

Sexual Exploitation of Children in Africa:

*Background Paper Prepared on Legal Frameworks and Law
Enforcement for the African Technical Preparation Meeting for
the World Congress III Against Sexual Exploitation of Children
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EXECUTIVE SUMMARY

After the first and second World Congress on the Commercial Sexual Exploitation of Children, African governments committed to take steps to prevent and protect children against sexual exploitation. The promotion of the rights of the child and the protection from all forms of sexual exploitation are central to the aims of the World Congress meetings on the Sexual Exploitation of Children. Tackling the problem of sexual exploitation is, however, not only a policy commitment but also a legal obligation. The absence of legal instruments consistent with international conventions and the extent to which they are observed in practice is an important area of concern in the area of children's rights in Africa. A clear understanding of the nature of the problem across Africa is needed in order to tackle the issue and, monitor the progress towards eradicating child sexual exploitation based on a real understanding of the size and intensity of the problem.

In preparation for the World Congress III against Sexual Exploitation of Children and Adolescents in Rio, Brazil in November 2008, this paper aims to engender debate on the current international, regional and national legislative frameworks on children in the context of sexual exploitation and their effective implementation. The paper also intends to provide a baseline of information on actions taken and remaining gaps for addressing sexual exploitation on the continent, based on international and regional frameworks on children to enable more systematic assessment of the progress on implementation and commitment.

The paper builds on a study conducted by the African Child Policy Forum (ACPF), which reviewed the *Harmonisation of laws in Nineteen Eastern and Southern African Countries*. In order to provide a more continental wide view of the situation of sexual exploitation of children in Africa, the paper examined the legislative frameworks in an additional nine North, Central and West African countries. The research conducted was a desk-based review which analyzed primary sources namely: treaties, conventions, charters and national laws on children. Where primary data was unavailable, a review of secondary data from government websites and organizations working in the area of sexual exploitation was conducted.

The findings show that the African Governments have shown considerable commitment to address the commercial sexual exploitation of children. However, despite the elaboration of important international, regional and national legal instruments, children in Africa still lack the power and support structures that enable them to effectively defend themselves against sexual exploitation. The review of national legal frameworks on CSEC found many African countries had laws to protect



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children from forms of abuse and exploitation, such as sexual abuse, exploitation and trafficking. Some protective measures were found in constitutions, others within child-specific legislation and others within the criminal law. Nonetheless, these legal instruments were insufficient in protecting children against sexual abuse due to a complex patchwork of laws on children, lack of an overarching definition of a child, poor implementation including lack of treatment and rehabilitation for survivors, inadequate access to child friendly procedures at police stations and courts and ineffective sanctions for perpetrators. Moreover, most countries have no specific laws that prohibit child trafficking, child pornography and child prostitution. The paper suggests recommended actions to be taken at the national level to prevent and combat sexual exploitation of children.

SECTION I. OVERVIEW ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AFRICA

Since the First World Congress held in Stockholm in 1996, the term commercial sexual exploitation has generated much debate. Among the different forms of sexual exploitation are child pornography and child prostitution, as well as the different methods used, such as the trafficking of minors for sexual purposes and commercial sexual tourism. Other avenues for sexual exploitation include forced early marriage. In relation to 'child prostitution' the term 'sexual exploitation' is used where possible. Exploitation emphasizes that the problem is what is done to the child rather than what the child does; child prostitution implies that children have choice and control, which is rarely the case. Sexual exploitation damages, demeans and on many occasions puts the lives of the child and adolescent victims in serious risk, and has extreme negative repercussions for the development of the child.

Data on the extent of child exploitation can only be estimates. Abuse is almost invariably covert and so compiling accurate figures is nearly impossible. According to the United Nations (UN), the number of children trafficked annually internally and externally in Africa is around 1.2 million. A clear understanding of the nature of the problem across Africa is needed in order to tackle the issue and, based on a real understanding of the size of the problem, monitor the progress towards eradicating child sexual exploitation.

