Offenders Bill 2018 (the **Registration Bill**). The Registration Bill, which is yet to be passed into law, would see establishment of a database to register all convicted sex offenders for life (the **Register**). As such, offenders would be required to provide updated details of their residence and work, in addition to reporting regularly to their local police station. Importantly, Section 31 of the proposed Registration Bill would provide for the exclusion of sex-offenders from child related employment.

It is not clear whether the creation of a convicted sex offenders list could also potentially allow parents, carers and guardians to formally ask the police to tell them if someone has been convicted of a CSEA offence. The Registration Bill is geared towards agencies being able to access and share information amongst themselves, and only persons authorised by the Commissioner may access the Register. Allowing public applications for information on the

Register could significantly aid the prevention of CSEA offences.

The Registration Bill, if passed, would also curtail international travel of convicted offenders, as it would: (i) require convicted sex offenders to notify the police of all foreign travel in advance; (ii) place convicted sex offenders on a watch list with the passport department, which notifies the police if a sex offender submits a passport application; (iii) establish a taskforce to proactively track and investigate Fiji nationals suspected of travelling overseas to commit CSEA; and (iv) implement laws to restrict travel by convicted sex offenders to sex tourism hotspots.

Records of Convictions

A previous conviction in Fiji is valid for ten years. There is no requirement for a person with previous convictions to disclose them to any country that person visits, unless the relevant country requests it, including where such convictions relate to CSEA.

After ten years, the conviction becomes spent and the convicted person is able to apply for a declaration to have the previous conviction struck off, which the State and the judiciary have the power to refuse.

It is not current practice in Fiji for information relating to previous convictions of offenders to be disclosed between countries. The recommendation is that a strengthening of bilateral relations between countries or the formation of a regional partnership under which this disclosure is mandatory could prevent CSEA occurring abroad or at home in the case of overseas nationals coming to Fiji.

Recommendations

There are several steps which should be taken as a matter of priority to help combat CSEA offences against children in Fiji, including:

Legal

— The Fijian Government must enact the proposed Registration Bill, to ensure that sex-offenders are excluded from child-related employment and allow the authorities to identify and monitor convicted sex abusers who seek to travel abroad. We recommend that this enactment should be extended to permit

concerned members of the public who are involved with such individuals so they are able to apply for confirmation as to whether that person has convictions for sexual offences. Bilateral arrangements should also be put in place with other countries to enable relevant previous convictions to be shared.

— Amendments should be made to the Extradition Act and the Crimes Act in order to hold accountable under the Fijian prosecution system those offenders who commit CSEA outside Fiji (whether or not the overseas country is able to prosecute offenders or is a country with which Fiji has an extradition treaty). To do this, the Fijian Government should enact legislation which criminalises the commission of any act against a child outside Fiji which would constitute a relevant CSEA offence if committed in Fiji. Such legislation should not require the exact description of CSEA to be the same in both Fiji and the foreign country in which the offence was committed, provided that the essential criteria for the offence in Fiji have been met.

— The trafficking-related provisions of the Crimes Act should be supplemented to criminalise all forms of trafficking (rather than only those involving the movement of persons).

— The Government must enact domestic legislation to enshrine the Trafficking Protocol in Fijian law, and put in place the domestic measures envisaged by the protocol to prevent and combat trafficking in persons and to protect survivors, particularly women and children.

— The Crimes Act should be reviewed and updated to ensure comprehensive alignment with the Lanzarote Convention and use of appropriate terminology.

Prosecution

— Urgent actions in this area are absolutely vital: Fiji needs to exhibit a clear political will to tackle CSEA as an immediate priority.

— The requirement that a survivor provide a statement to police should be removed, to allow third parties to make complaints of CSEA on behalf of a survivor or survivors where there would be sufficient

evidence to warrant investigation without a direct statement.

— The special measures available for court proceedings should be made available where requested by the survivor or prosecution witnesses.

— The Fijian Government must ensure that it follows up enactment of the Cybercrime Act by allocating sufficient resources to allow effective enforcement.

— A complete overhaul of policing and prosecution in this area is required, with substantial training to increase awareness and to emphasise the importance of proactively identifying and prosecuting CSEA offences, and increased resources being made available to the HTU.

— A formal structure should be put in place providing for the proactive screening of groups vulnerable to CSEA and trafficking, such as persons in the commercial sex industry, child labourers, homeless children and those not residing with their parents. There should be an increase in investigations of labour violations for forced labour involving children and migrant workers.

— Clear and mandatory procedures should be put in place regarding how any suspicions of CSEA offences should be dealt with (including reference to survivor support), and how any investigation should then proceed, including mandatory procedures on obtaining evidence to ensure that prosecutions do not fail due to procedural shortcomings e.g. regarding consent to DNA testing.

— There should also be increased and targeted advocacy with key institutions such as the Ministry of Education, the MWCPA, and faith-based and community organisations to encourage increased reporting of CSEA crimes.

Protection

— Proactive screening for potential CSEA as outlined above will also act as a deterrent to protect children from becoming survivors to CSEA in the first place.

— Formal survivor identification and referral procedures should be developed and implemented, with appropriate training given, for police,

immigration, customs, and labour officials, to ensure that survivors are given the support they require as soon as possible.

— The provision of survivor services should be improved by increasing the active involvement of Government agencies, co-ordination among agencies and co-operation between them and NGOs.

— Proactive investigations of potential official complicity in trafficking-related crimes should be instigated.

— Foreign survivors should be permitted (and enabled) to work and earn income while assisting with investigations, and a legal alternative to survivors' removal to countries in which they would face retribution or hardship should be provided.

— Steps should be taken to implement the 2020 anti-trafficking national action plan.

Prevention

— There should be wider intervention by the Fijian Government to address the cultural and socio-

economic causes of CSEA, such as a lack of access to education, poverty, homelessness and the cultural tendency to treat children as having fewer rights than adults. Increased intervention by the State is required to address these inequalities, provide alternative paths (e.g. apprenticeships) and coach and mentor parents and family members, perhaps as part of antenatal care for both men and women.

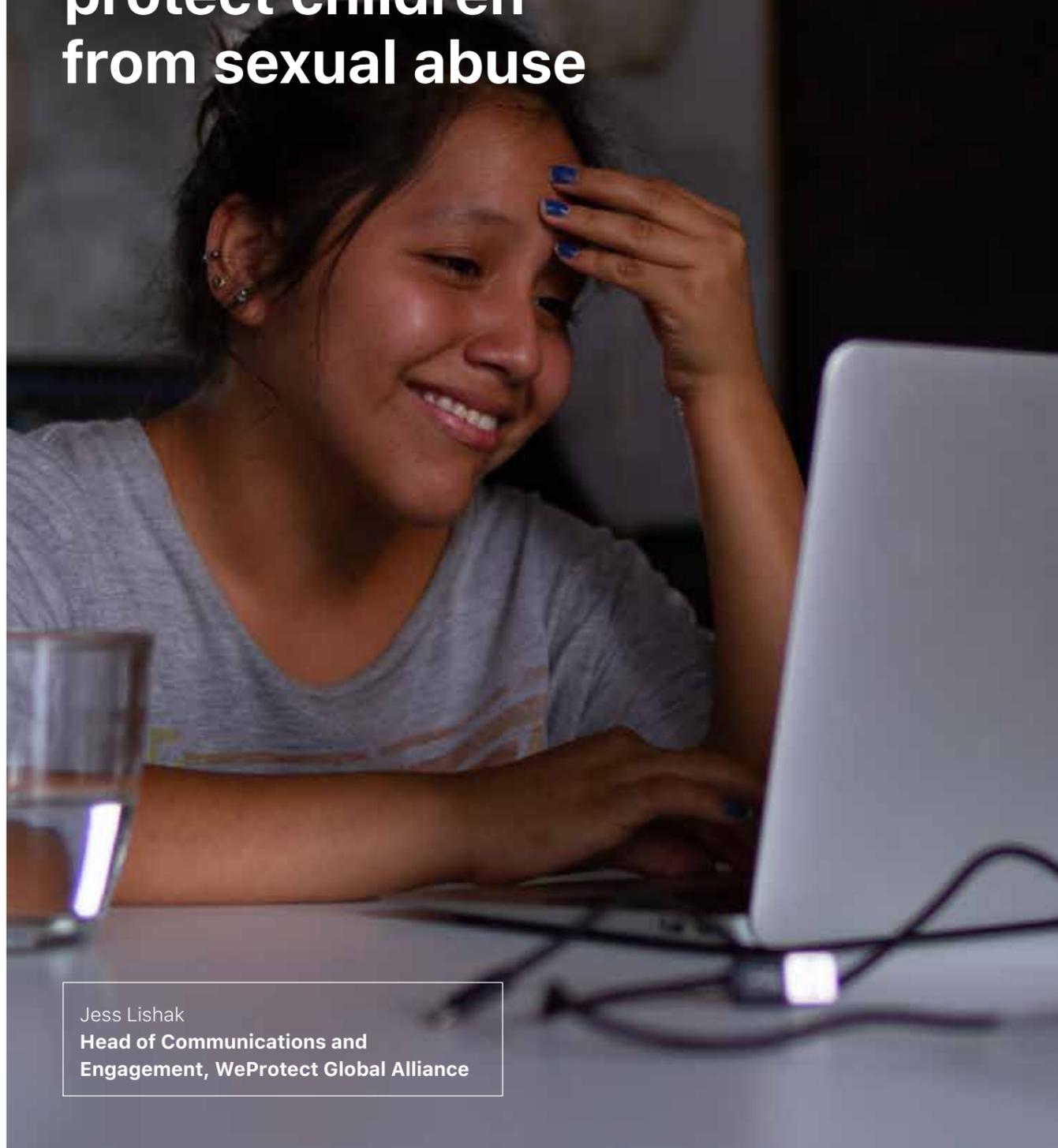
Cultural/Education

— There should be an increase in the dissemination of child sex trafficking awareness campaigns, including to raise awareness among foreign tourists of sex trafficking laws, and what is being done to enforce them.

— More focus should be given to campaigns seeking to change society's view of children, to see them as individual right-holders rather than possessions or vulnerable beings who can be taken advantage of.

SPOTLIGHT

Building a digital world designed to protect children from sexual abuse



Jess Lishak
Head of Communications and
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The rapid expansion of digital technology and increased access to the internet have transformed the lives of children and young people worldwide in both positive and negative ways. Technology offers remarkable possibilities to people everywhere. At the same time, it has never been easier for people who want to sexually exploit children to contact potential victims around the world—and then share images of their abuse and encourage each other to commit further crimes. As technology advances, new forms of this crime emerge.

The internet was created by and for adults; it can be unsafe for children to explore. Every phone, computer and internet-enabled device is a potential gateway for offenders seeking to sexually exploit children. But it doesn't need to be like this; by delivering a coordinated, global response and putting child safety at the heart of policy and technology design, we can turn the tide on the rapid growth of this abuse.

WeProtect Global Alliance brings together governments, the private sector, civil society and international organisations to develop policies and solutions to protect children from sexual exploitation and abuse online. Our members come from different backgrounds and countries; they bring a wide range of perspectives and knowledge. This diversity is our biggest strength as we all come together to work towards a common goal.

About the issue

Online-facilitated child sexual exploitation and abuse includes:

- production, possession and distribution of child sexual abuse material online;
- grooming potential child victims online with the intention of sexual exploitation;
- live streaming of child sexual exploitation and abuse.

The victim may have been sexually exploited even if the sexual activity appears consensual. Behind every image, video or screen, there is a real child being sexually abused.

To better address child sexual exploitation and abuse online and build a digital world designed to protect children, we must first understand the challenges we face. We need to collaborate to comprehend and analyse the scale of the issue, including the perspectives of children and survivors.

Our 2019 Global Threat Assessment showed that 750,000 individuals are estimated to be looking to connect with children for sexual purposes online at any one time. And at that time, there were 46 million unique images or videos relating to child sexual abuse material in EUROPOL's repository, which has continued to grow year on year.

The Internet Watch Foundation, an Alliance Member, revealed in its 2020 report that an [exponential increase in child sexual material, self-produced by children](#) (sometimes called 'self-generated child sexual abuse material'), was created using webcams or smartphones and then shared online. The images and videos predominantly involve girls aged 11 to 13 years old, in their own homes. They noted "with much of the world subject to periods of lockdown at home due to COVID-19, the volume of this kind of imagery has only grown."

Behind every image, video or screen, there is a real child being sexually abused.

Guiding the global response

There are many significant differences across countries and regions that are important to take into consideration: a child growing up in Sri Lanka will have a different experience and is likely to face different challenges to a child growing up in Australia. At the same time, however, it is necessary to acknowledge the universality and cross-border nature of child sexual abuse online: there are no country borders on the world wide web. Children from across the world use many of the same digital platforms and services. An abusive image or video taken in one country can be hosted on a server in a different continent and shared between other users all over the world.

A global problem requires a global response. To help governments and organisations prioritise areas for international collaboration and structure their resources to protect children against being sexually exploited online, we have produced the [Global Strategic Response](#) (GSR) framework to eliminate **(CSEA)** online.

The GSR responds to this international dynamic and provides objectives and a comprehensive strategy for collaboration, coordination and shared learning to eliminate CSEA online at global and regional levels. This reflects the need for a coordinated multi-sector, multi-agency and multi-layered response to safeguard children both online and offline from child sexual exploitation and abuse.

The GSR identifies six themes that are necessary to frame the response to CSEA online, detailing 26 capabilities which break down the themes into manageable areas for action. Agencies with expertise in one or more thematic areas will, naturally, focus on programmes or initiatives in those areas. At the same time, a wider perspective and comprehensive understanding of the situation should be maintained. Listed below is a selection of key practical outcomes that governments, industry, law enforcement and civil society work towards under each theme (for more detailed guidance, please visit www.weprotect.org

Policy and legislation

- Comprehensive national, regional and international legislation should be grounded in the UNCRC and prioritise safe and empowering internet access for its youngest users. Importantly, in 2021 the UNCRC adopted its general comment no. 25 On children's rights in relation to the digital environment.
- Nations, regional bodies and international organisations (such as the United Nations) can create a dedicated role, such as a national rapporteur or commissioner, to ensure continuing leadership and political will across changes in government.

Criminal justice

- Develop or identify and adapt existing training and professional development for all actors in the criminal justice system and child protection systems who will work on tackling child sexual abuse online, including civil society and victim support services.
- Reporting mechanisms that are visible, accessible (including to children with disabilities) and age-appropriate (targeting the youngest potential users) should be put in place on every platform, tool and software. They should be streamlined and have reporting options that update with changes in technology and how people use the internet, including where possible an option to remain anonymous.

Victim support

- Multi-agency support for children's protection should align with the child protection system of the country in which the child victim is based. Child protection services should also consider that children are part of an interconnected online and offline "ecological system" and reflect the needs, rights and responsibilities of the individual, family (or care setting), community, and wider society.
- Any communication with victims on this matter must be done by a qualified professional and in line with data protection regulations and agreed victim communications standard operating procedures.

Technology

- All digital services or products should carry out child risk and impact assessments, and safety review processes in the design phase (or retrospectively), and systematically thereafter, to understand the potential risks, and resulting implications, for children—as well as in terms of managing and mitigating potential offending behaviour.
- Regularly published transparency reports on the detection and prevention of child sexual exploitation and abuse online with meaningful metrics, and ensure data is supported by explainable methodology and reviewed regularly.

Societal

- Create a targeted, coordinated and widespread government campaign on what responsible digital engagement is (and is not), why responsible digital engagement is important, and what individuals' responsibilities are in creating a safe, pleasant and healthy digital environment.
- Develop targeted early intervention strategies to reach those at risk of offending and develop targeted strategies to reach existing offenders and signpost to sources of help to change behaviour.

Research and insight

- Targeted research projects (long-term or longitudinal where possible) with a baseline and pre-set, relevant and appropriate indicators, and both qualitative and quantitative research tools, should be established to monitor and analyse threats, risks as well as the opportunities for different groups of children.
- Increased and sustained investments in ethical AI and safety-enhancing solutions.

The value of the Global Strategic Response is its transnational, holistic overview; it recognises the mutual complementarity of the different capabilities and the different actors involved worldwide, and reinforces the need to consider each theme and capability to effectively prevent and respond to child sexual abuse online. It should be used in conjunction with our Model National Response (MNR) framework, which supports governments and organisations to establish a comprehensive model of capacity building and deliver, in their own countries, a coordinated national response.

Every child deserves the right to access all of the opportunities and benefits the digital world can offer, free from the threat and harm of sexual exploitation and abuse.

We have developed these frameworks to guide and support a coordinated, multi-sector and effective response to this urgent global issue. However, for them to have the impact required to really make a difference to the children of the world, every person, company and government has to make the implementation of all of these interconnected outcomes an absolute priority.

New Zealand



Overall, New Zealand is making progress in addressing the protection of children from sexual exploitation and abuse. Recent amendments and newly enacted legislation have sought to improve the delivery of child-friendly justice in CSEA cases, as well as provide further support to survivors. However, it is evident that there is still progress to be made in some areas, most notably regarding human trafficking and commercial sexual exploitation, to ensure that children in New Zealand and beyond are comprehensively protected against these forms of violence.

New Zealand has ratified many international human rights instruments, confirming its commitment to tackling CSEA offences. New Zealand ratified the UN Convention on the Rights of the Child (CRC) in April 1993.¹ The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the **Optional Protocol**) was ratified in September 2011,² whilst the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was ratified in 2002.³ Signalling a commitment to addressing online-facilitated CSEA and ensuring child safety, New Zealand is a member government of the WeProtect Global Alliance.⁴ Furthermore, in 2021 New Zealand announced that it was considering becoming a signatory to the Council of Europe Convention on Cybercrime (the **Budapest Convention**) as a non-member of the Council of Europe party,⁵ although the Convention has not yet been ratified or entered into force.⁶

CSEA Profile

It is difficult to estimate the prevalence of CSEA in New Zealand as there is a lack of data. For example, sexual crimes against children under 15 are not covered by the annual New Zealand Crime and Victims Survey (the **NCVS**) which documents crime prevalence.⁷

According to the NCVS, 32,000 people between the ages of 15 and 19 reported sexual assault in 2019–2020.⁸ This provides an indication and proves that CSEA does exist in the country, but it must be qualified by remembering that many more cases of sexual assault occur than are reported. The New Zealand Ministry for Children (the **Ministry for Children**) also admits that the prevalence of CSEA is unknown, but does refer to limited studies to indicate that one in five females and one in ten males

experience some form of sexual abuse before reaching 16.⁹ They also report that Māori children are at greater risk.¹⁰

Approximately half of sexual violence offences reported to the police in New Zealand involve an offence against a child, and a further 15 per cent concern historical childhood victimisations reported as an adult.¹¹ Research referenced by the Ministry for Children indicates that the majority of abusers are male and are known to the survivor.¹² This is backed up by information from HELP, a helpline for sexual abuse, which reports that 90 per cent of reports involved someone known to the child.¹³

Rates of commercial sexual exploitation are also difficult to ascertain due to a lack of national statistics.¹⁴ According to the 2021 Trafficking in Persons Report, traffickers and gang members continue to target vulnerable populations including children for exploitation in sex trafficking.¹⁵ The report found that the COVID-19 pandemic had a minimal impact on the trafficking profile of New Zealand.¹⁶ According to CSEC Community of Practice, Te Whāriki, the commercial sexual exploitation of children (CSEC) disproportionately involves children from communities affected by 'inequity and ongoing colonisation'.¹⁷ As such, 'tamariki Māori are disproportionately survivors of commercial sexual exploitation'.¹⁸

Regarding child sexual abuse material (**CSAM**), recently the results of a two-year international operation led by New Zealand authorities identified over 90,000 online accounts possessing or trading child sexual abuse material. The Department of Internal Affairs (the **DIA**) launched Operation H in October 2019 following an alert from an electronic service provider, which had found tens of thousands of people using the platform to share what the DIA

said was some of the most horrific and devastating CSAM online.¹⁹ The severity of the material depicted, the scale of Operation H, the aspects of re-victimisation for the children depicted, and also the volume of information and offending accounts found as a result of Operation H signifies how significant and prevalent the CSAM issue is.²⁰

Regarding online-facilitated CSEA and online grooming, NetSafe reported in 2018 that 'seven in ten teens in New Zealand have experienced at least one type of unwanted digital communication in the past year'.²¹

Child marriage, a risk factor for CSEA, is permitted under New Zealand law as 16- and 17-year-olds may marry if granted permission by a Family Court Judge.²² This changed the previous law whereby parental consent was sufficient. Since the change of law in 2018, there has been a significant reduction in child marriage from an estimated average of 30 marriages a year to six in the year following the change to the law.²³ According to the Commonwealth Lawyers Association, New Zealand Police have stated that unofficial unions involving girls as young as 13 occur in certain communities.²⁴ Furthermore, there have been reports that some young men can also be forced to marry against their will.²⁵ Whilst there is no statistical data available on child marriage in New Zealand, these anecdotal reports, as well as the 2018 change of law to provide more protection against forced marriage,²⁶ demonstrate that child marriage is an issue in New Zealand.

Criminalisation/Legislation

Classification of Sexual Offences with Children

The Crimes Act 1961 (the **Crimes Act**) of New Zealand is the primary legislation which protects children and young persons from CSEA offences. The Crimes Act prohibits a range of offences, including child sexual offences, child exploitation, human sex trafficking, and CSEA offences in the context of travel.²⁷ Alongside the Crimes Act, New Zealand has a comprehensive legislative framework consisting of various statutes covering CSEA offences. The Films, Videos, and Publications Classification Act 1993 (the **Films Act**), and the Customs and Excise Act 2018 (the **Customs Act**) protect children from child sexual abuse material.²⁸ The Prostitution Reform Act 2003 (the **Prostitution Act**) protects children from exploitation in prostitution,

and the Marriage Act 1955 (the **Marriage Act**) ensures children are not exploited through forced marriages.²⁹

The Crimes Act sets out the basic protections for children and young persons against CSEA offences. It sets out what will constitute sexual offences in New Zealand law but creates differences in penalties depending on the age of the child or young person offended against.

Section 132 of the Crimes Act criminalises sexual conduct with a child under 12 years old, imposing an imprisonment term not exceeding 14 years. This section also criminalises an attempt to have a 'sexual connection' with a child, with an imprisonment term up to ten years.³⁰ Furthermore, section 134 of the Crimes Act criminalises having a 'sexual connection' with a young person who is under 16, with a maximum imprisonment term of ten years. Attempting to do so carries a maximum imprisonment term of seven years.³¹

'Sexual connection' is defined as 'connection effected by the introduction into the genitalia or anus of one person, other than for genuine medical purposes, of a part of the body of another person; an object held or manipulated by another person; or connection between the mouth or tongue of one person and a part of another person's genitalia or anus.'

Section 131 of the Crimes Act criminalises sexual conduct with dependent family members, with a maximum imprisonment term of seven years for anyone who attempts to have a sexual connection with a dependent family member under 18 years of age.³²

The Crimes Act also criminalises human trafficking, offences related to child grooming, and sexual offences outside New Zealand, all of which are discussed below.