It is important to recognize the various push-pull factors that precipitate child involvement in commercial sexual exploitation. Firstly there is demand. Amidst growing consumerism both in developed and developing countries, children are at risk of being seen as just another commodity to be bought and sold. The growth of the pornography industry including, most recently, on the internet has led to increased tolerance of and demand for sexual images including those of children. Secondly there is supply. The availability of children for sex work is directly related to family poverty. There may be few alternative sources of income. Poverty is the most frequent explanation cited but poverty alone does not account for the large number of children recruited into the sex industry.

Other powerful explanations of the commercial sexual exploitation of children (CSEC) include paedophilia, ease of access, relaxed legal enforcement environments, debt bondage, inter-generational prostitution, and the high remittances received by child sending/sex tourist-receiving countries. Other explanations which have been less fully studied include community disintegration, social and cultural

devaluation of children, and international crime organizations with trans-national transportation and financial capabilities.

The processes whereby children are "recruited" into sexual exploitation are varied and are complex. They nearly always involve adult accomplices — including parents and older siblings. Others are recruited into "sex work" through forced abduction, by pressure from their parents, and through deceptive agreements between parents and traffickers, including unrecognized representatives of crime rings. Once recruited, these children typically are taken or travel to "work sites" located great distances from their place of origin. Isolation from their families and friends is the norm. Few are able to establish new relationships with persons other than those who are "managing" their victimization. Violence, forced drug use and threats to the point of death are only part of the daily abuse to which the majority of these children and youth are subjected. The following highlights some of the key underlying causes of sexual exploitation of children in Africa.

The United Nations Convention on the Rights of the Child (UNCRC) and African Charter on the Rights and Welfare of the Child (ACRWC) challenge the customarily 'unquestionable' control parents exert over their children and the traditional practices within families that harm children like early marriage. In many cases, laws that prohibit early marriage have faced strong resistance from cultural and religious groups and child marriage continues to be an issue in a number of African countries. Reasons behind child marriage are varied, but research by UNICEF (2006) found that "Parents may consent to child marriages out of economic necessity, or because they believe marriage will protect girls from sexual assault and pregnancy outside marriage, extend girls' childbearing years or ensure obedience to their husband's household". They also found that "Girls under 15 are five times more likely to die during pregnancy and childbirth than women in their twenties. Furthermore, if a mother is under 18, her baby's chance of dying in the first year of life is 60 per cent greater than that of a baby born to a mother older than 19." (UNICEF 2006)

Most domestic workers are girls who come from very poor families. Abuses committed by employers and labour agents include physical, psychological, and sexual abuse; forced confinement in the workplace; non-payment of wages; and, excessively long working hours with no rest days. In the worst situations, women and girls are trapped in situations of forced labour or have been trafficked into forced domestic work in conditions akin to slavery. Domestic workers are at risk because of

isolation in the household; living conditions that compromise their privacy; and lack of conditions that would ensure their personal security. (Human Rights Watch 2006)

The following illustrates the link between commercial sexual exploitation (CSE) and child domestic work:

As some form of transaction has most likely taken place in order to employ the child (either financially or in-kind), the child is often treated as the 'property' of the employer and seen more as a 'commercial object'. Child domestic workers are thus at high risk of sexual abuse; they are particularly vulnerable to sexual harassment and sexual violence from men and boys living in or associated with the household: relatives, neighbours and even the spouse of their employer. (ECPAT International 2007)

"My parents gave me away in marriage when I was 13 years old and since my marriage was unhappy I ran away from Lay Gaint to Gondar after suffering for three years and I got employed as a maid. After working for two years and seven months, I experienced an incident that spoiled my whole life. The son of the owner raped me when there was no one at home to rescue me ..."

Quote from a case handled by the Children's Legal Protection Centre of ACPF (2007)

Furthermore, HIV/AIDS is both a cause of and a contributing factor in the sexual exploitation of children. Children engaged in prostitution are more at risk of sexually transmitted diseases and HIV infection, as protection is rarely provided and daily survival a more pressing concern. (ECPAT International 2007) In the vicious cycle, children and the parents infected by HIV are often stigmatised against, leading to further vulnerability to CSEC as a means to support themselves and/or their family.

Orphaned children are much more likely than non-orphans to be working in commercial agriculture, domestic service, commercial sex and as street vendors. (Semikwa, et al. 2003) Orphans are more at risk of entering prostitution than children with parents. A 2002 rapid assessment in Addis Ababa, Ethiopia showed that more than three quarters of the domestic workers were orphans. (Kifle 2001) A rapid assessment in Zambia in 2002 found the average age of children engaged in prostitution was 15; 47 per cent were double orphans and 24 per cent single orphans.

Children who live on the streets are vulnerable to commercial exploitation as a means of survival. They are also vulnerable to pimps and traffickers. It is estimated that 32 million children are living on



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the streets across Africa. (UNEP and UNESCO) Girls are often at increased risk from living on the streets, and have been found to even disguise themselves as males to avoid confrontation and harassment. (WHO 2002)

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000 does not expressly discuss the sexual exploitation of children but does prohibit the compulsory recruitment into armed forces for all those under 18. Women and children have been conscripted as ‘sex slaves’ and forced to provide sexual services to armed forces. (UNICEF) 2006 Many women also become the victims of sexual attacks during armed conflicts, where rape and exploitation are used as weapons of war.

Children who are sexually abused suffer from physical, developmental and emotional problems. They are also prone to sexually transmitted diseases including HIV/AIDS. They may be subject to violence inflicted by ‘customers’ and those who exploit them (‘pimps’). They may get pregnant, already have a child when they themselves are children or they may be coerced into having an abortion to maximize their availability to make profit. Educational opportunities are often denied to them. Similarly, ‘pimps’ may prevent children seeking healthcare because of cost and the risk of being prosecuted. Many have retained or adopted societal views of themselves as immoral and corrupting, and somehow to blame for the situation. They have internalized the stigma associated with their involvement. These injuries remain with the children throughout adolescence and adulthood.

SECTION II. THE STATE OF LAW ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AFRICA

A. AFRICA’S INTERNATIONAL AND REGIONAL COMMITMENTS

African governments have made a number of commitments to protect the rights of children from sexual exploitation. At the international level, there has been a growing recognition and emphasis amongst governments of the importance of children’s rights and the call for more effective implementation of international legal instruments on children. International and regional instruments on children must be translated into national legislation, policies and programmes in order to have value and adequately protect children from sexual exploitation. Sexual exploitation of children is the focus of a number of international laws and treaties. Chart 1, below, shows ratification by African Countries of some key legal instruments.