The Films Act makes it an offence to possess, produce and distribute 'objectionable material'.³³ It deems a publication to be objectionable if it promotes or supports, or tends to promote or support the exploitation of children, or young persons for sexual purposes.³⁴ Numerous courts in New Zealand have held that CSAM are objectionable publications prohibited by the Films Act.³⁵

A recent amendment to the Films Act criminalises the livestreaming of objectionable material and enforces new enforcement tools, such as authorising inspectors to issue take-down notices, and imposing penalties on content hosts who fail to comply.³⁶

Section 145A of the Films Act defines CSAM, referred to as 'child pornography' in the legislation, as a representation of a person who is or appears to be under 18 years of age, engaged in real or simulated explicit sexual activities, or a representation of the sexual parts of a person of that kind for primarily sexual purposes.³⁷ In this regard, section 145A of the Films Act meets the Optional Protocol and extends to protect those under the age of 18 from being considered consenting adults in situations of CSAM and sexual exploitation. The Films Act also considers pornographic publications of young persons as an aggravating factor in sentencing.³⁸ Committing these offences with knowledge carries a maximum 14-year prison sentence, and committing them without knowledge of the objectionable nature of the publications carries a strict liability fine up to 10,000 NZD.³⁹ It is not a defence that the offender had no knowledge or reasonable cause to believe that the publication was objectionable.⁴⁰

Section 95 of the Customs Act prohibits the importation and exportation of objectionable publications, indecent or obscene articles, and goods for dishonest purposes.⁴¹ Items such as childlike sex dolls would be considered an indecent or obscene article.⁴²

The Prostitution Act prohibits the use of persons under 18 years of age in prostitution, carrying an imprisonment term of up to seven years.⁴³ The Prostitution Act acts as a safeguard against others taking advantage of children and exploiting them for their own sexual commercial purposes. The Prostitution Act makes it a crime to assist, facilitate, or encourage a person under 18 years of age to provide commercial sexual services to any person.⁴⁴ The offence carries a maximum of seven years imprisonment.⁴⁵ These offences have extraterritorial effect by virtue of section 144A of the Crimes Act 1961.

Under section 17 of the Marriage Act, a marriage licence will not be issued by any Registrar if either of the persons intending marriage is under the age of 16.⁴⁶ As per section 18 of the Marriage Act, when those intended for marriage are 16 or 17 years old, a

Registrar must not issue a marriage licence unless a Family Court Judge (**Family Court Judge**) has consented to the intended marriage.⁴⁷ A Family Court Judge can only sign off on the intended marriage if the party has made the application voluntarily, free of undue influence or coercion, the party understands the consequences of the application, and the intended marriage is in the party's interests.⁴⁸ In determining whether the intended marriage is in a party's interest, the Family Court Judge must take into account, without limitation: the age and maturity of the party, the party's views, any views of the party's parents and guardians that can reasonably be ascertained, and any other information available to the court relevant to the party's application.⁴⁹ This was a recent addition to New Zealand legislation, demonstrating the progress that has been made in recent years towards valuing the safety and protection of children from exploitation.

Section 204A of The Crimes Act criminalises Female Genital Mutilation (**FGM**) in New Zealand. The Crimes Act defines FGM as the excision, infibulation, or mutilation of the whole or part of the genitalia of any female.⁵⁰ A maximum of seven years' imprisonment is imposed on anyone who performs, or causes to be performed any act involving FGM, and no defence of consent is applicable.⁵¹ It is also an offence to arrange for a child under 17 years of age to be sent out of New Zealand for an FGM procedure.⁵² Furthermore, the Crimes Act criminalises aiding, inciting, counselling, or procuring FGM practices outside New Zealand involving a New Zealand citizen or resident, whether or not the act is in fact done.⁵³ It is also an offence to incite, counsel, procure or induce a New Zealand citizen or resident to submit, acquiesce, or permit FGM practices to be done on them outside New Zealand.⁵⁴ Although there is no documented evidence that FGM is practiced in New Zealand, the criminalisation of the practice ensures the protection of young girls if this were to arise, especially with growing numbers of migrants and refugees from countries where the practice persists.⁵⁵

New Zealand legislation also criminalises aspects of grooming children. Section 124A of the Crimes Act makes it a crime for a person to intentionally expose a person under 16 to indecent material in communicating with the young person, carrying a maximum of three years imprisonment.⁵⁶ Attempting to meet a child who is subject to grooming is also criminalised under Section 131B of the Crimes Act.⁵⁷

The Crimes (Child Exploitation Offences) Amendment Bill 2021 (the **Child Exploitation Act**), currently (as of January 2022) in the Select Committee stage, will amend the current Crimes Act. It will make it an offence to digitally communicate with a young person under the age of 16, whether sexual or otherwise, with the intent to mislead them in any way.⁵⁸ The Child Exploitation Act has also increased the penalty for the sexual grooming of children online from seven years' imprisonment to ten years', indicating a move towards more stringent protection against the harm of CSEA in the rapidly growing online environment.

Legislation Assisting in Protection from Sexual Offenders

Various legislative instruments in New Zealand prescribe protection policies for children regarding CSEA offences.

The Oranga Tamariki Act 1989 (the **Oranga Tamariki Act**), also known as the Children's and Young People's Well-being Act 1989, promotes the well-being of children, young persons, and their families by advancing their long-term health and protecting them from suffering abuse.⁵⁹ The Oranga Tamariki Act provides greater safety for children at risk of sexual abuse and exploitation in a family environment by making the welfare and interest of the child the first and paramount consideration.⁶⁰ When the court recognises that a child is in need of care or protection, they have a duty to make a care or protection order.⁶¹ Warrants are issued for the removal of children from families where there are reasonable grounds for believing the child is suffering, or likely to suffer, abuse, which includes sexual harm.⁶² Greater protection is provided for children where they are born into a family where children have previously been removed due to neglect, abuse, or have died due to a culpable act.⁶³ Therefore and theoretically, children susceptible to CSEA offences are offered greater protection through the Oranga Tamariki Act.⁶⁴

The Children's Act 2014 (the **Children's Act**) prescribes measures to protect children from abuse and neglect in their homes and in the community. Governmental organisations are required to adopt child protection policies under the Children's Act, which include matters related to identifying and reporting child abuse and neglect.⁶⁵ Practical measures involve greater safety screening of people

who work with children, and banning those with serious convictions from working closely with children.⁶⁶ Such protective measures are essential in New Zealand, where most revelations of child sexual abuse are perpetrated by adults known to them and entrusted to their care.⁶⁷

The Care of Children Act 2004 (the **Care of Children Act**) safeguards the best interests of a child by protecting him/her from CSEA offences in parenting arrangements. Section 23 of the Care of Children Act states that an eligible spouse or partner of a parent can only be appointed as an additional guardian of a child if they have never been involved in proceedings concerning a child under the Care of Children Act, the Oranga Tamariki Act and the Family Violence Act 2018.⁶⁸ They must also never have been convicted of an offence involving harm to a child, including an offence against the Films Act involving objectionable publications.⁶⁹

In 2016 the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 established a child sex offender register (the **Register**) in New Zealand.⁷⁰ Individuals who commit child sex offences are recorded in the Register, and a dedicated team tracks changes in their lives to ensure the protection of children in the community.⁷¹

Lanzarote Convention

New Zealand's laws are largely aligned with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**). However, some areas of non-compliance remain.

Article three of the Lanzarote Convention defines a child as under 18 years of age. New Zealand legislation fails to comply with this definition, as a child is defined as under the age of 12 in the Crimes Act, and a 'young person' as under 16 years old.⁷²

As per Article 10 of the Lanzarote Convention, New Zealand has taken the necessary measures to ensure coordination between various agencies to protect children from CSEA. The New Zealand government works alongside other entities, such as the New Zealand Police, the Department of Internal Affairs, ECPAT, and NetSafe. Each of these entities promote the protection of children and have improved the awareness of CSEA offences to both the private sector and wider society.⁷³

New Zealand legislation is largely aligned with Articles 18 to 29 of the Lanzarote Convention that covers substantive criminal law. Such legislation includes the Crimes Act, Films Act, Prostitution Reform Act, Care of Children Act 2004 and the Marriage Act. Articles 19 and 20 of the Lanzarote Convention make 'child prostitution' and 'child pornography' an offence, both of which are criminalised in New Zealand through the Prostitution Act and the Films Act.⁷⁴

Furthermore, Articles 30 to 36 of the Lanzarote Convention tackle investigation, prosecution and procedural law. The absence of limitation periods for criminal offences in New Zealand is consistent with Article 33 of the Lanzarote Convention.⁷⁵

Age of Consent & Definition of a Child

New Zealand's Crimes Act states that a person must be over 16 years of age to consent to sexual activity.⁷⁶ Commendably, under Section 98AA(7) of the Crimes Act, no person under 18 years old, against whom an offence was committed, can be charged as a party to the offence, regardless of their intent, therefore rendering consent to sexual activity irrelevant when it comes to a child who is a survivor.

There are varied legal definitions of a child throughout New Zealand legislation. The Crimes Act defines a 'child' as someone under the age of 12, and a 'young person' as under 16 years old.⁷⁷

The Oranga Tamariki Act also separates a 'child' from a 'young person'. It defines a 'child' as a person under the age of 14 years and a 'young person' as someone of or over the age of 14 years but under 18 years.⁷⁸

The Films Act does not define 'child', except in section 145A when referring to the Optional Protocol. However, section 145A(1) of the Films Act defines 'child pornography' as a representation by a person who appears to be under 18 years of age; implicitly defining a child as under 18.⁷⁹

As evident from the above, there is a lack of uniformity to how a child is defined in current New Zealand legislation.⁸⁰

Trafficking

New Zealand criminalises the trafficking of children for sexual exploitation through domestic legislation. All labour trafficking and some forms of sex trafficking are criminalised through section 98D of the Crimes Act, carrying a maximum imprisonment term of up to 20 years, or a fine of up to 500,000 NZD.⁸¹ Section 98D of the Crimes Act makes it an offence to use coercion or deception to arrange, or attempt to arrange, the entry of someone into New Zealand or another state, or receive, recruit, transport, transfer, conceal or harbour a person in New Zealand or another state, for the purpose of exploiting or facilitating the exploitation of the person.⁸² For the offence to be deemed to have been committed, survivors do not need to experience exploitation, and the perpetrator does not need to achieve their intended action.⁸³ The Crimes Amendment Act 2015 amended the Crimes Act to criminalise domestic trafficking in persons, bringing New Zealand into conformity with the international definition.⁸⁴

Sections 20 and 21 of the Prostitution Reform Act criminalises the facilitating, assisting, causing or encouraging of a child to provide commercial sex, or to receive earnings from commercial sex, with penalties of up to seven years' imprisonment.⁸⁵

Despite legislation targeting these forms of CSEA, according to ECPAT Child ALERT, 'measures to maintain the prohibition of the exploitation of children in prostitution' are 'widely lacking'.⁸⁶

Section 98AA of the Crimes Act titled 'dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour' criminalises all forms of child sex trafficking and prescribes penalties of up to 14 years' imprisonment for such offences.⁸⁷

Under Section 98D of the Crimes Act, which explicitly targets trafficking, the approval of the Attorney-General is required before proceedings are initiated, signalling the seriousness of the crime in New Zealand. However, since enactment, the section has exclusively been used to prosecute labour offences, not sex trafficking crimes.⁸⁸ The requirement that deception or coercion be demonstrated to constitute a child sex trafficking offence under Section 98D results in offences being prosecuted under the Prostitution Reform Act instead, which has a significantly lower maximum imprisonment term of

seven years, compared to the maximum of 20 years under Section 98D of the Crimes Act. According to the United States Trafficking in Persons Report, not prosecuting child sex trafficking offences under Section 98D of the Crimes Act “weakened deterrence and undercut the government’s overall anti-trafficking efforts”.⁸⁹ This was one of the reasons for New Zealand’s demotion from a Tier One country to Tier Two in the Report, as it was determined that New Zealand backslid in its efforts to combat human trafficking.⁹⁰

Legislation addressing trafficking in New Zealand has also been criticised as the definitions of trafficking and exploitation appear to be ‘ambiguous and outdated’, often conflating trafficking with sex work and child sexual abuse.⁹¹

Extraterritoriality

New Zealand exercises extraterritorial jurisdiction and criminalises CSEA offences when they occur overseas regardless of the laws in other countries. Such robust legal liability is welcome, as there is evidence of tourists from New Zealand travelling to Southeast Asia and other countries to engage in sexual activity with children without serious criminal repercussions.⁹²

The international sexual exploitation of children is predominantly covered under the Crimes Act.⁹³ Section 144A of the Crimes Act, titled “Sexual conduct with children and young people outside New Zealand”, makes it an offence for New Zealand citizens or residents to commit specific sexual offences under the Crimes Act or the Prostitution Act, with a child outside of New Zealand.⁹⁴ Section 144AB of the Crimes Act also makes it an offence to be a party or accessory liable to sexual acts with children outside New Zealand, done by, or involving, foreigner principal parties.⁹⁵ Section 144C of the Crimes Act makes it illegal to organise or promote ‘child sex tours’.⁹⁶ This involves making or organising travel arrangements, transporting people to a place outside New Zealand, and printing or publishing information with the intention of facilitating a sexual offence against a child.⁹⁷ Liability arises regardless of whether an offence is actually committed, meaning that planning of an offence is sufficient.⁹⁸

Section 98D of the Crimes Act makes it an offence for someone to arrange, organise, or procure the entry of a person into New Zealand, or the exit of a

person out of New Zealand, for the purpose of exploiting or facilitating the exploitation of a person.⁹⁹ Furthermore, every person who arranges, organises or procures the reception, recruitment, transport, transfer, concealment, or harbouring of a person in New Zealand or any other state for the purposes of exploiting, is also liable under the law.

Extraterritorial protection against ‘child pornography’ or CSAM offences also applies to children living overseas. The Films Act aims to reduce the risk of harm to people watching video and ‘on demand’ content made available in New Zealand, regardless of whether the provider is within New Zealand.¹⁰⁰ Under Section 145A of the Films Act, even if the acts or omissions occurred wholly outside New Zealand, proceedings can be brought for ‘child pornography’ offences if the person to be charged has been found in New Zealand, and has not been extradited on the basis that they are a New Zealand citizen.¹⁰¹

Currently, there are no restrictions on CSEA offenders from travelling overseas. However, an amendment bill was introduced in October 2021 and currently in its first reading. This bill seeks to amend the Child Protection (Child Sex Offender Government Agency Register) Act 2016 to require registered child sex offenders to provide additional information to the police before travelling overseas.¹⁰² If enacted, this will provide additional safeguards in New Zealand law.

Extradition

Extradition in New Zealand is governed by the Extradition Act 1999 (the **Extradition Act**). The Extradition Act does not require foreign Commonwealth countries to have an extradition treaty to request extradition from New Zealand. For an extradition request to be approved, an ‘extraditable offence’ must have occurred. This must be an offence that carries a minimum penalty of 12 months’ imprisonment in the requesting country.

The Extradition Act also imposes the double criminality principle, which requires the offence to be an offence both under the law of the jurisdiction requesting extradition and under New Zealand law.¹⁰³

Section 145C(1) of the Films Act states that every offence which involves ‘child pornography’ is deemed to be an offence described in any extradition treaty

for the purposes of the Extradition Act.¹⁰⁴ There is no legislation in New Zealand that expressly states that CSEA offences are extraditable offences in existing treaties.

Statutes of Limitation

New Zealand law does not impose a limitation period on CSEA offences. There is no statute of limitation for criminal proceedings, but limitation periods are set out in various statutes for specific offences.¹⁰⁵ As there are no specific provisions regarding CSEA, people are free to report CSEA offences whenever they feel ready. The repugnant and often intimidating nature of CSEA makes it common for witnesses and survivors to take many years before coming forward. The absence of a limitation period reflects the public interest in ensuring that delays in time do not allow such criminal conduct to go unpunished.

Outdated Terminology

Some outdated terminology is present in New Zealand’s criminalisation of CSEA offences, most notably the use of ‘child pornography’ rather than child sexual abuse material (CSAM) in the Films Act.¹⁰⁶

Other

Sentencing

The Prostitution Reform Act (2003) (the **PRA**) prescribes penalties of up to seven years’ imprisonment for the sex trafficking of children, which is significantly lower than those available for trafficking offences under the Crimes Act.¹⁰⁷ This has allowed convicted traffickers to serve significantly lighter sentences, with the majority of those convicted under the PRA receiving a sentence of home detention and avoiding imprisonment.¹⁰⁸

Gaps in Criminalisation

Evidently, there are several gaps in the criminalisation of CSEA offences in New Zealand:

— There is uncertainty and unpredictability around the definition of a child in New Zealand legislation. The distinction between a ‘child’ and a ‘young person’ creates confusion.¹⁰⁹ There are also instances where a child under 18 would not fall within the definition of

a child.¹¹⁰ Therefore, not all persons under 18 years of age are guaranteed the rights and protections afforded to a child.

— Definitions for trafficking and exploitation appear to be ambiguous and outdated, with trafficking being commonly conflated with other phenomena such as sex work, sexual violence, or family violence.¹¹¹

— The use of ‘child pornography’ in the Films Act is outdated and has been argued to imply consent on the part of the child.

— The requirement under section 98D of the Crimes Act to demonstrate deception or coercion for human trafficking limits the scope of sex trafficking and minimises the criminalisation of such offences, particularly when committed against children.¹¹²

— It is common for child trafficking offences to be prosecuted as defined under section 98D of the Crimes Act to be prosecuted under the Prostitution Reform Act instead, resulting in significantly lighter sentences for offenders.

— There are no restrictions on CSEA offenders from travelling overseas. An amendment bill is currently going through the parliamentary process in New Zealand and will require CSEA offenders, as well as other sex offenders, to provide additional information to police before travelling overseas.¹¹³ However, this does not completely restrict offenders travelling overseas.

— Although the double criminality principle regarding extradition safeguards the liberty interests of the requested person, it undermines the protections concerning CSEA offences. An offence under New Zealand law may not be an offence under the law of the offender’s jurisdiction. This means that the offence cannot be criminalised, as the double criminality principle requires an offence to be considered an offence in both the jurisdiction requesting extradition, and under New Zealand law.¹¹⁴

— There is no New Zealand legislation that expressly states that CSEA offences are extraditable in existing treaties.

Prosecution

Between 1 July 2020 and 30 June 2021, 750 people were charged in New Zealand with sexual offences against children under 16 years of age, and offending against children amounted to 66 per cent of all sexual offences in the country.¹¹⁵ Of those persons charged with sexual offences against children, 734 were male, 13 female, and three were recorded as unknown.¹¹⁶ Three hundred and eighty-six (46 per cent) of those charged were convicted, and 239 (62 per cent) of those convictions led to imprisonment.¹¹⁷ For the same period, 80 people were charged with offences relating to child sexual abuse material, and of those 80 charged, 57 resulted in a conviction.¹¹⁸

Initiating Prosecution

In New Zealand, any person can report suspected abuse or exploitation of a child. Section 16 of the Oranga Tamariki Act protects people who notify concerns of abuse in good faith from civil and criminal proceedings.¹¹⁹ CSEA offences do not have to be filed within a timeframe and there is no statute of limitations for criminal proceedings for children due to the serious nature of offending.¹²⁰

Prosecution Process

CSEA crimes are reported to Oranga Tamariki (New Zealand's Ministry for Children), and the New Zealand Police. An investigation is conducted and, if sufficient evidence is found, the alleged offender is arrested and charged. The alleged offender will plead either guilty or not guilty to the charges.¹²¹ If a not guilty plea is entered, then a trial will commence.¹²² This trial may be by a judge alone or a jury trial.¹²³ The right to trial by jury is protected in the New Zealand Bill of Rights Act 1990, and a defendant charged with an offence punishable by a maximum sentence of two years' imprisonment or more has the right to elect which kind of trial will be held.¹²⁴

In 2016, Sexual Violence Pilot Courts were established in Auckland and Whangārei District Courts to reduce the negative impact of court involvement on child complainants.¹²⁵ However, the impact of these pilot courts in achieving their stated aim since their establishment has been minimal, with further reform recommended to truly make the prosecution process a more positive experience for child complainants.¹²⁶

Overall, the prosecution process can be a long one, often taking many months between a person being charged and the case being concluded through the courts.¹²⁷ In May 2020, a study of young witnesses in the Sexual Violence Pilot Courts found the average time between a police complaint being made and the date of trial was 13 months.¹²⁸ Delays for sexual violence trials in non-pilot courts ranged anywhere from seven through to 24 months.¹²⁹

Investigation & Evidence

When a CSEA offence is reported by the child survivor, they are usually interviewed by a 'specialist interviewer', typically a police officer or a social worker from Oranga Tamariki, the Ministry for Children.¹³⁰

Presumption Survivor is a Child

The laws concerning CSEA in New Zealand do not expressly provide for the presumption that a survivor is a child. The courts usually receive evidence, such as a birth certificate, from the child's guardians, school or healthcare provider to ascertain the child's date of birth.

Procedure for Witness Testimony

Witnesses can be summoned to a court to give evidence orally, and to then be examined on that evidence. At a full trial, a witness will read a statement, known as a brief of evidence, to the court.¹³¹ The witness can then be cross examined by the other party. Following cross-examination, the witness may be re-examined by the party presenting the witness.¹³²

Procedure for the Child to Give Evidence

The Evidence Act 2006 (the **Evidence Act**) allows for alternative methods for children under the age of 18 to give evidence, including hearing their evidence through the video of their initial police interview, via closed-circuit television, or from behind a screen.¹³³ In circumstances where children are required to attend court, the judge may use their discretion as to how a child will appear.¹³⁴

Despite these measures, a 2021 report showed that the way children are questioned during cross-examination in particular causes great distress and is

characterised by the use of sexual violence misconceptions, accusations of lying, leading questions and questions that infer a negative character of the child and their family.¹³⁵

Following this report, the Sexual Violence Legislation Act was passed in December 2021, amending the Evidence Act 2006, Victims Rights Act 2002, and the Criminal Procedure Act 2011 in order to reduce the negative impact of giving evidence on survivors and witness.¹³⁶

Corroboration

In CSEA cases, research shows that guilty verdicts are reached in less than half of cases.¹³⁷ If there is a lack of forensic evidence, police often rely on corroboration. However, the very nature of sexual abuse and exploitation is such that there are rarely other witnesses with corroborating evidence.¹³⁸ Consequently, the testimonies of young survivors are generally the cornerstone of the prosecution case and successful prosecution becomes heavily dependent upon the child's comprehensive recall of detailed facts.¹³⁹ As a result of the delay faced by survivors from the time a complaint is made through to the trial commencing, defence lawyers often question the erosion of the child's memory, especially memory of peripheral details, which are often the focus of cross examination.¹⁴⁰ In many cases involving allegations of sexual abuse or exploitation, the verdict will depend on the assessment of the credibility of the complainant.

DNA

Under the Criminal Investigations (Bodily Samples) Act 1995, there are the following three situations in New Zealand when the police can legally require a person to provide a DNA sample:

- Where a person has been arrested for a criminal offence which carries a possible jail term.
- Where the police intend to charge a person with a criminal offence which carries a possible jail term.
- Where the police have applied to the court for a Compulsion Order.