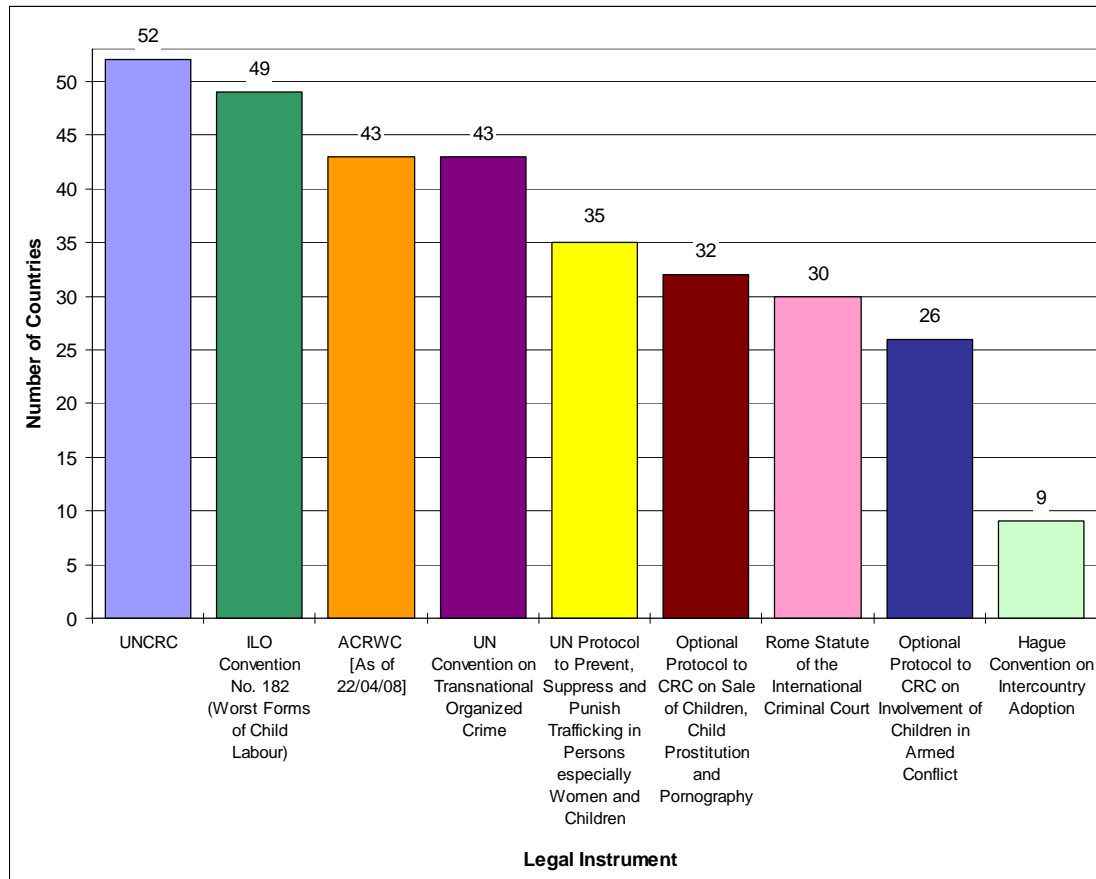


Chart 1. Ratification/Accession of some key Legal Instruments by 53 African Countries.

International Instruments

The United Nations Convention on the Rights of the Child (UNCRC) (1989)

- Article 34 of the Convention calls for inter-disciplinary measures aimed at preventing the inducement or coercion of a child to engage in unlawful sexual activity, the exploitative use of children in prostitution and/or other forms of unlawful sexual practices, the exploitative use of children in pornographic performances and materials.
- Article 35 of the Convention also calls for a variety of measures to prevent the abduction of, the sale of or traffic in children for any purpose or any form.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)

- The *Trafficking Protocol* supplements the *UN Convention against Transitional Organized Crime* and is the first universal instrument to address all aspects of human trafficking.
- The Trafficking Protocol (sometimes referred to as the *Palermo Protocol*) defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.
- In addition, the Protocol mandates States to provide physical, psychological and social recovery of child victims of trafficking. State parties are also mandated to establish comprehensive policies that prevent children from re-victimization.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)

- The Optional Protocol requires States to criminalize the sale of children, prostitution and trafficking.
- The Optional Protocol requires States to ensure jurisdiction over the offences; provide for the extradition of offenders; encourage international cooperation between states to pursue offenders; and provide support to child survivors of sexual exploitation.

The International Labour Organization Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)

- The ILO Convention 182 prohibits the sale and trafficking of children, the use, procuring or offering of a child for prostitution, the production of pornographic materials or for pornographic performances, and any work which is likely to harm the health, safety or morals of a child. It also emphasizes education as a preventative measure and as a means of reintegration.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (2000)

- Articles 2 and 4 of the Protocol prohibit the compulsory recruitment into the armed forces of all those under the age of 18, including those recruited into the armed forces or militia for the purpose of sexual exploitation.

Regional Commitments

The African Charter on the Rights and Welfare of the Child (ACRWC) (1999)

- Article 27 of the Charter mandates State parties to undertake measures to protect the child from all forms of sexual exploitation and abuse.
- State parties are required to take all appropriate measures to prevent the abduction, the sale of, or traffic in children for any purpose in any form, by any person including parents and legal guardians of the child.

The Declaration of the Arab-African Forum against Sexual Exploitation of Children (2001)

The Arab-African Forum against the Sexual Exploitation of Children was held in Rabat Morocco, from 24 to 26 October 2001 to prepare for the effective participation of the Arab African region at the 2nd World Conference against Commercial Sexual Exploitation of Children in Yokohama, Japan.

The **Declaration of the Arab-African Forum against Sexual Exploitation of Children** urges countries:

- (i) to ratify and implement international legal instruments on the CSEC;
- (ii) harmonize national legal instruments with the provisions of the UNCRC and ensure their enforcement;
- (iii) adopt legal provisions to protect children from sex tourism;

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- (iv) devise national programmes and projects of prevention, capacity building through integrated multi disciplinary training, and detection and treatment of any form of physical and sexual abuse of children;
- (v) encourage and support the creation of national and regional observatories to combat the sexual exploitation of children;
- (vi) involve travel agencies and tourism ministries of various countries in programs that combat the sexual exploitation of children;
- (vii) strengthening security services at borders;
- (viii) introduce mechanisms for the collection of qualitative and quantitative data and recording of CSEC;
- (ix) strengthening inter-ministerial coordination within the framework of an adequate response to the complex character of sexual exploitation of children; and,
- (x) allocate human and financial resources to national programs for combating the sexual exploitation of children.

Other commitments and declarations have been adopted by regional bodies such as Economic Commission for West African States (ECOWAS), Economic Community for Central African States (ECCAS), Middle East and North Africa (MENA), and the Southern Africa Development Community (SADAC) in order to facilitate trans-national cooperation against the CSEC. These include:

- Lome Appeal on Trafficking in Children, 1999
- Abidjan Appeal on Trafficking in Children, 2000
- ECOWAS Declaration and Plan of Action against Trafficking in Persons, 2001
- The Southern African Regional Network against Trafficking and Abuse of Children (SANTAC), 2002
- The Southern African Counter-Trafficking Assistance Programme (SACTAP)
- Libreville Declaration and Appeal to Harmonize National Legislation on Trafficking in Children in French- Speaking countries in West and Central Africa, 2003
- Cairo Declaration Regional Consultation for the Middle East and North Africa (MENA) on the UN Study on Violence against Children, 2005
- Multilateral Agreements between members of ECOWAS and the Economic ECCAS in order to Strengthen Cooperation on Anti-Trafficking Measures, 2006

The process of harmonisation is essential in order to ensure that governments have aligned national laws to reflect commitments made in international and regional instruments on children. (The ACPF 2007). Harmonisation aims to reduce the discrepancies between national legal systems and procedures

with international legal frameworks on children. (The ACPF 2007) There are different levels at which harmonisation can be achieved:

- (a) A broad review of existing policies and legislation and consolidation of laws relating to children into a single piece of legislation; or
- (b) Ad hoc amendments and/or formulation of laws relating to children targeting existing or new issues and leading to specific amendments or statutes on particular issues.

Harmonisation is an ongoing process that calls for constant review, monitoring and evaluation. African governments should continuously amend and adopt legislation that conforms fully with international instruments on children in the most user friendly and effective manner. (The ACPF 2007) However, harmonisation is not an end in itself, and the extent to which legislation has an effect on the lives of children depends on a conducive legal environment that is child friendly and sensitive to the needs of children.

B. SELECTED NATIONAL LEGAL FRAMEWORKS

Legislation and law enforcement play an integral role in the protection of children from commercial sexual exploitation. Child protection requires adequate laws, and a committed and sensitized police force and judiciary to implement them. In addition to good legislation that is properly enforced, the legal environment needs to be child friendly and sensitive to the needs of child victims of commercial sexual exploitation. The Agenda of Action against Commercial Sexual Exploitation of children provides a detailed framework and categories of action to be taken by governments in partnership with civil society organization for combating sexual crimes perpetrated on children. These include prevention mechanisms; protection within laws; recovery, rehabilitation and reintegration; and child participation.

There have been various national legislative reform efforts on the continent to address the sexual exploitation of children. In general, the countries studied have utilized several approaches in their law reform initiatives: **(i) enacting consolidated children's acts; (ii) amending the criminal law and revising the penal code; and (iii) enacting legislation which prohibits specific offences** and/or a combination of these approaches. However, the complex patchwork of existing legislation relating to children's rights poses significant barriers to the effective harmonisation of national laws with international norms and standards. This is further compounded by the pluralist nature of legal systems on the continent, where common and civil law coexist with customary and religious law.