Police are also able to obtain DNA samples by consent.¹⁴¹

Defences

No person can be convicted of a charge under section 134 of the Crimes Act if they were married to the young person at the time of the 'sexual connection'.¹⁴² However, it is not a defence to either sections 132 or 134 of the Crimes Act to believe that the child was over the age of 12 or 16, or that the child or young person consented.¹⁴³

Unwillingness to Proceed with 'Formal' Trial

The Chief Victims Advisor has highlighted that 'there is a crisis of confidence in the criminal justice system for victims'.¹⁴⁴ This crisis of confidence can often manifest in survivors not wanting to pursue criminal convictions for offenders. According to the NZCVS, only 17 per cent of survivors of interpersonal violence, including CSEA, report crimes committed against them.¹⁴⁵

Incidences of re-victimisation and re-traumatisation are common, and survivors have reported that 'the criminal justice system does not help make them safe, does not listen to them, does not give them the information and support they need at each stage of the system, and their overall experiences in the system are negative'.¹⁴⁶

It is possible that the lack of support and protective measures for survivors when interacting with the justice system will be addressed through the implementation of the Sexual Violence Legislation Act 2021. However, the impact of this act remains to be seen.

Gaps in Prosecution

Changes to the court process, including the Family Court (Supporting Children in Court) Legislation Act, the Sexual Violence Legislation Act 2021, coupled with the previous amendments to the Evidence Act, are aimed at addressing several current gaps in prosecution and ensuring that: children are supported to come forward with allegations of abuse; they are afforded extra safeguarding measures during the court process; they are given reasonable opportunities to participate in decisions affecting them; and the nature and process of the proceedings is explained to them in a manner that they are most likely to understand.¹⁴⁷

It is hopeful that these changes will tackle the following gaps that are evident in New Zealand's prosecution of CSEA offences:

- Delays in court proceedings not only impact survivors' trust of the criminal justice system, but also result in complications in evidence and witness testimony.

- The treatment of and support available to survivors of sexual violence, including children, when interacting with the criminal justice system has been identified as inadequate.

- Re-victimisation and re-traumatisation are common and survivors' confidence in the criminal justice system is low.

- The reliance on corroboration and forensic evidence in criminal proceedings could limit the delivery of justice for child survivors as there is usually no physical evidence of abuse; nor is there a predictable psychological or behavioural response that indicates a child has suffered abuse.¹⁴⁸

- Given that a unanimous verdict is typically required in New Zealand's criminal court jury trials, sexual abuse misconceptions being held by even relatively small proportions of jury eligible populations would likely have a significant impact on verdicts.

Protection

Responsibility for improving protection for vulnerable children lies with several agencies under the Children's Action Plan, the New Zealand Police, government agencies and Te Puni Kōriki (the Ministry of Māori Development).¹⁴⁹ This plan came into effect in 2014, along with the Children's Act 2014 (formerly titled the Vulnerable Children Act). Together they aim to 'prevent child abuse and neglect' and 'keep children safe and ensure their needs are met.'¹⁵⁰ Changes brought in under the Children's Act 2014 and the plan include child protection policies, safety checks, workforce restrictions on core worker roles and new care and protection provisions in the courts.¹⁵¹ Nevertheless, a report by ECPAT to contribute to the 6th periodic review of the UN Committee on the Rights of the Child in 2018 stated that, despite these changes, there continued to be a lack of coordination between different government agencies and social services.¹⁵²

Protection of Survivors During Proceedings

To support children during proceedings, judges routinely close the courts during their testimony in CSEA trials.¹⁵³ Furthermore, a child is able to have a chosen support person to help them during their testimony, and 'victim advisors' are available to provide information and guidance before the child appears in court to acquaint them with the prosecution process.¹⁵⁴

In New Zealand, name suppression laws act to protect the identity of the child survivor during, and after, proceedings. Under the Criminal Procedure Act 2011, name suppression is available for survivors and defendants in sexual cases, with the aim of the defendant being given name suppression as a means to protect their identity, for children under 17 who are complainants or witnesses in criminal proceedings, and where otherwise specifically stated in a law.¹⁵⁵

Several concerns have been highlighted regarding the protection of survivors during proceedings in New Zealand. In addition to the documented delays in the criminal justice system and cross-examination of child witnesses, reportedly there is an 'inadequacy of court facilities to sufficiently provide basic comforts and protect children from face-to-face contact with the defendant or their family members'.¹⁵⁶ This is of particular concern due to the potential re-traumatising effects of a child survivor encountering their abuser.

As detailed above, the Sexual Violence Legislation Act was passed in 2021, amending the Evidence Act 2006, Victims Rights Act 2002, and the Criminal Procedure Act 2011, and is aimed at reducing the re-traumatisation of sexual violence survivors.¹⁵⁷ The Sexual Violence Legislation Act seeks to do this by protecting survivors from invasive questioning into their sexual disposition, strengthening the obligations of judges to take into account the vulnerability of the witness and to intervene in questions they consider unacceptable.¹⁵⁸ According to Marama Davidson, Minister for Sexual and Family Violence Prevention, the introduction of the Act is a first step in moving away from the "narrow, punitive and adversarial" approach to justice, and towards longer-term positive impact, healing and improved support for survivors.¹⁵⁹

At time of writing in March 2022, it is too soon to assess the effectiveness of the Sexual Violence Legislation.

Protection of Children in General

Under the Oranga Tamariki Act, a child is determined to be in need of care and protection in circumstances where they are suffering, or likely to suffer, serious harm or where the persons who have the care of the child are unable to care for them.¹⁶⁰ In these circumstances, that child may be taken into the custody of Oranga Tamariki. 'Protection Orders' can also be made through the courts. Such 'Protection Orders' are made granting specific restrictions on what contact, if any, an alleged offender may have with a survivor with whom they would otherwise have some form of domestic relationship. Children under the age of 17 can apply for a Protection Order in their own right, and can also be included in any application for a Protection Order made by a parent.¹⁶¹

In December 2021, New Zealand launched Te Aorerekura, the country's national strategy to eliminate family and sexual violence, including violence against children.¹⁶² The 25-year strategy emphasises the need for a stronger focus on primary prevention, healing and community leadership to achieve inter-generational change to end these forms of violence.¹⁶³

As the primary government agency responsible for the protection of children, it has been reported that Oranga Tamariki, New Zealand's Ministry for Children, 'often fails to address the trauma of [child sexual exploitation] and instead blames the survivors for their abuse.'¹⁶⁴

The Action Plan published by the government to implement Te Aorerekura highlighted the need for specialist workforces to be built for children, particularly to respond to the issues of family and sexual violence. These specialist workforces include all who deliver services to support children who have been victimised by these forms of violence, including social workers, medical and criminal justice professionals, and law enforcement. Of particular importance is ensuring that these workforces are 'skilled, culturally competent and sustainable.'¹⁶⁵

CSEC Community of Practice, Te Whāriki has identified the need for a 'collaborative approach from child protection, police, courts and community

organisations so all parts of the system are coordinated and able to identify and respond' to cases of CSEA.¹⁶⁶ Most urgently, they highlight the need for preventative measures and increased support for children at risk of commercial sexual exploitation (CSEC).

Protection of Trafficked Children

Both the 2020 and 2021 US State Department Trafficking in Persons Report noted that trafficking in New Zealand is primarily focused on the investigation of forced labour cases, with sex trafficking cases being approached through alternative enforcement measures instead of being treated as criminal violations.¹⁶⁷ The lack of sufficient resources and understanding of all forms of trafficking, (coupled with high evidentiary standards), the conflation between statutes and definitions in law, and the deviation of New Zealand's definition of child sex trafficking with the international standard definition, has impacted on the identification of child sex trafficking survivors.¹⁶⁸ As a consequence, offenders are not appropriately sentenced and survivors don't receive appropriate care and support. The latter is highlighted by the findings that no child trafficking survivors were identified in New Zealand in 2020 despite six adult child sex traffickers being sentenced through the New Zealand court system.¹⁶⁹

According to CSEC Community of Practice, Te Whāriki, no specialist services currently exist for survivors of commercial sexual exploitation.¹⁷⁰

It is important to note that New Zealand has a special certification process for migrant survivors of trafficking in New Zealand, whereby migrant survivors can be 'certified' by the New Zealand Police.¹⁷¹ Although to date a foreign survivor of sex trafficking has never been certified,¹⁷² this process is designed to enable migrant survivors to access support services that may not otherwise be available to them, including accommodation, income support, counselling and medical support, legal assistance, compensation or reparation, education opportunities (for minors) and repatriation.¹⁷³ Survivors of trafficking that are not migrants can access support services through Victim Support.¹⁷⁴ 'Sexual violence' is listed as a support category on the Victim Support website, but exploitation and trafficking are not, which raises questions regarding whether the support service is fit for purpose for CSEA. There are no specific protections outlined for child survivors.

Police-certified survivors of people trafficking can:

- apply for special visas that allow them to stay in New Zealand and work, study or live in New Zealand permanently in some cases;

- receive publicly funded healthcare under Section B12 of the Ministry of Health's Eligibility Direction; and

- apply for welfare support, administered by the Ministry of Social Development.¹⁷⁵

The mandatory police certification for survivors can be a barrier to them self-identifying and coming forward, especially in cases where police are deemed corrupt or unsafe due to personal experience. Moreover, in New Zealand the same body that often investigates exploitation and abuse is responsible for issuing visas for exploitation cases. This creates a blurred line between enforcement and protection for survivors. These functions should ideally be separated, and New Zealand should adopt a more survivor-centric service for trafficking survivors from people that are trained in this area and who are separate from the police.

Beyond the system to certify foreign survivors to enable their access to additional services, New Zealand lacks a system to formally recognise trafficking survivors, including those from New Zealand.¹⁷⁶ The 2021 annual US State Department Trafficking in Persons Report found New Zealand authorities 'consistently failed to formally identify children in commercial sex, which is defined as a form of sex trafficking under international law, as victims of trafficking'.¹⁷⁷

A lack of understanding of trafficking among some social service providers and officials, including a lack of awareness that children in commercial sex and adults forced to engage in commercial sex acts were survivors of trafficking, means some survivors may not be receiving 'adequate or specialised psycho-social care'.¹⁷⁸

Counselling

The New Zealand Accident Compensation Corporation (ACC) funds support, counselling and other treatment as part of its 'sensitive claims' service for people who have suffered as a result of abuse.¹⁷⁹

Survivors are entitled to 14 free sessions with a counsellor before they must undertake an assessment process to prove that they have suffered harm in order to receive further counselling funding. Criticism of this process has been raised with concerns that amid a shortage of trained mental health professionals, survivors must themselves find a counsellor, and that the free sessions are focused primarily on preparing survivors for the assessment rather than providing them with the help and support that they need.¹⁸⁰

As has been identified by the Ministry of Family and Sexual Violence in the Te Aorere-kura, until recently, New Zealand has 'not placed sufficient focus on safe, tailored and appropriate healing and recovery services'.¹⁸¹

Protection of Children in Disaster Settings

As with many countries in the Pacific region, New Zealand is a country that is vulnerable to natural disasters, including floods, storms, cyclones, snow-storms, earthquakes, volcanic eruptions, geothermal incidents, tsunamis, landslides, and lahar.¹⁸² This vulnerability, and the effect of disasters on children, was particularly highlighted following the Canterbury and Christchurch earthquakes in 2010/11.¹⁸³

The 2020 Disaster Risk Reduction in New Zealand Status Report, released by the Asian Disaster Preparedness Center (ADPC) and UN Office for Disaster Risk Reduction, acknowledged the need to account for children in New Zealand's disaster preparedness efforts.¹⁸⁴

According to the International Federation of Red Cross and Red Crescent Societies (IFRC) and the UN Development Programme, current 'New Zealand legislation provides a sound national legislative framework' for addressing the risks that disasters pose.¹⁸⁵ However, there is a need to increase capabilities and collaboration, as well as the sharing of information, between central and local government, the private sector and communities throughout New Zealand.¹⁸⁶

In December 2021, a new bill was announced to replace the Civil Defence Emergency Management Act 2002 in order to address several identified shortcomings to ensure the disaster management system can meet current and future needs.¹⁸⁷ At the time of writing in March 2022, it remains unclear to

what extent the specific needs and vulnerabilities of children in times of disaster will be addressed in the new Emergency Management Act.

Other

Police Training

According to ECPAT Child ALERT, the New Zealand Government has conducted numerous training programmes focused on frontline staff, including law enforcement officers, to enable better protection and identification of CSEA survivors.¹⁸⁸

The government of New Zealand conducts various training programmes targeting front-line staff, migration, protection, health and public safety officers, as well as labour inspectors and judiciary officials working with child survivors. They mainly focus on how to investigate human trafficking offences and on how to detect child survivors. However, ECPAT Child ALERT New Zealand remains concerned by the fact that these efforts are not systematic and do not specifically include all the commercial sexual exploitation of children offences covered by the Optional Protocol.¹⁸⁹

The Ministry of Business, Immigration, and Employment (MBIE) requires immigration officers, labour inspectors, and other staff likely to work trafficking cases to complete an online training module on human trafficking. The New Zealand Police are also required to undertake anti-trafficking training for trainee detectives and a trafficking and smuggling chapter is included in the police manual. Both police and immigration officials are provided with training on the procedures for the treatment of survivors. Nonetheless, officials have reported a lack of trafficking awareness among frontline officers.¹⁹⁰

Protection of Adopted Children

Adoption in New Zealand is regulated by the Adoption Act 1955 (the **Adoption Act**). Those wanting to adopt a child in New Zealand can do so with the assistance of Oranga Tamariki. Prospective adopters must apply, providing referee details, medical information, and permission must be provided allowing for a police check and a check of the Oranga Tamariki care and protection database.¹⁹¹ No person with a history of criminal offending that may affect the safety of a child will be

approved for adoption.¹⁹² The approval process includes assessment interviews with Oranga Tamariki social workers.

The Adoption Act is currently being reviewed by the New Zealand Government to ensure that it is fit for purpose. The aim of the review is to ensure that a system is in place which provides safeguards to protect the rights, best interests, and welfare of children, as well as uphold its international human rights obligations. In 2021, a discussion document was released by the New Zealand Government covering topics relating to the cultural aspects of adoption and whāngai situations (the Māori tradition referring to a child, or children, being raised by someone other than their birth parents), how the process in New Zealand is carried out, including the process where a child is born by surrogacy, and the impacts of adoption. The Government's proposed reforms are due to be circulated for consultation in mid-2022.

Collection and Dissemination of Data on Child Protection

New Zealand lacks a comprehensive system for collecting data, particularly on the sexual exploitation of children.¹⁹³ Data is not published periodically and often Official Information Act requests have to be made to access current statistics that New Zealand Government agencies may hold.

The most recent recommendations published by the UN Committee on the Rights of the Child in 2016 highlighted the need for New Zealand to 'develop a comprehensive mechanism for data collection and an information system on all areas of the Convention. The data should be disaggregated by age, sex, disability, geographic location, ethnic origin, nationality and socioeconomic background, to facilitate analysis on the situation of all children'.¹⁹⁴

Despite this recommendation, there remains no data collection framework in place to monitor CSEA and inform policy.

Prevention

Register of Offenders

In New Zealand, a Child Sex Offender (CSO) register aids the protection of children and the prevention of

reoffending by known child sex offenders. This CSO register was established under the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 and commenced its operation in 2016.¹⁹⁵ The CSO register is a record of personal information about registered sex offenders in the New Zealand community that assists New Zealand Government agencies with monitoring those who have previously offended with the aim of preventing reoffending.¹⁹⁶

A person placed on the CSO register remains on it for eight years, 15 years, or life depending on the severity of the offending and the sentence passed.¹⁹⁷

Child Online Safety

The New Zealand Department of Internal Affairs (DIA) works with organisations including Netsafe and ECPAT New Zealand to eliminate CSEA content online. Members of the New Zealand public can report suspect sites.¹⁹⁸

The Online Child Exploitation Across New Zealand (the **OCEANZ**) team is a specialist police unit that works as part of an international taskforce, the Virtual Global Taskforce, to protect children from online child abuse.¹⁹⁹ The OCEANZ 'coordinates international investigations into online paedophile networks, identifies child sexual offenders by monitoring social network websites, targets New Zealand child exploitation sites, including those producing images and abuse for financial gain, in an effort to identify and rescue victims, and gathers intelligence for sharing with district-based child exploitation squads, the Department of Internal Affairs, Customs and international partners'.²⁰⁰

Joint initiatives have been set up in New Zealand with the aim of helping to combat CSEA online. These initiatives include:

- The funding of the New Zealand Customs Service to provide services to help combat child sexual exploitation across the cyber border.²⁰¹ The aim of this initiative is to 'reduce the creation and distribution of abuse imagery, reduce the number of children who are sexually abused, and prevent further abuse of previously abused children'.²⁰²

- A dedicated victim identification team, known as Taskforce Ruru, set up with personnel from across

the Department of Internal Affairs, Police and NZ Customs who share training, tools and the processing of victim identification.²⁰³

- The launch of the Combating Child Sexual Exploitation Group, which develops and runs collaborative initiatives, projects and campaigns to combat child sexual exploitation.²⁰⁴

- The expansion of a programme of trials to prevent online child sexual exploitation and abuse to include a wider set of Government agencies and NGOs.²⁰⁵

- The development of 11 Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse, aimed at helping the technology industry to protect children being exploited on their platforms.²⁰⁶

- A memorandum of understanding between the Department of Internal Affairs, the United Kingdom National Crime Agency and the Child Rescue Coalition, which allows for collaborative working and information sharing.²⁰⁷

- The introduction of the Films, Videos, and Publications Classification (Urgent Interim Classification of Publications and Prevention of Online Harm) Amendment Bill.²⁰⁸

Distribution of CSEA Content Online

CSEA content online is deemed objectionable under the Films, Videos, and Publications Classification Act 1993. Possession of objectionable content is punishable by imprisonment of up to ten years, with the distribution of such material being punishable by imprisonment of up to 14 years.²⁰⁹

Awareness & Education

Regarding commercial sexual exploitation, the New Zealand Government has run educational and awareness-raising programmes on topics, such as internet safety for children as well as trafficking in supply chains and other issues.²¹⁰

Furthermore, programmes have been launched focusing on the identification and monitoring of 'vulnerable groups and children' who are at risk of being victimised.²¹¹

However, further programmes are required to continue to raise awareness about specific forms of CSEA, most notably commercial sexual exploitation of children and sex trafficking.²¹²

There are a range of NGOs across New Zealand initiating, promoting, and supporting child abuse and exploitation prevention activities, providing education in both schools and wider communities. According to anecdotal evidence, these NGOs often face funding barriers and a struggle to break a long-standing culture of silence.

Recommendations

Legal

- The definition of a child must be harmonised across New Zealand legislation, with a child defined as any person under the age of 18. Currently, the limited definition of a child throughout New Zealand's legislation leaves children under the age of 18 vulnerable to CSEA without sufficient protections or measures in place to support them if they are abused.

- The New Zealand definition of child sex trafficking should be aligned with the international definition. The current requirement that deception or coercion be demonstrated to constitute a child sex trafficking offence under Section 98D results in offences being prosecuted under the Prostitution Reform Act instead, which has a significantly lower maximum imprisonment term of seven years, compared to the maximum of 20 years under Section 98D of the Crimes Act.

- Furthermore, the current definition of trafficking, conflating trafficking, sex work and child sexual abuse, should be amended.

- Outdated terminology currently present in legislation should be replaced with preferred terms, notably 'child pornography' with child sexual abuse material.

- The defence that currently exists in CSEA cases, that the offender was married to the survivor at the time of the offence, should be removed.

- New laws and policy should be reviewed within two years of implementation to assess effectiveness.

- The requirement of double criminality for extradition in cases of CSEA offences should be removed.

- The Child Protection (Child Sex Offender Government Agency Registration) (Overseas Travel Reporting) Amendment Bill should be implemented to improve children's protection from offenders travelling overseas.

Prosecution

- The laws in New Zealand should be amended to allow for the easier prosecution of CSEA. Currently this is disproportionate, with high evidentiary and procedural standards.

- Child-friendly justice measures must be implemented and upheld, with a priority to provide support and comfort for a child survivor, mitigate the risks of re-traumatisation and increase survivors' trust in the criminal justice system.

- Court delays and lengthy trial periods for CSEA offences must be addressed.

- The justice system should consider significant changes to how child survivor cases are dealt with and examine and address unfair and traumatic cross-examination tactics used by barristers during hearings.

Protection

- The identified limited coordination and cooperation between different government agencies and social services should be addressed.

- Training should be mandatory for frontline professionals who provide assistance, support, and protective services to CSEA survivors.

- More child-specific resources should be tailored to appropriate care and support of child survivors.

- In particular, child-specific services should be outlined for child survivors of sex trafficking and commercial sexual exploitation, and a process map should be published that shows how children can access services.

— Obstacles to providing counselling support to survivors should be reduced.

— Obstacles to providing counselling support to survivors of CSEA should be reduced.

— All police should be continually trained in the identification of, and to better understand, CSEA, not only detectives in training.

— Specific protections for child survivors of trafficking should be outlined, resources dedicated to tackling it increased, and understanding of the issues amongst frontline professionals improved.

— Measures should be established to identify survivors of trafficking, particularly children being commercially sexually exploited.

— Barriers should be reduced to survivors of trafficking accessing support from bodies other than the police. A survivor-centric service to survivors of human trafficking should be created, which is separate from the police and immigration services.

— The action areas identified in Te Aorerekura: The National Strategy to Eliminate Family Violence and Sexual Violence should be implemented, and the Action Plan fully resourced to address the occurrence of family and sexual violence, including CSEA, in New Zealand.

— The protection of children from harm, including CSEA and trafficking, must be integrated into disaster risk management and response.

— The review of the Adoption Act should continue to ensure it is fit for purpose.

— A comprehensive data collection system on CSEA should be established to improve child protection efforts and ensure the appropriate disaggregation and dissemination of collected data.

Prevention

— Government and police efforts to address online-facilitated CSEA and the production, sharing, live-streaming and downloading of CSAM, both in New Zealand and overseas, should continue.

— The particular vulnerabilities of certain communities to CSEA, such as the Maori, LGBT+ children and those living in poverty, must continue to be recognised and addressed in order to prevent their occurrence.

— Community-led solutions should be strengthened to prevent all forms of child sexual exploitation and abuse.

Cultural/Education

— The New Zealand Government should continue to run educational and awareness-raising programmes on topics such as internet safety for children as well as trafficking that highlight sex trafficking (and which not only focus on labour trafficking).

— Further programmes are required to continue to raise awareness about specific forms of CSEA, most notably commercial sexual exploitation.



Papua New Guinea

In recent years, there has evidently been a stronger central direction in some areas of justice policy reform in PNG.¹ Over the past five to ten years, significant progress has been made in improving the legal and policy framework for the protection of girls, boys and women: the Criminal Code Amendment Act of 2013, which amended the Criminal Code Act 1974 (the Criminal Code) criminalised almost all forms of CSEA;² the Lukautim Pikinini Act 2015 (the LPA) was enacted; and the PNG Government endorsed the National Child Protection Policy (2017–2027). These laws, policies and strategies provide reasonably sufficient legal and regulatory frameworks and a strong foundation for establishing a national child protection system to be able to effectively prevent and respond to violence against boys, girls and women, improve access to justice and enhance birth registration. In May 2021, Papua New Guinea joined the Global Partnership to End Violence against Children, demonstrating the government's commitment to addressing the current shortcomings in the country's child protection system.³

However, the effective implementation and enforcement of these laws and policies has been significantly limited due to widespread corruption,⁴ a severe lack of financial and human resourcing for the relevant agencies and departments,⁵ the absence of a centralised and appropriately resourced coordinating authority,⁶ a lack of awareness of CSEA risk factors, and an inability to identify vulnerable persons within the broader community, as well as inaccessibility to formal justice for many survivors.⁷

It has been said that the PNG Government has made insufficient legal effort in the trafficking of children for sexual exploitation.⁸ Although the PNG Government amended the Criminal Code in 2013, to date no convictions have been made for trafficking in persons' offences.⁹

Whilst some further amendments to the relevant laws and regulations would assist PNG in creating a more consistent child protection legal framework that better aligns with international best practice, it is clear that the immediate focus should be on creating and supporting systems that implement and assist the existing child protection system to enforce and prosecute relevant laws, raise awareness of CSEA issues and to protect survivors.

CSEA Profile

Child sexual exploitation and abuse (CSEA) is a widespread problem throughout Papua New Guinea (PNG). Children in PNG have been described as 'some of the most vulnerable in the world'.¹⁰ The full magnitude of the problem in PNG, however, is not properly understood due to the lack of disaggregated data available and the challenges survivors face in coming forward.¹¹

Nearly half of the reported rape survivors across PNG are under the age of 15, with 13 per cent under the age of seven.¹² The Family Support Centre at the Angau Memorial General Hospital in PNG has also reported that more than half the survivors of sexual violence and abuse that they see are children.¹³ Médecins Sans Frontières (**MSF**) has also reported that children were victimised in over 50 per cent of the sexual violence cases referred to their clinics.¹⁴ An interview with the manager of Port Moresby women's shelter, Haus Ruth, found that about 60 per cent of children who came to the shelter with their mothers had also been abused.¹⁵

Familial abuse and CSEA in domestic settings is prevalent throughout the country. An estimated 2.8 million children—equivalent to over 75 per cent of the child population—experience violent discipline in the home. In two provinces surveyed by Save the

Children, 70 per cent of children aged six to eight years reported feeling “scared and in pain” in their community.¹⁶ Furthermore, the majority of cases referred to the Family and Sexual Violence Offences (FASO) unit in Port Moresby involve an alleged perpetrator who is a daily member or otherwise connected to the survivor’s household.¹⁷ This occurrence of sexual violence in the family can mean that, because people consider family issues to be private matters, many offences go unreported.¹⁸ Evidently, a culture of silence and shame around CSEA exists in Papua New Guinea which leads to significant under-reporting and the stigmatisation of survivors.

Based on the limited available information that exists, girls, boys and women in PNG experience some of the highest rates of violence in the Asia-Pacific Region.¹⁹ Pervasive gender norms exist in PNG which condone men’s violence against women, as well as violence against children.²⁰ A study by Rachel Jewkes on behalf of the United Nations found that 41 per cent of men on Bougainville Island admit to raping a non-partner.²¹ Furthermore, about 14.1 per cent of men have committed multiple perpetrator rape.²² In urban areas, particularly slum areas, Raskol Gangs (from the English *rasca!*, criminal gangs primarily located in the larger cities) often require the raping of women for initiation reasons.²³ Peter Moses, one of the leaders of the “Dirty Dons 585” Raskol gang has stated that raping women was a “must” for young members of the gang. In rural areas, when a boy is ready to be deemed an adult by the rest of his people, he may go to an enemy village and kill a pig, whereas in the cities “women have replaced pigs”.²⁴ According to UNICEF, 14 per cent of adolescent girls aged between 15-19 years have experienced sexual violence or coercion.²⁵

As well as strict gender norms, a major structural driver of CSEA that is prevalent throughout PNG is poverty. According to the World Bank, 39.9 per cent of the population lives below the poverty line.²⁶ This prevalence of poverty throughout the county increases children’s vulnerability to exploitation and abuse. Instances have been recorded where parents have forced children to beg or sell goods on the street, sold or forced their daughters into marriage or into trafficking for sexual exploitation in order to support their families.²⁷ It has been estimated that approximately 30 per cent of sex trafficking in Papua New Guinea involves children, with some survivors as young as ten years old.²⁸ Children in PNG are

also at risk of human trafficking for domestic servitude, forced labour in the tourism sector, manual labour, forced begging, and street vending.²⁹ Regarding international trafficking in persons, according to the US Department of State, there have been reports of government officials facilitating trafficking by accepting bribes to allow undocumented migrants to enter the country or ignoring trafficking situations.³⁰ Furthermore, some reportedly engage directly in the exploitation of human trafficking survivors or procure children for other individuals in return for political favours or votes.³¹

Increased accessibility to the internet throughout PNG has also been cited as a reason for the perceived increase in CSEA offences.³² Furthermore, recent natural disasters and conflict have reportedly placed women and girls who have been displaced at heightened risk of exploitation.³³

Research shows that child marriage is present in PNG. In PNG, 21 per cent of girls are married before the age of 18, and 2 per cent before the age of 15.³⁴ According to reports, many girls are forced into customary marriage at the age of 12.³⁵ Polygyny and the custom of paying a “bride price” to obtain a bride is a recurring problem in the country. This, as well as the use of women as compensation between tribes to settle disputes, has been deemed an ongoing harmful traditional practice.³⁶ In theory, child marriage is prohibited by law in Papua New Guinea, according to Section 7 of Marriage Act.³⁷ However, the legal age for marriage is discriminatory, as it is set at 16 for girls and 18 for boys.³⁸ Furthermore, it is possible for the age of marriage to be further lowered with permission from parents and courts to 14 for girls and 16 for boys.

Further complicating the issue of child marriage in PNG is the fact that the majority of marriages are not officially registered with the PNG government and are instead approved according to local custom.³⁹ This could mean that child marriage is even more prevalent than recorded statistics portray. Whilst the Marriage Act states that customary marriages must be recognised according to the prevailing custom of either party in the marriage, Article 3 of the Customs Recognition Act recommends that in cases affecting the welfare of children, “recognition or enforcement would not...be in the best interest of the child”.⁴⁰

Criminalisation/Legislation

Classification of Sexual Offences with Children

Before dealing with how CSEA offences are prosecuted, it is worth noting first how they are criminalised in PNG.

The Criminal Code criminalises most forms of CSEA, including child trafficking:⁴¹

— Any sexual activity with or against children (consenting or otherwise) with a boy or girl under the age of 16 (Division 1A).

— Any sexual penetration of a child, boy or girl, including penetration of any orifice on a child’s body with a body part of an object (Section 229A).

— The sexual touching of a child or to force a child to touch anyone else in a sexual way (Section 229B).

— Indecent acts directed at children, including exposing oneself to a child in a sexual way or to make a child expose themselves in a sexual way (Section 229C).

— The persistent sexual abuse of a child, by committing any of the aforementioned sex crimes against children over a long period of time (Section 229D).

— The abuse of trust, authority or dependency whereby persons in positions of trust or authority have a consenting sexual relationship with a child aged between 16 and 18 years old who is in their care. In such circumstances, the absence of consent constitutes rape (Section 229E).

— “Child prostitution”, preferably known as exploitation of children in/for prostitution, which is defined as the buying or selling of sexual acts with a boy or girl under the age of 18, in return for money, goods or favours (Section 229J). It is a crime:

– to use a “child prostitute” or to offer or buy a “child prostitute’s” services (Sections 229K, 229L);

– to let your home or place be used for “child prostitution” (Section 229O);

– to receive any benefits from “child prostitution” (Section 229N); and

– for a parent to let a child be used for “child prostitution” (Section 229M).

— “Child pornography”, preferably known as child sexual abuse materials (CSAM), which includes pictures and films (and audio and text) that show children under the age of 18 performing sexual activities (Section 229J). It is a crime to:

– make or publish “child pornography” (Section 229R);

– import, export, distribute, sell or display “child pornography” (Section 229S);

– possess “child pornography” in your home or luggage (Section 229T); and

– get a child for, or let your child make, “pornography” (Section 229R).

The Lukautim Pikinini Act (**LPA**) seeks to protect and promote the rights and wellbeing of all children regardless of gender and to protect children from all forms of violence, abuse, neglect, exploitation and discrimination, with a clear focus on services for prevention and family strengthening.⁴² It is based on the principles and provisions of the UN Convention of the Rights of the Child (**CRC**), placing the best interests of the child as the paramount consideration and requiring that protective interventions prioritise community-based mechanisms over institutional alternatives. The LPA prohibits several CSEA offences, including:

— subjecting a child to a social or customary practice that is harmful to a child’s wellbeing as guided by the best interests of the child (Section 80);

— the sale of a child, or intention to sell a child, for personal gain (Section 82); and

— the facilitation of marriage, by act or omission, of a child either by custom or by law (Section 86).

In 2013, PNG passed the Family Protection Act (**FPA**) which made family violence a crime, punishable by up to two years in prison and/or a fine of nearly 2,000 USD.⁴³ The Act, as well as the

introduction of civil restraining orders specifically targeted at preventing and reducing domestic and family violence, represented a significant milestone in efforts to address these issues in PNG.⁴⁴

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA. However, PNG is not yet a signatory to the Lanzarote Convention.

PNG's legislation concerning CSEA is aligned with Articles 18, 19, 20, 22, 23 and 28 of the Lanzarote Convention.

Article 21 of the Lanzarote Convention, which concerns the participation of a child in "pornographic" performances, has not been implemented in the Criminal Code or other domestic legislation.

Article 24 and 25 of the Lanzarote Convention, which relate to CSEA offences committed internationally, have not been implemented in the domestic legislation of PNG as no extraterritorial jurisdiction is applied under the Criminal Code or LPA.

Article 26 of the Lanzarote Convention, which provides for the liability of corporate bodies for criminal acts, has not been implemented in the Criminal Code.

Article 27 of the Lanzarote Convention, which provides guidelines on appropriate sanctions and measures to be taken against those guilty of committing criminal acts of a sexual nature against children, has not been fully implemented into domestic law. Most CSEA offences attract an adequate penalty of imprisonment, but as Article 26 has not been implemented, Section 2 of Article 27 concerning individual persons held liable in accordance with Article 26 is also not addressed in PNG legislation.

Age of Consent & Definition of a Child

The age of consent to sexual penetration, oral sex and all other sexual contact is 16 years (Sections 229A and 229B of the Criminal Code).⁴⁵

The position becomes less clear under customary law, because the emphasis is on physical maturity rather than on the chronological age. For example, a girl of 14 years of age who has the attributes of a physically 'fit' person may enter into a valid customary marriage (thereby protecting underage marital intercourse from prosecution).

Trafficking

The PNG Government amended the Criminal Code in 2013 to include the comprehensive criminalisation of trafficking in persons offences, including criminalising those that know, have reasonable ground to believe or are reckless as to the fact that the other person will be exploited (Sections 208C and 208D).⁴⁶ However, the Criminal Code currently requires a demonstration of force, fraud, or coercion to constitute a child sex trafficking offence. Therefore, it does not, in effect, criminalise all possible forms of child sex trafficking.

In the Criminal Code (Amendment) Act (the **CCAA**), additional penalties are imposed for the offences of trafficking in persons if the survivor is under the age of 18. Under Section 208E of the CCAA, it is not a defence to a charge that the trafficked person consented to any acts.

The PNG Government has not yet signed or ratified the UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography or the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the **Palermo Protocol**).⁴⁷

To date, PNG has not achieved a single conviction for an offence of trafficking in persons.⁴⁸

Extraterritoriality

The Criminal Code applies to every person who is in PNG at the time of their committing any act or making any omission which constitutes an offence (Section 12(1) of the Criminal Code). The Criminal Code also applies in offences where elements of the offence occurred in PNG and elsewhere in the world. PNG does not have any policies or laws in place preventing convicted CSEA offenders from travelling abroad and it does not have extraterritorial laws relating to CSEA. The PNG Criminal Code does not have extraterritorial effect.

As a practical matter, the willingness to prosecute alleged trafficking in persons offences, including child trafficking, may hinge on the nationality of the perpetrators and the survivors. For example, a raid on a Port Moresby night club conducted by law enforcement and immigration in January 2020 identified eight Chinese women who had potentially been trafficked. This raid resulted in the potential survivors being deported for immigration violations before a comprehensive trafficking assessment was carried out.⁴⁹

Extradition

An offence is an extraditable offence if, under an extradition treaty between the requesting country and PNG, the conduct that constitutes the offence is required to be treated as an offence for which the surrender of persons is permitted by the country and PNG.⁵⁰

In the absence of an extradition treaty, Section 7 of the Extradition Act stipulates that an Extradition Offence is conduct that would constitute an offence against the law of the requesting country (for which the maximum penalty is death or at least 12 months imprisonment) and of the laws of PNG, if committed in PNG (for which the maximum penalty is death or imprisonment of at least 12 months). Therefore, double criminality is required in the absence of an extradition treaty between PNG and the requesting country.

Extradition applies to any person whose surrender is desired and is believed to be in PNG or on their way to PNG.

Statutes of Limitation

According to Section 624 of the Criminal Code, through which the majority of CSEA offences are criminalised, a "prosecution against any person for any act carried out in pursuance of any of the provisions of the Code regarding the arrest of offenders or the seizure of goods must be commenced within six months after the fact committed".⁵¹ This provision is severely limiting, especially regarding CSEA offences where children can take years to report crimes committed against them.

The LPA is silent on limitation periods.

Outdated Terminology

The continued use of the term "child pornography" and "child prostitution" in PNG's legislation implies that children are complicit in the sexual abuse, which serves to legitimise CSEA. It is recommended that "child pornography" be replaced by the term "child sexual abuse material (CSAM)" with further descriptions regarding specific offences in legislation (e.g. the publication and distribution of child sexual abuse images), and "child prostitution" be replaced with "exploitation of children in/for prostitution" in line with the Luxembourg Guidelines.⁵²

Other

Sentencing

Respectively, each of the LPA and the Criminal Code stipulate that offences under them are subject to criminal penalty and/or imprisonment (not exceeding five years under the LPA or life sentences for some offences under the Criminal Code). Penalties regarding trafficking for sexual exploitation are commensurate with those prescribed for other serious crimes, such as rape.

Treatment of Children of Different Genders

According to the Criminal Code, sexual activity between males is currently criminalised in PNG (Section 211). As well as impacting consensual homosexual relationships between adults, this means that male children who have been exploited or abused by male perpetrators may not report such offences to the authorities for fear of being charged with a crime themselves.⁵³

Gaps in Criminalisation

It is evident that, despite several amendments made in the last decade, certain gaps remain in Papua New Guinea's criminalisation of CSEA offences, including:

— PNG's legislation is not currently fully aligned with the Lanzarote Convention, including Sections 21, 24, 25, 26 and 27. The grooming of a child for sexual exploitation or abuse is not an offence under PNG legislation, unless the offense occurs online using an electronic system or device. Further, using, procuring, and offering a child for "pornographic"

(sexually abusive) performances are not criminally prohibited.

— The use of outdated terminology throughout Papua New Guinea’s legislation against CSEA offences, such as “child pornography” and “child prostitution”.

— Although the Criminal Code criminalises most forms of sex trafficking and all forms of labour trafficking, it requires a demonstration of force, fraud, or coercion to constitute a child sex trafficking offence. Therefore, it does not, in effect, amount to criminalising all forms of child sex trafficking. This is inconsistent with international law and does not sufficiently protect children from commercial sexual exploitation.⁵⁴

— A person is also not criminally responsible for an offence against Division 2A (sexual exploitation of children) regarding an act if, at the time of the act, the child was of over the age of 14 years and the person was married to the child (Section 229G). This presents a significant gap in light of the prevalence of young girls being married under customary practices. Notwithstanding that the Marriage Act 1963 provides for a minimum age of 16 years for girls to be married, this statute also recognises customary marriages. Under the traditional justice system, administered by male-dominated village courts, readiness for marriage is determined by physical maturity, allowing girls to be married as soon as they start their period.

— The Palermo Protocol has not yet been signed or ratified by the Government of PNG to confirm its commitment to eliminating the sexual exploitation and trafficking of children.

— No extraterritorial jurisdiction is currently applied to PNG’s legislation concerning CSEA offences.

— In potential trafficking cases, reports have been found of survivors being deported for immigration violations rather than assessed for human trafficking and provided with support.

— The statute of limitations for offences under the Criminal Code, under which most CSEA offences are criminalised, is severely limiting and is likely to inhibit CSEA survivors’ access to justice.

— The criminalisation of male homosexual activity may lead to male children who have been exploited or abused by male perpetrators not reporting such offences to the authorities for fear of being charged with a crime themselves.

Prosecution

PNG has a plural legal system with a long history of customary law in the more than 865 ethnic communities in the country.⁵⁵ The PNG legal system is based on English common law overlaid with extensive national legislation. It also incorporates PNG’s customary laws to create a separate layer of “underlying” law that is recognized by the PNG Constitution. According to UNICEF, the majority of CSEA cases are heard at District and Family Courts.⁵⁶ The Constitution states that customary law is subordinate to statutory law,⁵⁷ however it is the main law applicable in village courts, which reach 95 per cent of PNG’s population. This can present difficulties when dealing with harmful traditional practices, such as those involving CSEA, and ensuring just outcomes.

Across PNG, the effectiveness of CSEA offence prosecution, including investigation, varies considerably according to geographical location due to difference in capacity and resources. As the national capital, Port Moresby has the most dedicated prosecutors and legal officers, as well as access to the electronic case management system, but these resources are often unavailable in smaller provincial capitals and more rural areas.⁵⁸

Anecdotal evidence, including NGOs and monitoring reports, have noted a significant lack of prosecutions for CSEA offences in PNG.

Initiating Prosecution

The criminal justice system and police investigation process in PNG are complaint-based. Therefore, a complaint must be made to the police before any investigation or court process commences.⁵⁹ A complaint need not be lodged by the survivor but one must be made. Those under the age of 18 are encouraged to obtain assistance from parents, a family member or adult that they trust for the purposes of making a police statement.

Investigation & Evidence

Throughout PNG, as of 2020, 24 Family and Sexual Violence Units (FSVUs) exist as part of the Royal Papua New Guinea Constabulary (RPNGC), and are the primarily responsible body for the investigation of CSEA offences, particularly those in a domestic context. Sexual Offence Squads (SOSs) have also been established in key police stations.⁶⁰

In court, each element of an offence must be established by the prosecution beyond reasonable doubt to secure a conviction. Notwithstanding stringent penalties, the PNG Government has maintained insufficient law enforcement efforts.

A baseline study of the RPNGC in 2013 cited ‘poor investigations, evidence collection and custody; and inadequate brief preparation, which results in low rates of successful prosecutions in the District Courts and adversely affects committals to the higher courts.’⁶¹ According to a 2015 report by Australian Aid concerning the effectiveness of FSVUs in investigating and prosecuting family and sexual violence (FSV) offences, including CSEA, there are several limitations. Systematic weaknesses and failures to hold perpetrators accountable for FSV undermine the criminal justice system.⁶² Understaffing has been cited as a major issue for every criminal justice agency in PNG.⁶³ Furthermore, according to the US Department of State, there is ‘insufficient resources and political will among urban law enforcement to conduct investigations in rural areas.’⁶⁴ This is corroborated by Australian Aid, which found that there was an ‘inconsistent approach to arrest and prosecution within and between police stations’.⁶⁵ Furthermore, FSVUs are significantly under-resourced, with unclear lines of authority and weak linkages to other departments in the criminal justice system.⁶⁶ Reportedly, there is a need for FSVUs to improve their timeliness of response to cases, as well as transparency to survivors about their roles, responsibilities and processes.⁶⁷

As noted above, no cases have been successfully prosecuted since the criminalisation of most forms of trafficking for sexual exploitation under the Criminal Code. Whilst a few investigations have been opened in recent years, there is no visibility as to whether these have progressed to charges being laid or court action taken. According to Putt and Dinnen, relatively few cases are properly investigated by the FSVU for the above reasons.⁶⁸

The lack of enforcement and cases brought is one of the primary gaps in PNG’s child protection system.

In response to these issues, a 2020 report found that a range of positive changes had been implemented since 2015 which may have long-term impact on the effectiveness of investigation and prosecution for CSEA cases in PNG. The changes cited included greater sensitisation to family and sexual violence offences, including CSEA, improved treatment and attitudes towards survivors by justice personnel, better referral networks and improved provision of medical statements for court cases, and enhanced knowledge and development of skills amongst justice professionals, such as police investigators and prosecutors.⁶⁹

Procedure for Witness Testimony

Gathering evidence from child survivors and witnesses is reported as a considerable challenge for the PNG justice system, particularly in historical cases.⁷⁰

The FSVU has documented difficulty in preparing vulnerable witnesses appropriately for court proceedings, especially when the witnesses are children.⁷¹ This difficulty is further exacerbated by significant delays in the justice process which can lead to witnesses forgetting their testimonies, moving and losing contact with police, or eventually becoming unwilling to pursue their case in court.

Presumption Survivor is a Child

Relevant statutes do not make provision for a presumption that a survivor is a child if there is doubt concerning their age.

Corroboration

Under Section 229H of the Criminal Code, for any CSEA offence, a person may be found guilty on the uncorroborated testimony of one witness, and a Judge must not instruct themselves that it is unsafe to find the accused guilty in the absence of corroboration.⁷²

Defences

For offences of child sexual abuse under the Criminal Code, it is a defence if the accused believed on

reasonable grounds that the child was aged 16 years or older, or that the child was aged 12 years or older, and the accused was no more than two years old than the child. In any other circumstance, it is not a defence that the child consented to CSEA.⁷³

For offences of child sexual exploitation (Section 229K and 299M) of the Criminal Code, it is a defence that the accused reasonably believed that the child was aged 18 years or older.

Furthermore, it is a defence to a charge against Section 229R, 229S and 229T of the Criminal Code, relating to CSAM offences, that the material alleged to constitute child pornography has a genuine medical, legal, scientific or educational purpose; or the material alleged to constitute “child pornography” has artistic or cultural merit; or the accused believed, on reasonable grounds, that the child depicted in the material alleged to constitute “child pornography” was over the age of 18. It is also a defence to charge against Section 229Q and 229R of the Criminal Code that the accused was in possession of CSAM for the purpose of prevention, investigation or prosecution of an offence under the Code; or in the exercise of a function under *Classification of Publication (Censorship) Act 1989*.

Finally, according to the Criminal Code, a person accused of CSEA is not criminally responsible for an offence if, at the time of the act, the child was of over the age of 14 and the person was married to the child. This presents a significant gap in light of the prevalence of young girls being married under customary practises.

Unwillingness to Proceed with ‘Formal’ Trial

A heavy reliance on customary law and village courts (whereby traditional mediation and compensation processes are firmly established within communities) means that survivors of CSEA and their families are often unwilling to proceed with a ‘formal’ trial.

The majority of resources and personnel of the criminal justice system are concentrated in urban centres,⁷⁴ where only 13.25 per cent of PNG’s population live.⁷⁵ This clearly explains the prevalence of approaches to justice involving Village Courts and customary law throughout the country.