In this Section, illustrative examples of national law reform efforts are highlighted:

(i) Enacting Consolidated Children’s Acts

South Africa’s Experience

The South African Law Commission began its process of harmonising national laws and practices with international norms some ten years ago. The process saw the vigorous participation of civil society in the reform effort. The efforts resulted in a consolidated children’s act with significantly enhanced protection for children. The Children’s Act of 2005:

- Defines child exploitation as the “procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or care-giver of the child, or any other person or trafficking in a child for use in sexual activities, including prostitution or pornography.”¹ The exploitation of a child is further defined to include all forms of slavery or practices similar to slavery, including debt bondage, forced marriage, servitude, forced labour and the removal of body parts.²
- Defines and prohibits the trafficking of children and criminalises actions which facilitate trafficking in children.
- Provides provisions that assist in the physical, psychological and social recovery of victims of trafficking. Thus, a child who is a victim of trafficking must be referred to a designated social worker for investigation and should be placed in temporary safe care. Similarly, a trafficked child who is not a citizen of South Africa may not be returned to the child’s country of origin or the country from where the child has been trafficked without giving due consideration to the availability of care arrangements and the possibility that the child might be trafficked again, harmed or killed.³
- In addition, the *Criminal (Sexual Offences and related Matters) Amendment Act No. 32 of 2007* contains a chapter on sexual offences and children.

(ii) Amending the criminal law

Ethiopia’s Experience

The Ethiopian criminal law pertaining to the sexual exploitation of children was reviewed and amended in 2004 to provide enhanced protection to children from sexual exploitation. Also notable,

¹ The Children’s Act of 2005, Section 1.

² Ibid. Section 1.

³ Ibid, section 290 (1) (a), (b), (c).

the Constitution of the Federal Democratic Republic of Ethiopia 1994, Article 18 (2) prohibits human trafficking for any purpose⁴. In Ethiopia, the revised penal code provides:

- It is an offence to procure a minor for prostitution, even if he/she consents, or to keep a minor in a brothel for the sake of prostitution.⁵ If convicted, this crime carries a prison term of five years' rigorous imprisonment and a fine of up to 10,000 Birr (approx. USD 1,125);
- Abducting a minor with the intent to use him/her for prostitution is an aggravated crime punishable by ten to twenty-five years imprisonment;⁶
- It is illegal to have sexual relations with children and there is enhanced punishment where the child is under 13;
- The trafficking of children or women for gain or to "gratify the passions of another" by enticing, inducing or procuring a child or a woman for prostitution⁷ or, arranging or providing for the procurement of trafficked children is unlawful;
- The making, importing, exporting, transportation, receiving, possessing, publicly displaying, selling, distributing, trafficking or trading writings, images, posters, films or other objects that display stimulated sexual intercourse by a child or that exhibit the genitals is illegal; and
- It is an offence to recruit, hide, transport, export or import a child for forced labour.

(iii) Enacting legislation prohibiting specific offences

Nigeria's Experience

In 2003, Nigeria enacted new legislation on trafficking that includes provisions related to child prostitution, child sex tourism and child pornography. The *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*:

- Makes it illegal to use threats, intimidation or false pretences to procure a person under 18 years of age to engage in sexual activity in or outside of Nigeria, or to use any drug to overpower a person under 18 years of age in order for a man to have sex with the drugged

⁴ See Constitution of the Federal Democratic Republic of Ethiopia 1994, Article 18 (2)

⁵ See Criminal Code of the Federal Democratic Republic of Ethiopia, Articles 635.

⁶ Ibid. Articles 589, 590 (1) (a) and 590 (2) (e)

⁷ See Article 636 (a). Offenders may be punished with up to 25 years rigorous imprisonment, a fine of up to 10,000 Birr (approx. USD 1,125), and additional severe measures if there is illegal restraint.

person. Offenders of these two provisions may be punished with a fine or 14 years' imprisonment.⁸

- This law further prohibits any Nigerian resident from encouraging the prostitution of a person under 18 years of age⁹; permitting such a person's defilement on one's premises;¹⁰ or allowing such a person to be in a brothel.¹¹ The law also makes it illegal to keep a brothel or to trade in prostitution.¹²
- In relation to sex tourism, this law prohibits organising or promoting foreign travel that promotes or encourages prostitution. Violators may be punished with ten years' imprisonment.¹³ Tour operators and travel agents must notify their clients of their obligation
- under this law, and not to aid, abet, facilitate, or promote a person's exploitation in tourism.¹⁴ Contravening the above provisions may be punished with up to 12 month's imprisonment.¹⁵

(iv) A hybrid approach

Kenya's Experience

In Kenya, the protection of children from sexual exploitation is found primarily in three sources: in the children's act, in the sexual offences act and in revised criminal procedures.