Overall, it is estimated that between only 10-20 per cent of survivors have access to a formal court system.⁷⁶ As a result, approximately only 5 per cent of all cases of crime against children in PNG end up being punished by a criminal conviction in a court of law.

Many ongoing issues affect survivors’ willingness to report sexual violence offences and CSEA, including family and community pressure to stay silent, fear for reprisal from the perpetrator and, when the offender is a relative or family member, the impact of having ‘the breadwinner’ of the family imprisoned.⁷⁷

Even when survivors do come forward and report, there is a significant backlog of cases in PNG’s criminal justice system, which means that ‘two to three years can elapse between the arrest date and the completion of a trial.’ This delay in bringing a case to court contributes to a high number of withdrawals by survivors.⁷⁸

Furthermore, inconsistent and unhelpful behaviour by frontline police when dealing with family and sexual violence cases, including CSEA, has been reported, which may impact survivors’ resistance to pursue formal justice for crimes committed against them.⁷⁹

Gaps in Prosecution

Overall, it is clear that there are various gaps and factors that impact the prosecution of CSEA offences in Papua New Guinea. These include:

- The inaccessibility to formal justice for the majority of PNG’s population and heavy reliance on customary law can limit consequences for the perpetrators of CSEA.
- The effectiveness of prosecution and investigation efforts varies considerably according to geographical location due to difference in capacity and dedicated resources.
- PNG’s justice system as a whole continues to struggle due to under-resourcing, under-staffing, limited evidence collection, challenges in gathering witness testimony, and a lack of public faith in formal justice. The system as a whole continues to struggle with demand and diminished and intermittent resources. Changes have been reported, but there

are still several outstanding issues which should be addressed.

- There is no presumption that a survivor is a child if there is doubt concerning their age.

- Currently, ‘reasonable belief’ that a child was over 16 years old or 18 years old is an acceptable defence for CSA and CSE respectively. Furthermore, defences related to CSAM offences leave a lot of room for interpretation which may provide offenders with opportunity to escape prosecution.

- Being married to a child over the age of 14 is an accepted defence to CSEA offences, severely undermining efforts to protect children and eliminate child marriage.

- A culture of silence around CSEA cases exists, particularly in cases where the offender is related to the survivor, leading to significant under-reporting.

Protection

In recent years, PNG has introduced sustained efforts to improve the system protecting children from sexual exploitation and abuse.⁸⁰ However, whilst there are a number of policies in place around increasing the effectiveness of the child protection capability in PNG, such as preventative and responsive services. Most have been unable to be properly implemented due to limited financial and human resourcing capacity, weak governance, poor coordination, and a lack of reliable data.⁸¹

Protection of Survivors During Proceedings

The Evidence Act 1975⁸² (the **Evidence Act**) was amended in 2002 to include a new Division 3 that provides for special measures for vulnerable and intimidated witnesses when giving evidence in court. Persons under the age of 18 are considered vulnerable for the purposes of the Evidence Act. For cases in which the court believes that the quality of evidence would be adversely affected by reason of fear or distress, special measures orders can be granted. Women and children can also ask the magistrate to grant special measures to enable them to give evidence in a more supportive and safe environment. The Evidence Act does not draw any distinctions between the gender of a witness, although surrounding commentary focuses heavily on

such measures being available to women and girls as opposed to men. Examples of a more supportive and safe environment can include the magistrate or judge agreeing to: tell the public to leave the court while the child gives his/her evidence; allow a child to have a support person with him/her while he/she testifies; allow a child to give evidence behind a screen in court, or directly to the magistrate in his/her room; grant an adjournment if it is in the interests of the witness; allow the witness to give evidence through closed circuit television or similar communication technology, including videotaped interviews.

Since the introduction of the LPA, there has been increased recognition that vulnerable witnesses, particularly children, require special care and consideration when their evidence is given to police and in court.⁸³ This has resulted in increased cooperation and training exercises and workshops between PNG and Australian police in managing the investigative and judicial processes when involving CSEA survivors.

Protection of Children in General

In August 2014, the National Parliament voted 70-0 in favour of the National Youth Development Authority Act 2014.⁸⁴ This gave the National Youth Development Authority (**NYDA**) full powers in managing the affairs of all young people throughout PNG. Since this announcement, the NYDA has been undergoing a transitional phase as it aims to link multiple groups, such as churches, NGOs, International donors and other collectives committed to the development of young people in PNG. The NYDA falls under the realm of the Ministry of Community Development, Youth and Religion (**MCDYR**).

In the MCDYR, is the National Office of Child and Family Services (**NOCFS**). This office is the custodian to statutory functions on Child and Family Services. NOCFS aims to protect the rights of children and the welfare issues of families through the provision of services, as a result of their implementation of the LPA and the National Child Protection Policy (**NCPP**). The NCPP is an umbrella policy that gives broad direction and guidance towards a coordinated approach to promoting and protecting the rights and wellbeing of children in PNG.⁸⁵ It provides the overall policy framework for the formulation and enforcement of the LPA and

gives effect to the review of other family and children's legislation. The best interest of the child is to be the primary consideration in all actions concerning children, whether taken by courts of law, administrative authorities or legislative bodies, or public or private child and family institutions and organisations. NOCFS also gives credence to the vision statement of the NCPP with specific policy definitions surrounding the primary objectives and core principles of the LPA to guide the implementation of programmes.⁸⁶

PNG does not have a witness or survivor protection programme in place.⁸⁷ People with information about potential CSEA offences who are concerned for their safety are encouraged to speak to relevant NGOs or contact the Anti-Trafficking Committee.

In 2013, the adoption of the Family Protection Act (FPA) made for a breakthrough in public awareness about the problem of CSEA offences, and the law could be transformative if it is fully implemented across the country.⁸⁸ The Government has also worked, with support from donors and NGOs, to establish Family and Sexual Violence Units (FSVUs) in police stations and Family Support Centres (FSCs) in hospitals, designed to make these institutions more accessible to and supportive of survivors of family violence.⁸⁹ A new "referral pathway" aims to provide better access to services for survivors of violence by ensuring that wherever a child goes to seek help, they are then linked to a full range of assistance. The Government is in the process of developing a strategy for handling gender-based violence, which should focus greater Government attention on protecting women, and the Government has also pledged to establish a national human rights commission. In August 2015, the parliament launched an inquiry into causes of and solutions for violence against women and children. A new hotline was set up to refer survivors of family and sexual violence to services and a growing network of activists—many of them also survivors of family violence—are bringing help to some of the most remote areas of the country.⁹⁰

Family Protection Orders (FPOs) were introduced in PNG in 2014 following the passing of the FPA. Similar to restraining or protection orders found across the world, FPOs are a civil remedy, issued by courts with the intention of protecting a person from domestic violence by stipulating conditions that the respondent should follow. Types of orders are

available: interim protection orders (IPOs), which last for 30 days, and protection orders (POs), which can last for up to two years. Only if a condition is breached can the respondent be arrested and charged with an offence.

Reportedly, more people are becoming aware of FPOs, but among those that do know of them, there is a common perception that only women and children can apply for them. This is not the case. However, available evidence indicates that the overwhelming majority of survivors of domestic violence are women.⁹¹ Applying for an IPO can be a big step. Given low levels of English literacy, one challenge for survivors is completing the paperwork for IPO applications and reading court documents, which are in English. One study showed that having police intervention or action, somewhere to live away from the respondent, and having a local specialist domestic violence service contributed to their safety.⁹²

Overall, experts have argued that further development is needed in the child protection system in Papua New Guinea. Of particular importance, they argue, is the need to improve the immediate and long-term protection of and support provided to child survivors in between their contact with the system.⁹³ Furthermore, doubts have been raised about how reported progress, such as new legislation, increased public awareness, better services for survivors and training programmes for police, have translated into actual changes in police and justice responses to cases of family and sexual violence, including CSEA.⁹⁴

Protection of Trafficked Children

Under Section 208G of the CCAA, the Government of Papua New Guinea has made the following commitments to protecting survivors of trafficking in persons:

- • (a) protecting the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; (b) protecting the physical safety of the persons at all times; (c) providing medical, psychological and material assistance; (d) respecting the special needs of women and children; (e) making arrangements for the ongoing presence of persons in Papua New Guinea on humanitarian grounds or regarding the status of the persons under any applicable law,

where the persons are not citizens of Papua New Guinea; (j) making arrangements for the ongoing presence, and integration into society, of persons in a place in Papua New Guinea of their choice, where the persons are citizens of Papua New Guinea; and (g) facilitating the return to a country where the person was a citizen or a permanent resident at the time of entry into the receiving country, with due regard for the safety, dignity, physical and psychological conditions of the person and the status of the person under any applicable law.⁹⁵

Reportedly, however, PNG has not provided or funded protective services for survivors, nor has it systematically implemented its survivor identification procedures.⁹⁶ For example, during the January 2020 raid on a night club in Port Moresby referred to above, law enforcement and immigration officials detained eight potential trafficking survivors, but it was unclear whether a full trafficking assessment was conducted before the women were reportedly deported for immigration violations.⁹⁷ This case study demonstrates the inability of law enforcement to undertake appropriate and necessary survivor screening and for the Government to ensure that vulnerable survivors are protected throughout the investigation and judicial process. Although the survivors concerned were not children, this highlights the significant detrimental impact of under-resourcing on the law enforcement and child protection system in PNG.

Due to the lack of resources dedicated by the Government of PNG, civil society organisations often provide medical and short-term shelter services to survivors. According to the US Department of State, male survivors can receive ad hoc services, and female and child survivors can receive services through NGO-run gender-based violence programmes, however, there are no services specifically tailored to the needs of trafficking survivors.⁹⁸

The law provides legal alternatives to the removal of foreign survivors to countries where they may face hardship or retribution (Section 208G of the Criminal Code). However, this is reportedly rarely offered to survivors. The Government may allow "ongoing stay" for trafficking survivors but did not extend the service to any individuals during 2020.⁹⁹

Protection of Children in Disaster Settings

PNG is highly disaster-prone. Lying directly on the fault lines, it is extremely vulnerable to earthquakes and volcanoes. Floods and landslides are frequent, while tsunamis and cyclones are occasional.¹⁰⁰

The PNG Government does not have a structured plan to monitor, secure, identify or refer survivors and/or vulnerable individuals as a result of conflict or natural disaster.¹⁰¹ The Criminal Code makes no specific provision for CSEA offences in disaster settings.

The objective of the LPA is to protect and promote the rights and wellbeing, generally, of all children regardless of race, nationality, religion, sex, ability or disability. It does not deal specifically with the issue of vulnerable children in disaster settings.

Although the NCPP acknowledges the vulnerability of children in disaster settings, it does not specify any specific steps to ensure that decisions related to children are made on the basis of the best interests of the child or are age, gender and disability responsive in such circumstances. The NCPP recognises that PNG's child protection system's capacity to prevent and respond to child protection in emergencies is limited.

Other

Police Training

Since 2005, the Australian Federal Police (AFP) has delivered police-to-police assistance in PNG where PNG-based AFP officers work directly with RPNGC officers in an advisory and capacity-building role.¹⁰²

According to Australia Aid's 2015 study, further training is still needed for police officers, particularly those belonging to FSVUs, in order to better understand family and sexual violence, including CSEA, trauma and how to respond to survivors.¹⁰³ Experts report that currently, no systematised national training plan for police officers is in place.¹⁰⁴ These claims are corroborated by Putt and Dinnen's report that 'young, inexperienced police officers are often having to "learn on the job" with inadequate mentoring and supervision.'¹⁰⁵

Collection and Dissemination of Data on Child Protection

Child protection efforts in PNG are currently severely undermined by limited data collection and dissemination. According to UNICEF, ‘the child protection system is characterised by lack of accurate information on all aspects of child protection and inadequate monitoring systems to track child prosecution issues.’¹⁰⁶

The limits in data collection and dissemination in PNG are understandable, given resource, organisational and other capacity constraints, as well as the prevalence of alternative justice approaches.¹⁰⁷ However, statistical data is a critical aid to policy and planning across the law and justice system, and therefore steps should be taken to design and implement a data collection system that is affordable, sustainable and feasible.¹⁰⁸

Prevention

Based on existing policy documents and official statements, the PNG Government appears reasonably aware of the limited ability of the child protection and law enforcement systems to effectively implement and enforce the LPA and the Criminal Code. The relevant umbrella laws are reasonably sufficient in their current form notwithstanding that some legal instruments and regulations require amendment to align with these laws (and relevant international conventions).

The primary hurdles would appear to be a lack of financial resourcing and human resourcing capacity and a lack of centralised coordination and monitoring of policy implementation and policy outcomes. These issues are unlikely to be easily overcome for a developing nation with limited financial capacity. It is therefore likely to be more important to raise awareness of such issues at a grassroots level and to enhance the ability of the child protection system to detect, enforce, prosecute and support survivors.

Register of Offenders

There are no specific measures or provisions in either the Criminal Code or the LPA that expressly exclude individuals convicted of CSEA offences from engaging in activities or employment involving contact with children.

PNG does not maintain a centralised or formal register of individuals convicted of CSEA offences. The LPA aims to establish a Child Protection Register, which seeks to identify children in need of protection, licensed early childcare and development centres, licensed out of home care centres, and licences issued to individuals and organisations dealing with children under the LPA (Section 15). No such register currently appears to be active online.

Child Online Safety

In 2016, the PNG Government passed the Cybercrime Code Act (the **Cybercrime Code**).

Section 18 of the Cybercrime Code¹⁰⁹ prohibits the distribution or accessing of ‘child pornography’ (as defined by Sections 229R, 229S and 229T of the Criminal Code) by electronic system or device to be guilty of a crime. This offence carries financial penalties and up to 25 years’ imprisonment for individuals and fines for corporations.

Section 19 of the Cybercrime Code prohibits the use of an electronic system or device to befriend, invite, induce, persuade, procure or offer to engage a child in sexual intercourse or sexual contact, a sexual or obscene performance or any other sexual conduct. Financial penalties and up to 25 years of imprisonment apply for individuals guilty of this offence.

Whilst there is a dedicated police cybercrimes unit, enforcement is weak due to under-resourcing and cultural issues presented by three official national languages (that are not necessarily capable of effective online moderation and monitoring). In 2020, Facebook was heavily criticised for failing or being too slow to remove online content in PNG national languages from its platform involving child abuse and other explicit material involving minors.¹¹⁰

Recommendations

There are several steps which should be taken as a matter of priority to help combat CSEA offences against children in PNG, including:

Legal

— The Criminal Code should be reviewed and updated to ensure comprehensive alignment with the

Lanzarote Convention and use of appropriate terminology.

— The PNG Government should enact legislation which criminalises the commission of any act against a child outside PNG which would constitute a relevant CSEA offence if committed in PNG. Such legislation should not require the exact description of CSEA to be the same in both PNG and the foreign country in which the offence was committed, provided that the essential criteria for the offence in PNG have been met.

— The Criminal Code should be amended to criminalise child sex trafficking without elements of force, fraud, or coercion in accordance with the Palermo Protocol.

— All laws should set the minimum age of marriage at 18 years for both boys and girls. This prohibition on child marriage must extend to all forms of marriage, including customary and religious marriages, and no exceptions or qualification to this minimum age should be allowed.

— Enact legislation for the protection of children in disaster settings.

— Legislation or a legally enforceable framework should be considered to exclude the involvement of CSEA offenders from activities involving contact with children.

— Internet service providers should be held accountable for monitoring suspicious CSEA behaviour.

— Due to the plurality of PNG’s legal system, further amendments to laws or the introduction of a model law is unlikely to provide meaningful improvements. More likely to assist in achieving meaningful outcomes would be modelling the implementation and provision of relevant services and enforcement practises on those existing in other jurisdictions, such as Australia, e.g. joint training, the secondment of experts to PNG to train local staff and law enforcement (police, psychosocial, survivor support, education), and raising awareness of CSEA issues in local communities/village courts; and building closer relationships with NGOs who can assist on addressing existing gaps in service delivery and capabilities.

Prosecution

— The strategic priorities outlined in the NCPP should form a framework for the ongoing development and improvement of PNG’s child protection system. Ensuring that the relevant agencies receive the appropriate level of funding and support to implement such strategic recommendations will be critical to improving the effectiveness of the system (and the welfare of survivors).

— Disseminate and systematically implement existing standard operating procedures (**SOPs**) for survivor identification, referral, and protection, and widely train police, immigration, and customs enforcement officers on the SOPs.

— Allocate resources, including dedicated staff, to Government agencies to implement the national action plan and SOPs.

— Investigate and prosecute child trafficking offences and sentence convicted traffickers to significant prison terms, including survivors’ family members and officials who facilitate or directly benefit from trafficking.

Protection

— Consider linking foreign aid provided to the PNG Government by Australia to specific programmes and outcomes that are directed at curbing CSEA and improving the effectiveness of PNG’s child protection capabilities.

— Establish structures for coordination of effort and monitoring of implementation.

— Increase coordination with NGOs on best practice for service implementation and support.

— Develop and enforce appropriate administrative standards, protocols and guidelines for working with children in need of protection.

— In collaboration with civil society, screen for trafficking indicators among vulnerable groups, including internally displaced persons, communities located near commercial forestry operations, children in communities marked by intertribal conflict, and individuals, including children, apprehended for illegal

fishing, desertion from foreign-registered fishing vessels, illegal logging, illegal gold panning, or immigration crimes.

— Protections and policies must be increased specifically directed at supporting and assisting children who have been trafficked.

— Develop a comprehensive information management system on child protection.

Prevention

— Build and maintain a skilled child protection human resource workforce, including community child protection volunteers, to increase the capacity of the PNG child protection system as a whole. This should include the training and improvement in the sensitivity of law enforcement and the ability to effectively screen and identify survivors of CSEA.

— Ensure a diversified and sustainable funding base for child protection interventions.

Cultural/Education

— Increase collaboration with civil society groups, the private sector, and religious and community leaders to raise awareness of and reduce demand for commercial sexual exploitation and forced labour of children.

— Raise awareness of the LPA and NCPP.

— Strengthen the Anti-Trafficking Committee by regularising its meetings and functions, designating senior officials to represent their agencies, increasing awareness of and participation in the committee by civil society and protection stakeholders, and allocating resources for its activities.



Samoa



Despite the small size of the country, both geographically and by population, child sexual exploitation and abuse (CSEA) is reported to be prevalent in Samoa. Samoa has signed and ratified the Convention on the Rights of the Child 1990 and 1994 (CRC), and in 2016 ratified the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC).

There is a lack of up-to-date statistical data on its nature, extent and causes, however the limited evidence that does exist demonstrates that the scope of CSEA in Samoa is widespread and serious. Concern about CSEA was noted in the Joint Submission to the Universal Periodic Review Process by the Samoa Umbrella for Non-Governmental Organisations Inc (**SUNGO**) and was reflected by the National Human Rights Institution.¹

In recent years, the government of Samoa has taken steps to improve protection against exploitation and abuse. For example, major amendments to the Crimes Act were introduced in 2013,² aligning Samoa's local laws more closely with the model provisions of international conventions. However, there remain notable gaps in Samoa's legal framework addressing CSEA offences. The proposed Child Care and Protection Bill 2013 (**CCPB**) would fill some legislative gaps in child protection and child justice, e.g. by setting out an authoritative definition of a child as a person below the age of 18 and by prohibiting child marriage.³ However, this has not yet been passed as the CCPB was put on hold until an effective implementation strategy for its legislative framework was established. In this regard, the Ministry of Women, Community and Social Development (**MWCSD**) developed the National Child Care and Protection Policy and Action Plan (2020–2030) to guide its programme implementation and form the basis of its policy and strategic advice for a child protection framework.⁴ Nevertheless, it is not clear whether the CCPB has been enacted or implemented yet, and therefore this country report does not include a detailed analysis of its proposed provisions.

Overall, despite the clear commitment of the government of Samoa to address violence against children, very little headway seems to have been made in the implementation and enforcement of

legislation criminalising CSEA. Research has found very little evidence of successful prosecutions and significant gaps in investigation, protection and prevention.

In May 2021, Samoa's Supreme Court confirmed the election of Fiamē Naomi Mata'afa as the country's first female Prime Minister.⁵ Although a momentous occasion for women's representation in Samoan politics, and a nod to improving women's rights generally, the election was not without difficulty, as former Head of State Tuimaleali'ifano Va'aleto'a Sualauvi II attempted to void the results, although he was ultimately unsuccessful.⁶ Now as Prime Minister, Mata'afa has already put her weight behind ending violence against women, and issued a statement for the UN campaign *16 Days of Activism – Orange our World, End the Violence against Women, NOW!*⁷ In her statement, Mata'afa advocated for ending violence against women and girls everywhere by believing survivors, adopting comprehensive and inclusive approaches, transforming societal norms and empowering women and girls.⁸ It is too early to tell, but one can be hopeful that a leader who advocates for ending violence in such a way will also impact the way in which Samoa addresses child sexual exploitation and abuse in the future.