- *The Children's Act 2001* protects children from "sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity".
- *The Children's Act* defines a child as "any human being under the age of eighteen years".
- The *Sexual Offences Act 2006* criminalizes child prostitution. Any person who (i) knowingly permits any child to remain in any premises for the purposes of causing such child to be sexually abused (ii) acts as a procurer of a child (iii) induces a person to be a client of a child (iv) takes advantage of his influence over a child (v) threatens/uses violence toward a child to procure the child for sexual intercourse (vi) rents property for the purpose or (vii) gives

⁸ Trafficking in Persons (Prohibition), Law Enforcement and Administration Act. Article 18

⁹ Ibid. Article 26(1)(a)

¹⁰ Ibid. Article 26(1)(c)

¹¹ Ibid. Article 26(1)(d)

¹² Ibid. Articles 26(1)(b), 26(1)(d)

¹³ Ibid

¹⁴ Ibid. Article 30

¹⁵ Ibid. Article 27

consideration with the intent to procure the child for any form of sexual abuse commits an the offence of child prostitution punishable by a term of not less than ten years.

- The *Sexual Offences Act* also targets child sex tourism. Thus, any person who makes or organizes any travel arrangements for or on behalf of any other person with the intention of facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed, is guilty of the offence of promoting sex tourism and is liable upon conviction to a term of imprisonment of not less than ten years.
- The *Sexual Offences Act's* prohibition on child trafficking provides that anyone who organizes any travel arrangements for a child within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence against that child or who supplies, recruits, transports, transfers, harbours or receives a child, within or across the borders of Kenya, for purposes of the commission of any sexual offence under this Act with such child or any other person is guilty of the offence of child trafficking.

C. CHALLENGES IN EXISTING NATIONAL LAWS

Despite legislative advancements in African countries to protect children from sexual exploitation, the review found that children on the continent are not reaping the protective benefits of laws for several reasons including the following:

I. Legislative Gaps

1. Definition of a child & determination of age of majority

All the rights and protection accorded to children hinge on the definition of a child. The review found that there is a threat to children's protection from sexual exploitation due to the failure to have an overarching definition of a child and as a result of discrepancies and ambiguities on the minimum ages of related issues, such as marriage and sexual consent.

- For example, although Nigeria's *Child Rights Act* provides a uniform definition of a child as a person under the age of 18 years, the Act is not binding on all states. Thus, the age of sexual consent in two southern states is as low as 13. In some northern states, 14 is the age at which a child can consent to marriage.
- Sudanese legislation also employs varying definitions of the child. Puberty, which is generally recognized in girls between the ages of 9 and 15 and in boys between the ages of 14 and 18, is one way of determining majority. Consequently, a 15 year-old

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person who has manifested obvious external signs of puberty is generally said to have reached the age of majority.

- In Mozambique, according to customary and religious practices, rather than being defined by age, a child is defined by his/her physical and mental capacities. (United Nations 2000)¹⁶ Girls are no longer considered children after puberty and boys are no longer considered children once they can perform adult tasks such as hunting and fishing. (United Nations 2000)
- Similarly in Zanzibar which has predominantly customary and Islamic legal systems, a child is defined in relation to the age of majority which is determined through the signs of puberty.

2. Marriage as a defence

- The Criminal Code of Chad provides that if a kidnapped or abducted minor marries her abductor, the offender may be prosecuted only on the basis of application by persons having the legal capacity to request the annulment and he may not be convicted until after such annulment.
- In Eritrea, under the *Transitional Penal Code*, the consent of the victim to marry the accused bars prosecution and, where the offender was convicted, terminates the sentence. This was deemed in the best interest of the child victim, who would otherwise be stigmatized in the community and have little chance of marrying.
- The Madagascan Penal Code provides, in cases of abduction of a minor, if the victim agrees to marry her abductor, the perpetrator can only be prosecuted upon complaint by people who can ask for the annulment of the marriage. The persons having the legal capacity to request the annulment of the marriage are often co-perpetrators or accomplices in the abduction of the girl or in marriage by abduction.