CSEA Profile

Given the small size of Samoa, both geographically and by population, there appears to be a significant presence of CSEA within the nation. Poverty, financial hardship, dysfunctional family issues, a culture of shame and underreporting, as well as widespread lack of awareness about what child sexual exploitation is, have been cited as factors which contribute to its prevalence.⁹

As with much of the Pacific, the available evidence of CSEA is sparse and incomplete, with statistics difficult to obtain and accuracy limited as cases are

often not reported or recorded due to societal attitudes that discourage reporting.¹⁰ Where data does exist, it is not up-to-date. Nevertheless, it can be used to provide an indication of the scale of CSEA in Samoa. For example, between 2013–2014, 112 cases of rape or sexual assault of girls under 16 years old were reported to the Ministry of Police.¹¹ This figure indicates that sexual violence against girls is a significant issue. Further data is required and social research needs to be undertaken in order to fully understand the prevalence and causes driving CSEA activity in Samoa.¹²

According to reports, violence against children (including physical, emotional, verbal and sexual abuse) is a serious problem, with an estimated 9 out of 10 children in Samoa experiencing violence in their lifetime.¹³ Familial abuse appears to be one of the most common manifestations of violence against children in Samoa.¹⁴ According to a 2017 study, 9.5 per cent of female respondents reporting that they had been raped by a family member.¹⁵ Some have described the rates of family violence across the country, including sexual abuse, as an ‘epidemic’.¹⁶

Anecdotal evidence suggests that the scope of the sexual exploitation of children in travel and tourism settings (SECTT) in Samoa is widespread.¹⁷ In one study, research interviewees described perpetrators as older male tourists who are frequent flyers to Samoa, generally arriving from several parts of the world, including Australia, New Zealand, Germany and the United States.¹⁸ This study also noted that the facilitators of SECTT represent a cross section of the community, and include male taxi drivers, mothers of children, and transgender (*fa’afafine*) individuals.¹⁹

In 2018, an inquiry into family violence in Samoa found a major cause of violence against women and children to be the patriarchal society that exists throughout the country.²⁰ ‘Stereotypical gender roles are taught from birth...teaching girls to be subservient, encouraging sexual entitlement of boys, and creating an environment of impunity for perpetrators,’ the inquiry reports.²¹ Furthermore, the teachings of the Bible, as well as the traditional, customary way of life in Samoa—*Fa’asamoa*—are ‘widely used and misused’ to reinforce this patriarchal society, and thereby enable sexual violence and a culture of silence.²²

The Marriage Ordinance 1961 provides that the minimum age of marriage is at least 16 for girls and 18 for boys, and that no marriage shall be solemnised for a man under the age of 21 or a woman under the age of 19, without the consent of the parents or guardians.²³ Similarly to that of CSEA in general, comprehensive data regarding the prevalence of child marriage in Samoa is limited. Where statistics are available, they appear to be contradictory as to the extent of child marriage throughout the country. For example, a 2019 report from OECD reported that child marriage in Samoa appears to be rare.²⁴ A 2016 report released by UNICEF claims that there is no available data concerning ‘underage marriages’ in Samoa.²⁵ However, UNICEF’s website records that seven per cent of women aged between 10 and 19 are currently married.²⁶ Furthermore, a 2014 Demographic and Health Survey found that out of women aged 20–24 years old, one per cent were married before they were 15 years old, and 11 per cent were married before they were 18 years old. This data, whilst not evidence of child marriage being abnormally widespread, does not suggest that it is an insignificant problem in Samoa. The Commonwealth Lawyers Association have posited that the confusion surrounding the prevalence of child marriage in Samoa could be due to a difference between customary unions and registered marriages.²⁷ In 2019, the OECD reported that high rates of teenage pregnancy (39 per 1,000 adolescent girls) may put pressure on adolescent girls to marry early.²⁸

Criminalisation/Legislation

Classification of Sexual Offences with Children

The following CSEA-related offences are crimes pursuant to the Crimes Act:

- Sexual contact with child (under 12) or young person (under 16).²⁹
- Attempts to have a sexual contact with a child (under 12) or young person (under 16).³⁰
- Performing an “indecent act” with or on a child (under 12) or young person (under 16).³¹
- Sexual conduct with a dependent family member under the age of 21.³²
- Attempts to have a sexual contact with a dependent family member under the age of 21.³³

— Dealing in people under the age of 18 for sexual exploitation, e.g. engaging in the sale or purchase, transfer, barter, rent, hire, detainment, transport of that person for the purpose of sexual exploitation (including for commercial purposes, e.g. sex trafficking).³⁷

Lanzarote Convention

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the **Lanzarote Convention**) is a benchmark for criminal law reform to protect children against CSEA. Samoa has not ratified the Lanzarote Convention; however, it has implemented local laws (see below) that give effect to the following articles of the Convention:

- Article 18: Engaging in sexual activities with a child, including where use is made of coercion, force, threats; abuse is made of a recognized position of trust authority or influence over a child (including within the family) is prohibited by section 54 of the Crimes Act; Article 18(b) abuse of a particularly vulnerable situation due to mental or physical disability is provided for in section 63 of the Crimes Act (and is relevant to the question of consent section 51).
- Article 19: Recruiting, coercing, or having recourse to coerce, a child into sexual exploitation is prohibited by section 157 of the Crimes Act.
- Article 20: Producing, offering, distributing, procuring, possessing and knowingly obtaining access to child sexual abuse materials or images is prohibited by section 82 of the Crimes Act.
- Article 23: Local law criminalises the offering or engaging a child for the purposes of sexual exploitation and specifically criminalises the solicitation of children for sexual purposes under section 218 of the Crimes Act.

— Article 3: Although the CSEA offence relating to the dealing in persons under the age of 18 for the purposes of sexual exploitation is prohibited, other offences relating to sexual contacts and child sexual abuse materials or images adopt a definition of a “child” being under the age of 16 years; therefore, local laws are not comprehensively consistent with Article 3.

— Article 21: Recruiting or coercing a child into participating in pornographic performances or causing a child to participate in such performances is broadly covered by section 157 of the Crimes Act (albeit not specifically in those terms). However, knowingly attending such performances is not explicitly prohibited.

— Article 22: The intentional causing, for sexual purposes, of a child who has not reached the age of maturity to witness sexual abuse or sexual activities, even without having to participate, is not criminalised by local law.

— Article 26: The Crimes Act does not differentiate between natural persons and corporate entities for the purposes of imposing liability for CSEA offences.

— Article 27: The Crimes Act imposes reasonably proportionate and dissuasive sanctions regarding individual liability for CSEA. However, the maximum penalty could be increased from 14 years to a longer prison term. The Crimes Act does not specify sanctions for corporate and other legal entities. Furthermore, it does not provide for the confiscation of property or other proceeds of CSEA crime.

— Article 28: Some but not all aggravating factors are included in the Crimes Act regarding human trafficking but not specifically concerning CSEA offences (section 156).

— The Crimes Act does not specifically provide for previous convictions to constitute a circumstance of aggravation for CSEA offences.

Age of Consent & Definition of a Child

The age of consent in Samoa is 16.³⁸

For the purposes of the Crime Act, a 'child' is defined as a person under the age of 12 and a 'young person' is defined as a person under the age of 16. This current definition of a child and young person in Samoan law limits the legal protections afforded to children between the ages of 16 to 18.

In 2016, the UN Committee on the Rights of the Child (**CRC**) recommended that the Government of Samoa harmonise its definition of a child with international standards. In response, the Samoan Government reported that the Samoan Law Reform Commission reviewed and produced issue papers, reports and recommendations which would improve compliance with the CRC.³⁹ However, due to the postponement of the introduction of the Child Care and Protection Bill 2013, it is unclear how far Samoa has come in meeting these recommendations.

Trafficking

Sections 155-157 of the Crimes Act prohibit child trafficking. Specifically:

- Section 155 of the Crimes Act prohibits trafficking in people by means of coercion or deception.
- Section 156 of the Crimes Act enumerates aggravating factors to be included taken into account when sentencing an individual for an offence arising under section 155 of the Crimes Act, including but not limited to whether bodily harm or death occurred, whether the offence was committed for the benefit or direction of or in association with an organised criminal group, whether the survivor was subjected to inhuman or degrading treatment, whether the survivor was subjected to exploitation, the age of the person against whom the offence was committed and whether the person committing the offence did so for material benefit.
- Section 157 of the Crimes Act specifically prohibits dealing in persons under the age of 18 for sexual exploitation, removal of body parts, or engagement in forced labour.

Research found no evidence of laws that ban using, procuring, or offering children for illicit activities, including for the production and trafficking of drugs.

Extraterritoriality

The Crimes Act applies to any conduct that constitutes an offence under its provisions which occurs in Samoa. Its application is not limited by reason of the nationality or resident status of the survivor or perpetrator.⁴⁰

Where the acts or omissions constituting the offence occur wholly outside Samoa, proceedings may be brought in Samoa regarding certain offences (trafficking and dealing with people under the age of 18) if the person to be charged is a Samoan citizen, or is ordinarily resident in Samoa, or has been found in Samoa and has not been extradited, or is a body incorporated under the law of Samoa.⁴¹

Therefore, the offences of trafficking and dealing in people under the age of 18 for sexual exploitation will attract the extraterritorial application of the Crimes Act.

Other CSEA offences identified above will not attract the extraterritorial operation of the Crimes Act, unless the person charged is a Samoan citizen acting in some form of official capacity.

The Mutual Assistance in Criminal Matters Act 2007 allows the Attorney General for Samoa (the **AG**) to request assistance from foreign states to locate or identify persons, obtain evidence, examine or cross-examine a person providing evidence or documentation, arrange attendance of a person in Samoa to assist with a criminal investigation.⁴² The requirement for these requests to be made by the AG may, as a practical matter, limit the ability of police agencies to cooperate with each other in the absence of such a request.

The Sex Offenders Registration Act 2017 (**SORA**) requires registrable offenders to report any intended travel outside of Samoa to the Police Commissioner along with their passport and other relevant documentation.⁴³

Extradition

CSEA offences are extraditable offences under Samoan law pursuant to the Extradition Act 1974 (the **Extradition Act**).⁴⁴ However, extradition is only available to and from foreign countries if they are a party to a treaty with Samoa or, in the absence of a

treaty, to and from designated Commonwealth countries. Samoa has not concluded any bilateral or multilateral treaties. It has designated certain Commonwealth countries as extradition partners, but the Extradition Act does not identify these partners.

In practice, Samoa has affected extradition requests by cancelling the sought person's permit allowing them to be in Samoa under its immigration laws.⁴⁵ Certain Pacific Island Forum countries (e.g. Palau and Fiji) have enacted legislation allowing extradition to Samoa by endorsement of warrants, but Samoa has yet to reciprocate.

Samoa requires dual criminality with a minimum penalty of 12 months' imprisonment in the requesting country as a precondition for extradition.⁴⁶ For extradition to a Commonwealth country, the minimum required penalty is two years' imprisonment in Samoa and the requesting country.⁴⁷

Statutes of Limitation

There is no statute of limitations or tolling provisions under the Criminal Procedure Act 2016 (**CPA**) that apply to the CSEA offences identified above.⁴⁸

Outdated Terminology

The Crimes Act does not define 'indecent' or 'performing an indecent act with or on'. There is also no definition of these concepts in other relevant Samoan legislation. However, the law on what may be deemed as indecent is well established in Samoan jurisprudence (which draws heavily on precedent from other common law jurisdictions such as New Zealand, Canada and Australia). This law stipulates that 'indecent' should be given its ordinary and popular meaning. The key question is whether 'the conduct offends against a reasonable and recognized standard of decency, which in the opinion of the Court, ordinary and reasonable members of the community ought to impose and observe in this day and age on entertainment of this sort of public nature'.⁴⁹

The question of indecency must be considered by reference to the time, place and circumstances of the conduct, and although 'indecent' may describe something which is not so offensive as would warrant it being called 'obscene', the impropriety must be

more than trifling and be sufficient to warrant the sanction of the law.⁵⁰

The use of 'indecent' in legislation concerning CSEA offences, and the lack of clear definition, is recommended to be removed and replaced by the term 'sexual' which is clear in its definition.⁵¹

Other

Sentencing

The Crimes Act imposes penalties of imprisonment of up to 14 years for most CSEA-related offences and imprisonment for a period up to life for certain sexual offences against children under the age of 12.

The following maximum sentences are provided in the Crimes Act:

- For sexual contact with a child (under 12): life imprisonment.
- For attempts to have sexual contact with a child: imprisonment for 14 years.
- For performing an "indecent act" with or on a child: imprisonment for a term not exceeding 14 years.
- For sexual contact with a young person (under 16): imprisonment for a term not exceeding 10 years.
- For attempts to have sexual contact with a young person: imprisonment for a term not exceeding 10 years.
- For performing an "indecent act" with or on a young person: imprisonment for a term not exceeding seven years.
- For sexual contact with a dependent family member under the age of 21 years: imprisonment for a term not exceeding 14 years.
- For attempts to have sexual contact with a dependent family member under the age of 21 years: imprisonment for a term not exceeding 14 years.
- For performing an "indecent act" with or on a child: imprisonment for a term not exceeding 14 years.

— Publication, distribution or exhibition of “indecent” material on a child: imprisonment for a term not exceeding seven years.

— Abduction of a child under the age of 16 with intent to have sexual contact: imprisonment for a term not exceeding 10 years.

— Dealing in people under the age of 18 for sexual exploitation (including for commercial purposes): imprisonment for a term not exceeding 14 years.

— For trafficking in people by means of coercion or deception, or for dealing in people under the age of 18 for sexual exploitation irrespective of whether the offence occurred in Samoa: imprisonment for 14 years.

Overall, whilst the sentencing of CSEA-related offences is not wholly inadequate, more severe penalties for cases involving children are needed in order to match the severity of the crimes, and bring Samoa in line with the laws of other jurisdictions.

Treatment of Children of Different Genders

Overall, legislation criminalising CSEA offences in Samoa is gender-neutral. Indeed, according to the Government of Samoa, the introduction of the Crimes Act in 2013 addressed a number of gender-neutrality issues.⁵²

However, under the Crimes Act, it is not possible for a male child to be considered a survivor of ‘rape’, only ‘unlawful sexual contact’ which carries a lighter sentence.⁵³

Furthermore, according to the Crimes Act, sexual activity between males is currently criminalised in Samoa (Sections 67, 68 and 71). As well as impacting consensual homosexual relationships between adults, this means that male children who have been exploited or abused by male perpetrators may not report such offences to the authorities for fear of being charged with a crime themselves.⁵⁴

Protection of Survivors or others who report CSEA Offences from Personal Liability

The Crimes Act specifically provides legal protection for the survivors of dealing in persons under the age of 18 for sexual exploitation and for the dependents involved in conduct that would constitute sexual

contact with a family member from being charged as a party to an offence. Other CSEA offences above do not have specific protections in place.

Gaps in Criminalisation

There are several gaps in the legal framework (specifically the Crimes Act) that result in Samoa not meeting international standards or benchmarks for comprehensive criminalisation of CSEA offences.

— The Crimes Act does not specifically protect children between the ages of 16 and 18 regarding the CSEA offences detailed above.

— The legislation of Samoa is not currently fully aligned with the Lanzarote Convention, including Sections 3, 21, 22, 26, 27 and 28.

— Children are not currently protected from CSEA offences in the context of child marriages as the law does not criminalise marriage for girls between 16 and 18 years old, and being married to them is an accepted defence to perpetrating sexual exploitation or abuse against a child.

— Male children are not provided with the same level of protection as females due to the criminalisation of homosexual activity and gender-specific definition of rape.

— The intentional causing, for sexual purposes, of a child who has not reached the age of maturity to witness sexual abuse or sexual activities, even without having to participate, is not criminalised.

— ‘Indecent assault’ is used often throughout Samoan legislation, but the term is considered to be outdated and not clearly defined.

— Civil or criminal liability on legal entities (corporations and businesses) is not currently imposed for trafficking offences.

— Relatively low penalties (sentences) are currently imposed for CSEA offences involving children.

Prosecution

Samoa possesses two parallel systems through which social order and justice are maintained. These are the formal criminal justice system and the traditional justice mechanism provided by village councils or courts (the **Fono**). Fono plays an integral role in maintaining social order and passing

judgement on offences in the traditional villages in Samoa, with the majority of villages being classified as traditional.⁵⁵

Under the Crimes Act

Section 4(5) of the Crimes Act grants jurisdiction to the Court of Appeal, the Supreme Court and the District Court for matters arising under the Crimes Act.⁵⁶ However, the Crimes Act itself does not appear to grant exclusive jurisdiction for matters arising under the Crimes Act to the Fono courts.

A specialist Family Court was established in 2013 to deal with some family violence and child protection cases which are not covered by the Crimes Act.⁵⁷ Reportedly, the court sits every Monday, and on an average sitting can hear up to 25 cases.⁵⁸

Village Fono Act

Village courts exist and will most often deal with local disputes. Samoa passed the Village Fono Act in 1990, amended in 2017 (**VFA**), which preserves the authority of the village council as a governing entity recognised by the Constitution, which includes jurisdiction over acts which “violate harmony and peace within the village”.⁵⁹ A Fono has power to punish individuals for ‘village misconduct’, which is widely accepted to include acts of domestic violence, amongst other offences.⁶⁰

As a result of the broad scope of jurisdiction afforded to the Fono, the precise jurisdiction of each Fono is unclear and depends greatly on the custom of the particular village over which it presides. The system functions concurrently with the common law system and the judiciary.

Village government is based on the customs, usage and history of each village as interpreted by the Fono, its legislative body. The village rules in each traditional village vary, as do the penalties for offences committed.⁶¹ These are seldom documented and are subject to change based on the membership and decisions of a Fono at a particular time. The Samoa Law Reform Commission (**SLRC**), after a national consultation on the authority of the Fono in 2012, recommended that penalties for the same offence be standardised across different villages, with records of decisions made by the Fono documented for presentation to the court as

required.⁶² Although the Amended VFA invites the registration of villages’ bylaws, it is voluntary and registered bylaws cannot be interpreted to be compliant with the constitution (Section 5C).⁶³

The Samoan Law Reform Commission’s report on Sex Offenders states that ‘the Samoan Courts are required by law to take into account as mitigation of sentence any punishment already imposed on the offender by their Fono’.⁶⁴ This would suggest that Fono can hear matters relating to CSEA if they feel it is appropriate to do so pursuant to the customs and traditions of the particular village over which it presides.

Initiating Prosecution

The Criminal Procedure Act 2016 (**CPA**) requires all criminal proceedings to be commenced in the Supreme Court and states that a hearing cannot commence until a charging document has been filed.⁶⁵ However, a charging document is not required if the prosecution is private, or if the Attorney General (**AG**) consents to the prosecution commencing.

As the prosecution for the CSEA offences under Section 82 (Publication, Distribution or exhibition of indecent material on child) and Section 157 (Dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour) of the Crimes Act require the written leave or consent of the AG of Samoa, there would appear to be no formal requirement for an individual to formally file a complaint to commence an action before the Supreme Court. The same can be said of all relevant CSEA offences in the event that a private prosecution is commenced. However, realistically it seems highly unlikely that this avenue be followed due to the lack of support and education for survivors bringing their own legal proceedings.

Section 26 of the CPA permits any person aged 21 years or over to provide any information for an offence and a person under the age of 21 may do so with the leave of a judge. This would appear to make provision for the families and guardians of a survivor or other organisation to report and commence CSEA proceedings on behalf of the survivor.

Investigation & Evidence

In the Ministry of Women, Community and Social Development (**MWCSD**), the Child Protection Unit, as well as the Criminal Investigations Department of the Ministry of Police (**MOP**), are responsible for the investigation of CSEA cases.⁶⁶ In 2007, the Samoan police established a specialised Domestic Violence Unit (**DVU**) to handle investigations of domestic violence offences, including CSEA when it occurs in a domestic setting, and submissions for protection orders.⁶⁷

According to UNICEF, the DVU's effectiveness in responding to cases is severely hampered due to lack of human and financial resources, and weak case management by law enforcement.⁶⁸

Once serious cases of CSEA have been reported to the police, the correct procedure is for the case to be reported to the Social Development Division (**SDD**), in accordance with inter-agency response procedures.⁶⁹ The SDD's Child Protection Officers then collaborate with the police in the response.

Recently, the Ministry of Police has received praise for the progress that has been made in improving its technical expertise regarding forensic evidence to support the prosecution of CSEA cases.⁷⁰ However, as appears to often be the case throughout Samoa, under-resourcing has been cited as a significant problem in the criminal justice system, and difficulties in gathering evidence have been reported in earlier years.⁷¹ Whilst improvements are evidently being made, it remains unclear whether these issues have been fully addressed.

Reportedly, significant barriers to the effective investigation and prosecution of gender-based violence, including CSEA, are the perceptions and attitudes amongst police and others involved in the criminal justice system. For example, the UN Country Team for Samoa (**UNCT**) reports that, despite education and training, many police officers and prosecutors continue to believe that these forms of violence should not be considered a criminal offence and therefore do not conduct effective investigations into such cases.⁷² Furthermore, the UNCT suggests that there have been cases where prosecutors made the decision not to prosecute cases of violence against women and domestic violence based on 'perceptions that complainants cannot be trusted.'⁷³

Presumption Survivor is a Child

The Crimes Act makes no provision for presumptions regarding a child or young person's age should they not have the correct documentation to prove their age.⁷⁴ In 2013–2014, only 65.9 per cent of village births were correctly registered in Samoa's Births, Deaths and Marriages system.⁷⁵ These limited rates of official birth registration, combined with the lack of presumption that the alleged CSEA survivor is a child, could mean that children are unable to pursue justice for crimes committed against them as they are unable to prove their age.

Procedure for Witness Testimony

Samoa has made provision in law for special procedural protections to facilitate children's testimony and reduce the trauma of participating in criminal proceedings as witnesses.

The Evidence Act 2015 gives the court discretion to allow a complainant to have a support person near them while giving evidence; allows the judge to disallow questions that are improper or expressed in language that is too complicated for the witness to understand; prohibits the accused from directly cross-examining the complainant or any child witness in a sexual case or proceedings concerning domestic violence; and gives the judge discretion to allow a witness to testify via electronic link, video-taped testimony, or from behind a screen.⁷⁶

However, reportedly, these special measures to facilitate children's evidence in criminal cases are not routinely available.⁷⁷

According to the Government of Samoa, it is the responsibility of the police to inform and explain the processes of the criminal justice system to children prior to them appearing in court.⁷⁸ However, there is a need for further support to be provided to child witnesses and survivors to familiarise them with the court process and help them when providing testimony.⁷⁹

Defences

The Crimes Act provides that a defendant can raise the following defences to CSEA allegations.

In an allegation of sexual conduct with a young person under the age of 16, the defendant will have a defence if they are under the age of 21, they had taken reasonable steps to find out whether the young person concerned was of or over the age of 16, and they believed on reasonable grounds that the young person was over the age of 16. It is not a defence that the defendant thought the young person concerned was of or over the age of 16 without the aforementioned elements of the defence.

In an allegation of dealing in people under the age of 18 for sexual exploitation, the defendant will have a defence if they prove that he or she believed on reasonable grounds that the person under the age of 18 years concerned was of or over the age of 18 years.

In 2013, the Child Protection Baseline Report recommended the defence of honest and reasonable belief that the survivor was of legal age be removed from Samoa's legislation against CSEA.⁸⁰

Furthermore, it is currently a defence, in respect of sexual conduct with a young person under the age of 16, if the person was married to the young person concerned at the time that the sexual contact or 'indecent act' occurred.⁸¹ However, this does not extend to the offence of 'sexual violation of a spouse', which remains an offence.⁸²

Unwillingness to Proceed with 'Formal' Trial

Although legislation is in place and Court structures have been established to address issues such as CSEA, survivors still face difficulties accessing the formal justice system in Samoa. Citizens are in principle able to report criminal matters to the police, but many prefer to abide by the decisions of the Fono.⁸³ Reportedly, the Fono often prevents survivors from reporting matters to the police.⁸⁴

Whilst this reliance on the community justice and village courts system is not wholly an area of concern on its own, reports have been found that claim the Fono do not always punish the offenders.⁸⁵ This can cause instances of abuse to become more severe, or survivors to stay silent even longer. Furthermore, it has been argued that reporting and settling cases through the village courts can result in action being taken against the survivor or their families, rather than against the perpetrators, due to the small size of

Samoa which affords the survivor little-to-no anonymity.⁸⁶

Gaps in Prosecution

Despite the government of Samoa's efforts to address identified issues in the prosecution of CSEA offences, it is clear that some gaps remain:

- Reporting, prosecution and conviction rates are reportedly very low for CSEA offences in Samoa.⁸⁷
- Under the Crimes Act, specifically regarding offences related to child sexual exploitation, including the 'publication, distribution or exhibition of indecent material on child' or child sexual abuse materials (CSAM) and 'dealing in people under 18 for sexual exploitation', the process to commence a prosecution is more onerous as it requires the written leave or consent of the Attorney General of Samoa.
- The Crimes Act makes no provision for presumptions regarding a child or young person's age.
- Shortage of specialised training, human and financial resources for law enforcement and criminal justice personnel dealing with CSEA cases limits the effectiveness of prosecution and investigation.
- Police attitudes can limit their investigation and prosecution of gender-based violence, which can include CSEA offences.
- Limited availability of measures to ensure child-friendly justice and protection of survivors from re-traumatisation during the investigation and prosecution of crimes committed against them.
- Currently, several defences in Samoa's legislation against CSEA may not be in the best interest of the child, including the belief that the survivor was of legal age and if the survivor and the accused were married at the time of the offence.
- Widespread preference for reporting and settling cases through the village councils, rather than the formal justice system, may result in action being taken against the survivors or their families rather than against the perpetrators.

Protection

Protection of Survivors During Proceedings

Under Section 56 of the Criminal Procedure Act, ‘a person must not publish the name of the victim or the alleged victim of a sexual offence in a report or account of the whole or any part of the trial unless the Court is of the opinion that the interest of justice requires publication.’⁸⁸ This should, theoretically, ensure that the identity of survivors is protected throughout proceedings. In light of Samoa’s small size, it has been suggested that this name suppression may not be enough to protect their anonymity, particularly should other details of the case be made public such as the location of the offence or the perpetrator’s name.⁸⁹ Therefore, the UN Committee on the Rights of the Child has recommended that sexual offence proceedings should be dealt with in closed court.⁹⁰

As identified in the above section, measures are in place to protect survivors from further traumatisation during proceedings. However, experts have reported that further prioritisation of child-friendly justice is needed, particularly directed at survivors of CSEA rather than juvenile offenders, including the publishing of clear guidelines and provision of regular training for all police and others who work in the criminal justice system.⁹¹

Protection of Children in General

Samoa has recently implemented the National Child Care and Protection Policy 2020–2030, which outlines policy directions, legislative measures, services and programmes that address child care and protection.⁹² The primary government agency responsible for the coordination and oversight of child protection policy is the Ministry of Women, Community and Social Development (**MWCSD**).

The Crimes Act does not make specific provision for access to assistance, support or protection for survivors of CSEA offences or those who are likely to be victimised.⁹³

Section 4 of the Family Safety Act 2013 (**FSA**) provides for the application for a protection order in circumstances where a complainant is the subject of domestic violence and/or sexual abuse.⁹⁴ The DVU works closely with SVSG to provide assistance to

survivors of violence, especially in relation to filing of protection orders. Under the FSA, children are either referred to the NGO Samoa Victim Support Group (**SVSG**) or, if the nature and seriousness of the case dictates it, they are placed under the care of the MWCSD.⁹⁵

Human and budgetary resource constraints have been cited as barriers to the effective delivery of child protection services throughout Samoa.⁹⁶

The bulk of core services, assistance to survivors and protection of children in Samoa is provided by NGOs and charities.⁹⁷ It has been specifically noted by the UN Committee on the Rights of a Child that the inadequacy of structures in place to support child survivors of violence, such as shelters and counselling, most of which are run by Samoa Victim Support Group (**SVSG**), and the absence of a legal framework and of mechanisms for monitoring the NGOs offering services and assistance to children are two issues of particular concern.⁹⁸ As stated by Samoa’s National Human Rights Institution in 2019, ‘for many years, Government has relied on the goodwill of communities and NGOs who are simply not equipped to deal with the full scale of the problem to provide support.’⁹⁹

Samoa has yet to develop comprehensive mechanisms for reporting, referral and case management of suspected cases of CSEA.¹⁰⁰ A key priority of the National Child Care and Protection Policy 2020–2030 is to work towards a coordinated framework and response system, as well as standard operating procedures being in place and in full operation.¹⁰¹

Protection of Trafficked Children

There appears to be a considerable lack of protections and support provided specifically to children in Samoa who have been trafficked. Furthermore, there are no provisions in the Crimes Act or the Proceeds of Crimes Act 2007 to allow the use of proceeds, or part of the proceeds of trafficking forfeited, to be used to support trafficking survivors.

Counselling

Regarding the counselling of survivors of CSEA, the Ministry of Police (MOP) usually refers them to SVSG for support or other relevant NGOs.¹⁰²

According to the UN Committee on the Rights of the Child, therapeutic counselling is provided for children affected by violence by the Social Services and Mental Health Unit at the National Hospital.¹⁰³ However, there is only a small number of counsellors operating out of this single hospital, which seems to indicate a lack of resourcing towards the counselling of CSEA survivors.

SVSG is reportedly the only organisation which provides a shelter for survivors of gender-based violence, including CSEA.¹⁰⁴ The National Human Rights Institution has stated that the Government of Samoa has provided no assistance in the building of a Family Violence Shelter, and the SVSG-operated shelter relies fully on the support of individual donors, local churches and business communities.¹⁰⁵

Furthermore, there is currently a lack of reporting avenues in place for children who have experienced CSEA.¹⁰⁶ This area of concern was due to be addressed in the Child Care and Protection Bill 2013 (**CCPB**).¹⁰⁷ However, as it has yet to become law, children in Samoa are still without clear routes to speak up about the offences being committed against them and seek help.¹⁰⁸

Protection of Children in Disaster Settings

Although it is not child or CSEA specific, all emergency preparedness and implementation include children as well as adults. Samoa’s Disaster and Emergency Management Act 2007 (**DEMA**) provides the legal and administrative framework for disaster risk management and emergency preparedness and response at all levels.¹⁰⁹ The Ministry of Natural Resources and Environment has recently released the Samoa Climate Change Policy 2020–2030. However, this policy does not cover child protection issues related to climate change.¹¹⁰

The MWCSD works closely with the Disaster Management Office (**DMO**) and other relevant ministries to carry out and facilitate community preparedness for natural disasters, including the impact of climate change. This process is facilitated through the village council and the Women’s Committee, with active involvement of children and young people, to ensure increased awareness and improved family and community-level preparedness and how to cope and recover during and after the post-disaster period.

Research did not identify any specific policies relating to decision-making affecting children in the context of disasters or to specifically address the heightened risk of CSEA in disaster settings.

The Government of Samoa does seem to be aware of this current gap, as the need to integrate child protection into disaster risk management and response is one of the highlighted outcomes in the MWCSD’s National Child Care and Protection Policy 2020–2030.¹¹¹

Police Training

According to UNICEF’s 2017 report, training is implemented for new police recruits on violence against women, as well as in-service training on child-friendly procedures.¹¹² However, it has been noted that the specialised training that exists tends to primarily focus on children in the criminal justice system as offenders, rather than survivors and witnesses.¹¹³

In the National Child Care and Protection Policy 2020–2030, the MWCSD recommends that child-friendly justice be integrated into pre-service and in-service training for the police, as well as those involved in prosecution, court and other areas of the justice system.¹¹⁴

Protection of Adopted Children

The National Human Rights Institution (**NHRI**) of Samoa has highlighted the need for improved protection for adopted children. They argue that ‘the current legislation does not comprehensively ensure the full protection of the rights of the children concerned.’¹¹⁵

Of particular priority is the protection of Samoan children involved in overseas adoptions, so that, even once the child has been adopted and leaves Samoa, their protection is guaranteed.¹¹⁶ Furthermore, there must also be provisions to ensure that children with physical and intellectual disability are appropriately cared for throughout the adoption process.¹¹⁷

Collection and Dissemination of Data on Child Protection

There is a considerable lack of information and statistical data on the nature, extent and causes of

child abuse and neglect, as well as sexual exploitation and abuse in Samoa.

Currently, the Ministry of Justice and Courts Administration (**MJCA**) and Ministry of Police collect data on family violence which has assisted to inform reports and policies. Generally, there is still a lack of a centralised system and that data is not disaggregated to allow for better targeting of assistance.¹¹⁸ The government of Samoa does not appear to make information regarding its criminal law enforcement activities available to the public.

In 2007, the Child Protection Information System (**CPIS**) was developed as part of a regional programme. However, several challenges have been reported since the CPIS' development which hinder data collection efforts regarding child protection.¹¹⁹

The collection and dissemination of data on child protection in Samoa must be enhanced in order to inform policy and interventions, as well as made publicly available in order to increase public awareness. All institutions dealing with reports of CSEA should record and report disaggregated data in relation to reports received and actions taken.

Prevention

Register of Offenders

Under the Sex Offenders Registration Act 2017 (**SORA**), Samoa does have a sex offenders register that tracks and monitors convicted sex offenders following their release from prison.¹²⁰

Under Section 44 of SORA, a registered sex offender who applies for, or who is in any way engaged in, employment that is child-related, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units (a system used in Samoa for financial penalties, whereby a penalty unit has a designated monetary value) or to a term of imprisonment of up to two years.

Distribution of CSEA Content Online

A person convicted of publication, distribution or exhibition of indecent material of a child is liable upon conviction to an imprisonment term not exceeding seven years. Solicitation of children on the internet and other offensive behaviour associated with

electronic communication that is affecting children of this age, can be caught under the provisions dealing with harassment utilising means of electronic communication and solicitation of children under Sections 218 of the Crimes Act.

Research did not identify any specific education or social campaigns that address or raise awareness of online CSEA in Samoa.

Awareness & Education

According to the National Human Rights Institution, there is a significant absence of sexual education and healthy relationships in the school curriculum and a lack of guidance provided to teachers around gender and sexual violence.¹²¹ This reinforces gender stereotypes and increases vulnerability of children to sexual violence. Reportedly, the Government has recently started to review and strengthen sexual education in Samoa in order to address these concerns.¹²²

Following the introduction of the Family Safety Act in 2013, the Ministry for Justice and Courts Administration (**MJCA**) has carried out several awareness programmes on the laws relating to access to justice.¹²³ The R.E.A.C.H. initiative, developed by the MJCA, the European union and the UN Spotlight Initiative, was launched in 2020 to coordinate, plan and implement initiatives to prevent and respond to violence against women and girls, including domestic violence and intimate partner violence, by using national and sub national systems and institutions available.¹²⁴

According to the Government of Samoa in their report to the UN Committee on the Rights of the Child, the Child Protection Unit of the Ministry of Women, Community and Social Development has conducted Prevention of Sexual Violence Awareness programmes directed at children.¹²⁵ Between 2011–2014, a total of 2,617 children participated in these programmes. However, it is unclear whether these awareness initiatives have continued in recent years.

Recent developments have made it clear that the Government of Samoa is prioritising addressing familial violence, including CSEA, through education and awareness initiatives in villages. In 2020, the National Human Rights Institution of Samoa released a report on the Pilot of the Village Family Safety Committee Project, launched following the

recommendation of the National Inquiry into Family Violence in Samoa.¹²⁶ A significant part of the pilot project involved exploring and challenging the established patriarchal, societal norms which result in familial violence, including CSEA, being regarded as inevitable and significantly underreported.¹²⁷ Further behavioural change and educational programmes were recommended to be implemented as a conclusion of the report's findings.¹²⁸

Recommendations

There are several steps which should be taken as a matter of priority to help combat the sexual exploitation and abuse of children in Samoa, including:

Legal

- Actively progress the finalisation and implementation of the Child Care and Protection Bill 2013 into law.

- Amend the Crimes Act to provide for better protection of all children under the age of 18 years. An important starting point would be to extend current CSEA protections to all children between the ages of 16 and 18.

- Amend the legislation of Samoa so that it fully aligns with the Lanzarote Convention, particularly Sections 3, 21, 22, 26, 27 and 28.

- Criminalise the intentional causing, for sexual purposes, of a child who has not reached the age of maturity to witness sexual abuse or sexual activities, even without having to participate.

- Properly define unlawful sexual activity involving children, including the removal or clear definition of the term 'indecent', provide the same level of protection to male children as females by decriminalising homosexual activity and remove the gender-specific definition of rape.

- Protect children from CSEA offences in the context to child marriage by raising the legal age of marriage for girls to 18, and removing the defence that the offender and the survivor were married at the time of the offence.

- Impose civil or criminal liability on legal entities for trafficking offences.

- Extend extraterritorial jurisdiction to all CSEA offences that are committed by residents or citizens of Samoa overseas.

- Amend the relevant provision of the Proceeds of Crime Act 2007 to allow the use of proceeds or part of the proceeds of trafficking forfeited, to be used to support trafficking survivors.

- Accede to and promote bilateral and multilateral measures to protect the child from sexual abuse and sexual exploitation. This will guarantee the effective enforcement of the extraterritorial application of Samoan criminal laws through international cooperation.

- Increase sentences applied to CSEA offences to reflect the seriousness of these crimes.

Prosecution

- Address the reluctance of survivors to report CSEA offences and pursue a case in the criminal justice system, through increased resourcing, de-stigmatisation programmes, community-led initiatives, and regular behavioural change training of police and criminal justice personnel.

- Improve the delivery of child friendly justice, including the provision screens to all courts, and gradual expansion of audio-video equipment to facilitate remote testimony of children, the implementation of training to limit risks of re-traumatisation for CSEA survivors and policy of closed courts to protect the anonymity of survivors.

Protection

- Deliver the objectives as outlined in the National Child Care and Protection Policy and Action Plan (2020–2030).

- More coordination and resourcing is needed, as is expertise and appropriate training of local law enforcement and child protection professionals.

- NGOs must be supported by the government in delivering services which support and protect survivors of CSEA.

- Provide protection, rehabilitation and support services to all survivors of CSEA, regardless of nationality and agreement to appear as witnesses in any criminal proceedings.

— Protections and policies must be introduced specifically directed at supporting and assisting children who have been trafficked.

— Comprehensive mechanisms for reporting, referral and case management of suspected cases of CSEA must be put in place.

— The capacity of counselling services for CSEA survivors should be improved with government support.

— Specific reporting avenues should be introduced for CSEA offences, as well as public-facing campaigns to raise awareness of the help available to children.

— The protection of children from harm, including CSEA and trafficking, must be integrated into disaster risk management and response.

— Promote the registration of all children at birth in order to increase access to justice as the law does not currently allow for the presumption that a survivor is a child.

— The protection of children who are adopted should be improved, particularly for overseas adoptions and children with disabilities.

— Develop a comprehensive information management system on child protection.

Prevention

— Awareness-raising activities should be conducted in schools and communities, including rural,

vulnerable and impoverished areas, to inform children and adults about criminal networks, traffickers, smugglers, suspicious charity organisations and other actors who may seek to lure children into commercial sexual exploitation and trafficking.

— Considering the dependency on tourism in Samoa, the government must fully consider the risks of the sexual exploitation of children in travel and tourism (SECTT) and take action to prevent it, as well as other forms of CSEA which fall outside familial abuse and domestic violence.

— Awareness-raising activities and training delivered must cover information on online grooming and CSEA online.

— Ensure access to age-appropriate education on sexual and reproductive health, including as part of the school curriculum, for children of all genders.

Cultural/Education

— Culturally relevant education programmes should be continuously implemented directly within communities to develop a greater understanding of CSEA offences, their impact on children and families and increase community trust in the formal criminal justice system.

— Patriarchal, societal norms which increase incidences of familial violence, including CSEA, must continue to be addressed through education and awareness initiatives.



SPOTLIGHT

The importance of strengthening child protection systems to deliver better outcomes for children

Margaret Banjo
 Child Protection Specialist,
 The UK Committee for UNICEF
 (UNICEF UK)

In 2015 the UK passed the Modern Slavery Act. This was a significant moment in bringing issues of child trafficking, exploitation, and abuse to the public consciousness.

Many child protection specialists who work in resource mobilisation and fundraising can relate to the feedback from funding calls stating a proposal has been unsuccessful because, “the protection issue was not relatable”, or “too sensitive, so people could not engage”, or indeed simply “too technical”. This legislation and others like it provided opportunities to engage with different audiences, including the private sector, on these sensitive topics. It is worth noting this perception of protection issues even affects how we understand the prevalence of Child Sexual Exploitation and Abuse. As noted in the UNICEF (2020)³¹² Evidence Review, in countries including Finland, Germany, Cambodia, Haiti, Kenya, Malawi, Eswatini, Tanzania and Zimbabwe, the number of victims that access services or tell authorities about their abuse is significantly less than those that self-reported in a survey of their abuse.

Specifically in the area of resource mobilisation and UNICEF UK’s relationship with the private sector, the addition of a supply chain clause which stated that businesses with an annual turnover of 36m GBP should demonstrate the steps they have taken to prevent modern slavery meant that there was an even clearer reason why it is important to partner with the private sector.

UNICEF’s work in protecting children against violence, exploitation and abuse is central to its mandate. In the 2022–2025 strategy³¹³, UNICEF continues to prioritise CSEA under Goal Area 3 (Protection for Every Child).

This strategic goal relevantly includes an output indicator which will track the number of countries with a legislative and policy framework to end child sexual exploitation and abuse (including technology-enabled). Work in this area is not limited to legislation, as UNICEF knows we must strengthen the child protection system to address risks and drivers that leave children vulnerable to CSEA. Supporting this are the findings from WHO³¹⁴ that looked at the individual, societal and structural drivers and risks to CSEA. For example, WHO stated that simply addressing legislation to reduce adolescents’ access to alcohol may mitigate risks of abuse at the individual level, but these measures would not be adequate to address risks and drivers to CSEA stemming from structural issues such as inadequate police protection or indeed social norms that justify victim-blaming. We need to address the whole system.

Systems’ Strengthening

*A child protection system is generally agreed to be comprised of the following components: human resources, finance, laws and policies, governance, monitoring and data collection, protection and response services, and care management. It also includes different actors: children, families, communities, those working at sub-national or national level, and those working internationally. It is the outcomes of these interactions that comprise the system.*³¹⁵

...ensuring every child is protected from violence and exploitation.

When designing a programme, it goes without saying that everyone who comes to the table wants to see better outcomes for children! We also all come with our expectations of the task at hand, the ping-pong of emails and back-to-back Zoom calls that underscore the urgency and tenacity of all involved to get to a programme that delivers these outcomes. For the reasons explained above, my expectation, or rather my ideal goal, is for funding to be unrestricted and able to be flexibly allocated to all the elements of Child Protection Systems' Strengthening (CPSS³¹⁶), as the context requires.

The balance that often needs to be struck is how far to advocate for CPSS over the immediate benefits of issue-specific programming. In issue-specific programming, outcomes may not be designed to strengthen all the elements that work together to bring about a comprehensive protection response. This type of programming does however lend itself to human interest stories, with more "tangible" results.

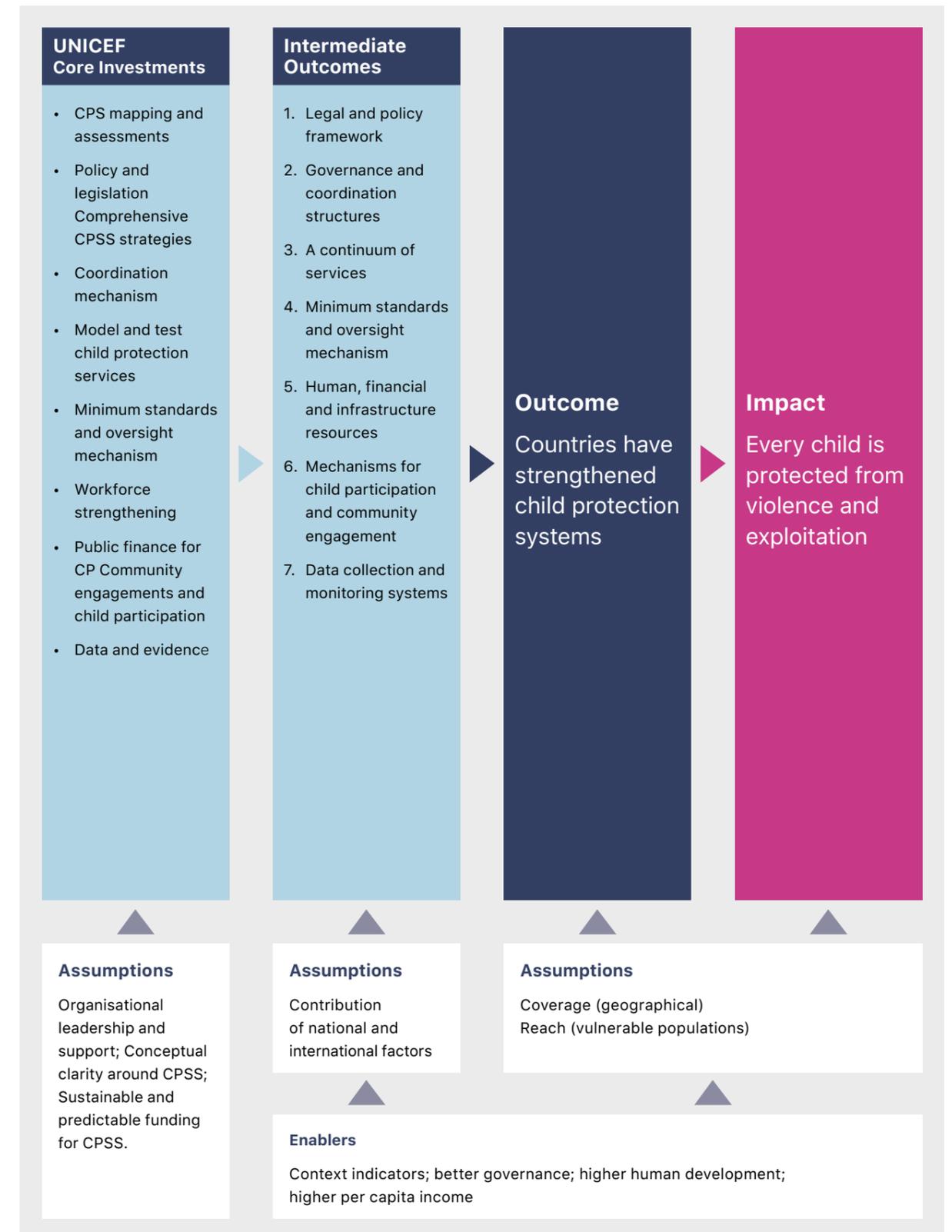
Unlike the components of the CPSS programme, an issue-specific programme for trafficking might limit its remit to addressing societal norms and stigma that support the abuse of children or working only with girls at risk of trafficking through life skills programmes for the next three years. Positively, we might be able to point to a specific result affecting children directly within the bounds of issue-based programming; however, if we take a systems lens to the same protection issues, we then start to notice some of the gaps that the "focused" and "tangible" programmes have overlooked.

For example, a prevention programme focusing only on girls at risk of trafficking through life skills may overlook other protection issues affecting children in the same communities or may run parallel to other similar initiatives. We might also start to notice a lack of data that is critical in understanding the impact and the prevalence of other issues, or even weak governance systems that risk undoing the outcomes from issue-specific programming.

We must work within the bounds of our ethics to safeguard the dignity of the children we work to protect.

Admittedly, adding the dimension of CPSS compounds the already-existing funding challenges. CPSS can run counter to dominant paradigms and relationships. The complex dynamics among the public, researchers, programme implementers, funders and political actors pose many challenges to the systems perspective³¹⁷. A case in point is the feasibility of building a community of practice in International Development whilst working within a competitive funding model.

Despite this, UNICEF made the strategic shift to systems' strengthening as an approach to child protection over ten years ago. In prioritising this approach, UNICEF recognised the efficient way in which we would be able to respond, and how our response would be more comprehensive. This would allow us to work on interconnected issues which affect children. By adopting the CPSS approach, we are better able to influence policies, governance structures, and advocate for more holistic budgets that contribute to positive outcomes for children. This shift is now largely embraced by the wider child protection sector, and this investment in CPSS and its gains are also now much better understood by those that may focus on single protection issues. In its latest Global Threat Assessment (2021³¹⁸), WeProtect make the key recommendation that to address the threat to children online, we must invest in child protection systems. Thus, in the 2021–2030 child protection strategy, the UNICEF approach to Child Protection Systems' Strengthening is as follows, with the intended impact of ensuring every child is protected from violence and exploitation.



We must strengthen the child protection system to address risks and drivers that leave children vulnerable to CSEA.

Funding Environment

As we champion Child Protection Systems' Strengthening, there is also an appreciation that the funding environment is constantly changing and flexible funding streams which allow for a systems approach might not always be in reach for funding partners.

At UNICEF UK, our funding partners come in the form of foundations, philanthropists, corporations based in the UK and governments. Our supporters also include individuals who give directly or support us through regular and issue-specific campaigns like Soccer Aid and Save Generation Covid. In 2020, UNICEF UK raised 109.4m GBP for children which was a 7% increase on the year before³¹⁹.

Each funder has different needs and expectations from their stakeholders. For example, multilateral donors like governments have taxpayer accountability at the core of their mandate, so we as delivery partners must adhere to and demonstrate our commitment to value for money principles³²⁰. For private philanthropists, these may want more human-interest stories or have a specific cause they would like to address, and as such relate more closely to certain places and people. These all matter in what type of programme takes shape or indeed if the proposal is successful at all.

The technical nature of Child Protection programming, and the extent to which some protection issues might be unrelatable, makes it harder to mobilise resources. Consequently, relaying stories within the ethical framework means that those decision-makers who we need to motivate will rarely, if ever, hear the full story.

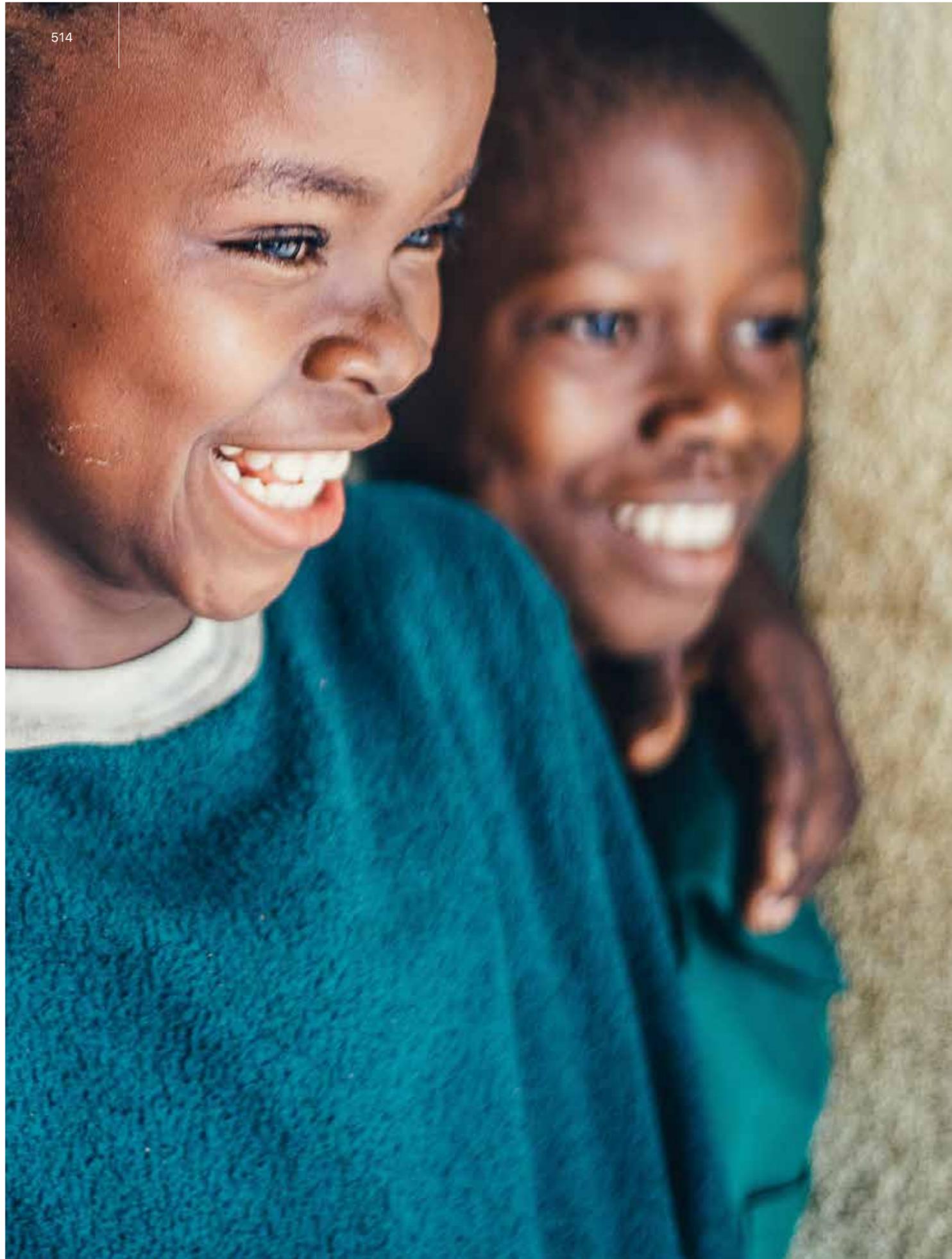
So, is it either or?

In evaluating the design of programmes, UNICEF 2021³²¹ acknowledges that CPSS provides challenges in mobilising resources on account of the limited demonstrable evidence, and as such notes the advantages of issue-specific programmes bringing people to the table. When successfully funded, issue-specific programmes can be used as a gateway CPSS programmes. In its 2021 evaluation, UNICEF also notes the fragmented nature and disjointed outcomes of issue-specific programming, and states that these two approaches should complement each other.

In unpacking this further and whilst addressing specific protection issues that are causing significant concerns, the paper stresses that the child protection system can be strengthened. Conversely, when systems work, they too can deal with specific protection issues. As such, a UNICEF 2008 evaluation found that an approach that leverages the gains made from issue-based programming were central to advocating for systems' strengthening.

When working directly with account managers (those managing relationships with funding partners), prospecting conversations and programme design processes should set the expectation that a mature programme will require us to address all components of CPSS. It is reasonable to say that early partnerships can focus on issue-specific characteristics and as they mature, address the entirety of CPSS elements.

How the programme is communicated is an integral part of influencing the nature of partnerships. Here we must work within the bounds of our ethics to safeguard the dignity of the children we work to protect. And ultimately, to better protect children we must enhance the systems that serve them.



Conclusion

The sexual exploitation and abuse of children is a widespread and multi-faceted world-wide issue. No Commonwealth country is immune to CSEA. The Covid-19 pandemic has made action on CSEA especially urgent, not only due to rising incidences but also in response to its changing nature and emerging forms as the continuum of online and offline child exploitation and abuse becomes more apparent. The consequences of the pandemic for children in the Commonwealth have been severe and long-lasting.

Whilst positive steps have been taken to address the issue across the Commonwealth, as evidenced throughout this report, it is clear that more can be done to protect children from these forms of violence. In many Commonwealth countries, millions of children do not have the full protection of the law against sexual exploitation and abuse, whether through limited definitions, the exclusion of boys, inadequate criminalisation, limitation periods and a lack of extraterritorial jurisdiction over CSEA offences. Children's access to justice is hampered by low enforcement and prosecution rates, societal stigma, under-reporting, a lack of child-friendly justice, and limited resources dedicated to protective services. More needs to be done to ensure that children feel they can come forward about their experiences, without fear of shame, societal stigma or unwanted repercussions.

To fulfil their commitments to international and regional human rights instruments, such as the UNCRC, Commonwealth member governments should consider working to implement this report's recommendations. Not only should legal change be brought about to better protect children from CSEA, but the improvement of enforcement, reporting, prosecution, protection and prevention are also key.

As an intergovernmental association of 54 nations, the Commonwealth should come together as a whole to prioritise and address CSEA, alongside other key stakeholders in child protection. Presently, children are not adequately represented in Commonwealth discussions and their safety from these forms of violence does not have a sufficient focus. Furthermore, the cross-border and transnational nature of many forms of CSEA, especially offences committed online, requires that Commonwealth governments and other child protection stakeholders collaborate and work alongside each other. As a global problem, CSEA requires international solutions.

Governments, Commonwealth-accredited organisations, civil society, parliamentarians, law enforcement and criminal justice professionals, social workers, and survivors all have significant parts to play. Together, we can build a Commonwealth where all children are protected from sexual exploitation and abuse.

Priority Recommendations

Legal

- The term “child” should be clearly and consistently defined across all legislation as a person under the age of 18.
- All forms of CSEA must be criminalised, including child sexual abuse, child sexual exploitation, child marriage and other harmful traditional practices such as female genital mutilation (FGM), online CSEA and the production, dissemination and possession of child sexual abuse material (CSAM), the livestreaming of online CSEA, the trafficking of children, grooming and sexual harassment, attempted CSEA, sexual exploitation in the context of travel and tourism and other emerging forms of CSEA.
- The “best interests of the child” principle should be enshrined in law and be of paramount importance in all decisions and matters affecting children, including the protection of children from CSEA.
- The protection of children from CSEA must not vary according to their gender. Boys must be afforded the same protections as girls and definitions of CSEA should be gender neutral. Survivors of abuse by offenders of the same sex must be able to come forward, and therefore homosexuality should not be criminalised. Gender-based violence and patriarchal and discriminatory social norms which make girls more susceptible to abuse must be addressed.
- Definitions of CSEA must be clear, and the terminology used to describe offences should not be moralistic or imply the consent of a child who is incapable of consenting to such acts. The terminology used must not serve to undermine the crimes committed or further victimise children. Terminology in legislation should comply with the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse.³²²
- Survivors and those reporting crimes should not be prosecuted for any crimes committed during the exploitation, such as immigration offences or charges related to prostitution.
- Commonwealth countries should consider acceding to the Council of Europe’s Lanzarote Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse.³²³ Countries should ensure that their domestic legislation aligns with all provisions of the Convention and strengthen legal and protective measures to address CSEA.
- Relevant regional and international instruments, including the Optional Protocol,³²⁴ the Palermo Protocol,³²⁵ the Budapest Convention,³²⁶ the African Charter on the Rights and Welfare of the Child,³²⁷ and others related to CSEA should be ratified and implemented in domestic law.
- Commonwealth governments can also join the Global Partnership to End Violence Against Children and the WeProtect Global Alliance, and scale up the implementation and enforcement of laws that prohibit all forms of violence against children, particularly online and technology-facilitated CSEA.
- The age of consent should be clearly defined for all children. It should be high enough to ensure that children are protected from abuse but low enough to avoid the over-criminalisation of children’s behaviour.
- Legislation and the judiciary should take into consideration the age difference and possible balance of power in determining the validity of consent where a child is under the age of consent. A close-in-age defence should be implemented into national legislation for sexual activity taking place between children, where the age gap between the children is no more than two, three or four years, depending on context.
- Sufficiently stringent penalties should be set out in the legislation for all forms of CSEA, including online CSEA, and should be handed down where appropriate to act as a deterrent to offenders and to ensure that survivors, their families and the community feel that justice has been served. Legislation should include aggravating circumstances that result in a more severe sentence, such as where the offender is a repeat offender, the survivor is a child with disabilities, or the offender has a position of authority or influence over the child.
- Where they still exist, limitation periods on the prosecution of sexual offences against children should be removed, so that survivors can report such offences when they feel ready to come forward, even if they are adults at the time of reporting.
- Legislation should provide the right for CSEA survivors to receive support in their recovery and rehabilitation, including access to re-integration services, and seek compensation in national courts from convicted offenders and through state-managed funds.
- Legislation should contain a presumption that the survivor is a child, so that survivors are not subjected to intrusive cross-examination regarding their appearance and the possibility of evidence being brought regarding prior sexual behaviour.
- No defence should be available to perpetrators that they believed (whether reasonably or not) the survivor to be over the age of consent, nor should it be a defence that the offender was married to the child at the time of the abuse.
- Extraterritorial jurisdiction must be applied to all CSEA offences, covering both foreign children and offenders resident in the jurisdiction, with no condition of double criminality.
- CSEA offences should be listed as extraditable offences. The extradition of CSEA offenders should not depend on political will and diplomatic relations, but should be rigorously and uniformly applied.

Prosecution

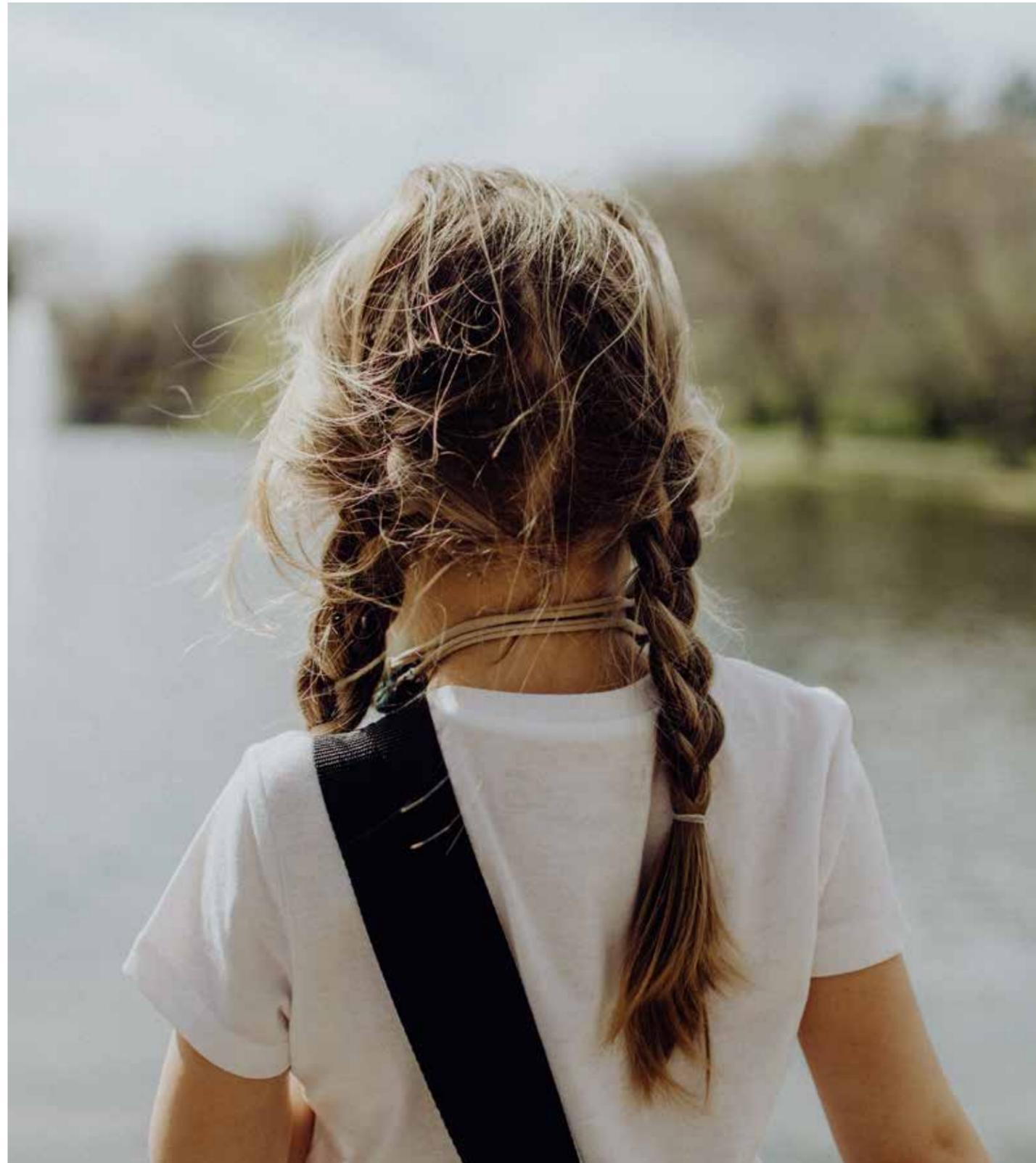
- Children who are brave enough to report offences should be taken seriously and the allegations investigated thoroughly by law enforcement. Negative attitudes held by law enforcement should be addressed through sensitivity training. Child-friendly interviewing practices must be implemented to mitigate the risks of re-traumatisation.
- Interdisciplinary collaboration and information-sharing must take place between law enforcement, the judiciary, mental health and healthcare professionals, and social workers to improve the investigation and prosecution rates of CSEA offences, as well as support survivors interacting with the criminal justice system.
- The continuous development of skills and training should be provided to the relevant stakeholders in the Criminal Justice Sector, such as the police, judiciary, child counsellors and other stakeholders, which emphasises the best interests of the child.
- Delays in court proceedings, which often act either as a deterrent to reporting or lead to charges being dropped, should be mitigated by creating specialised child-friendly courts where they do not exist, ensuring that all cases involving children are tried in an appropriate forum, and dedicating resources to improving the delivery of child-friendly justice in CSEA cases.
- 24/7 reporting mechanisms (e.g. hotlines) should be established for children and those who suspect CSEA is taking place to report CSEA confidentially to trained social workers who are able to refer such reports to the police should the child wish to make a report. The availability of these hotlines should be widely publicised, including in schools. The hotline should also be able to arrange any practical assistance the child may need, including safe transport to a police station or a child-friendly temporary place of shelter.
- Clear and comprehensive procedures should be introduced regarding obtaining video evidence and presenting such evidence in court, as well as other measures to avoid children having to come into contact with perpetrators and risk re-traumatisation. Measures should also be adopted to ensure the anonymity and confidentiality of survivors from initial reporting up until and after they reach majority.
- Children's testimony should be accepted as evidence without the need for corroboration, and children should be supported in providing evidence. Justice systems need to address the use of unfair tactics and traumatising cross-examination techniques that seek to undermine the credibility of the child's testimony in CSEA cases.
- Countries should invest in developing the use of forensic evidence, including DNA, to support prosecutions of CSEA offences, with the understanding that this is not a prerequisite for a successful conviction.
- Information-sharing should take place between countries with successful evidence collection techniques and those with insufficient evidence-gathering to improve investigation and prosecution techniques.
- Local, regional and international cooperation should be bolstered to prevent and counteract CSEA, especially with countries-of-origin of child trafficking survivors, as well as cross-border FGM and child marriage survivors.

Protection

- The protection of children from CSEA should be of critical importance to governments in the Commonwealth. There is a need for increased political will to tackle CSEA and related issues.
- The collection, disaggregation and dissemination of data on CSEA and related issues is a priority. Governments should therefore establish rigorous reporting and data collection mechanisms, as well as analyse risks posed to children, in order to inform child protection policy and practice.
- Governments should dedicate more financial and human resources to addressing CSEA, as well as seek foreign aid for CSEA with appropriate controls in place to ensure that funds are used as intended.
- Government departments and agencies, healthcare and social workers, civil society, the private sector, and faith and community organisations all have a role to play in protecting children, and must work together to ensure no child is left behind. Financial and human resources, including training and skills' development, should be provided to such actors to support the delivery of their work.
- Child protection stakeholders, including those in law enforcement and the judiciary, must work to address all forms of CSEA, including familial sexual abuse, organised abuse, and sexual abuse and exploitation resulting from traditional or cultural practices, such as FGM and child marriage.
- Governments should adopt and implement national child protection policies to serve as a yardstick against which to measure child protection efforts, with such policies being regularly updated to reflect new trends and forms of CSEA, including online, and novel methods of protecting children. In developing such policies, key child protection stakeholders must be consulted.
- Protection measures must be established for CSEA survivors to ensure their safety from the offender throughout reporting, prosecution, recovery and reintegration.
- Specialist, effective and affordable mental healthcare should be provided to survivors and their families, as well as measures to address other common psychosocial needs, including temporary housing where appropriate. Access to free or subsidised mental healthcare should be offered within vulnerable communities with high incidences of CSEA, to both child and adult survivors, to try to break the cycle of abuse.
- Mandatory reporting laws should be enacted, directed at anyone who has a reasonable suspicion of CSEA, including parents/caregivers and frontline professionals who work with children, such as healthcare workers and teachers, with adequate penalties imposed for those who fail to report.
- The protection of children from harm, including CSEA and trafficking, should be integrated into disaster risk management and response. Countries should have a disaster management law in place that includes child protection, as well as policies that address the risks faced by children during disasters.

Prevention

- Countries should extend preventive or rehabilitative support to those at risk of committing CSEA, including early intervention, confidential counselling and treatment.
- Where one does not exist, a coordinated National Sex Offender Register should be developed and introduced, with data accessible by law enforcement, employers, members of the public and Interpol. Information should be shared internationally and regionally, with coordination between government agencies and overseas partners.
- Measures should be put in place, including background checks for employment, to limit CSEA offenders' contact with children. Travel restrictions should also be applied to CSEA offenders to mitigate the risks of them abusing and exploiting children when overseas.
- Governments should enact legislation ensuring that social media platforms, technology companies and internet service providers are proactive in regulating the sharing of child sexual abuse material (CSAM) content and preventing CSEA online. Such actors should be obliged to provide this information to law enforcement and child protection agencies.
- Police task forces should be created and initially staffed with specialists in online forensics who are able to infiltrate CSEA networks on the dark web and gather evidence to support prosecutions. In turn, specialists should deliver training to investigators to empower them to undertake detailed investigations of online CSEA without their assistance in the future.
- Greater international cooperation should take place between national police forces and Interpol in order to disrupt online CSEA and CSAM networks operating across borders and globally.
- Online safety agencies need to proactively monitor and seek the removal of CSAM where it has been detected to support to CSAM abuse survivors. The ongoing circulation of this content directly undermines their safety.



Cultural/Education

- The root causes and risk factors of CSEA and their interrelated nature need to be better understood and addressed. These include poverty, limited education (particularly for girls), access to mental healthcare, harmful cultural or religious beliefs, and vulnerabilities and barriers to help for children with disabilities, and those from marginalised communities and ethnic minorities.
- The voices of survivors must be amplified in all efforts to raise awareness and educate about CSEA and its devastating impact on lives.
- All children should be provided with age-appropriate, comprehensive sexuality education, including training on boundaries and how to tell someone about abuse or feelings of unease, even if the perpetrator is someone they know or who asks the child to keep it a secret. A safe environment should be created to allow children to disclose CSEA without fear of what might happen.
- Educational initiatives should be implemented to increase the awareness of parents/caregivers of children's rights. This should include how to recognise CSEA, the risks posed to children's safety online and protective steps to take, how to report a suspected case, and the support available for survivors and their families.
- Community sensitisation and awareness campaigns, utilising materials and methods appropriate to the community, should address negative cultural and social norms and the paramount importance of children's rights, regardless of gender and certain cultural or religious traditions. Trusted community and religious leaders should engage with communities, particularly those located in remote or rural areas who otherwise lack access to information and services. Such campaigns should also focus on the forms of CSEA most prevalent in the country as well as emerging forms of CSEA. They should encourage families and communities to have open and frank discussions about CSEA in order to address stigmatisation, identify incidences of CSEA, and increase reporting.

Endnotes



Endnotes

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