3. Reasonable belief the child victim was old enough to consent to sexual relations

- The penal codes of Botswana, Nigeria and Zimbabwe permit the accused to argue he reasonably believed the victim was 18 years or older.

4. Discrimination on the basis of gender

Despite the growing incidence on the sexual exploitation of boys on the continent, legislation often affords lesser protection to boys compared to girls.

- For example, in Uganda the Penal Code prohibits procuring girls for the purposes of prostitution but gives no protection to boys.
- Swaziland’s Girls and Women’s Protection Act does not provide general protection for all children against “*unlawful carnal connection*”. Its provisions are specific to girls and do not cover the sexual abuse against boys.
- In Tanzania for example, girls can get married at 14 while boys cannot consent to marriage until age 18.

5. Ambiguous definitions on prostitution, trafficking and pornography

- In Egypt, *The Suppression of Prostitution Act, No 10 of 1961* renders anyone who engages in prostitution, whatever their age liable to one to three years’ imprisonment. However, *The Children’s Act No. 12 of 1996* provides that a child who is “employed in work connected with prostitution” or who is “in the service of a person involved in such activities” shall be regarded as being at risk of delinquency. Anyone who places a child at risk of delinquency shall be punished by imprisonment. In Egypt, *The Suppression of Prostitution Act, No 10 of 1961* renders anyone who engages in prostitution, whatever their age liable to one to three years’ imprisonment. It is unclear whether those involved in prostitution are liable to prosecution for the “crime of prostitution”. The law could thus be read to prosecute children exploited in prostitution. It is also unclear which activities can be considered prostitution.
- Many of the countries under review had no legislative provisions protecting children from child pornography. In many countries, the law limits children’s access to pornographic material but fails to criminalize making or distributing child pornography.

6. Inconsistencies between the minimum age at which a child can consent to marriage and age at which a child can consent to sexual relations

- In Tanzania, the law has created the anomalous situation where the age of marriage is lower than the age of sexual consent. The Sexual Offences Special Provision Act 1998 sets the age of sexual consent at 18, but under the Law of Marriage Act, it is set as 15 for girls.

- In Egypt, the age of consent for sexual activity is 18 and the age of consent for marriage is 16 for females (and 18 for males).
- In Malawi, the minimum age of sexual consent is as low as 13 for girls and 12 for boys.

II. Challenges in implementing protective laws

1. Lenient sentences and impunity for perpetrators
 - Many of the countries under review have ineffective sanctions and penalties for abusers. Sex offenders are given suspended sentences, non-custodial or short sentences and often receive bail.
2. Implementation challenges
 - Poor implementation by duty bearers in the entire criminal justice system including lack of child friendly procedures inhibit the formal protection afforded to children.
3. Lack of medical and other services for child victims
 - Many laws do not adequately address the care and rehabilitation of child victims of sexual abuse, through medical, legal and psychological support. In the review, only South African law provides comprehensive, free medical services for victims of sexual abuse and exploitation.
4. Birth Registration
 - Many African countries have insufficient birth registration systems which often preclude children from protection against sexual exploitation. Children who have no formal proof of age are at risk of not benefiting from protective minimum ages which as this paper has revealed, is fundamental in protection children from sexual exploitation.

D. CONCLUSION

Despite important progress in the international, regional and national legislative frameworks to protect children from sexual exploitation, children in Africa still lack the power and support structures to protect themselves from sexual exploitation. The complex and fragmented patchwork of laws pose a significant barrier in the harmonization of national laws with international norms and standards. There is often a direct correlation between better protection of children and countries which have enacted harmonised, comprehensive children's acts. The findings identify some pressing steps that need to be taken in order to bring about change in the legal protection of children from sexual exploitation:

Recommendations

- Governments must audit and review existing legislation on children and the laws on child prostitution, child pornography and child trafficking should accord with the standards of the *Optional* and *Trafficking Protocol*.
- Laws should contain an overarching definition of a child.
- Legislation should prohibit sex with all children under 18 for remuneration;
- Legislation must ensure that child victims are not treated as offenders.
- The extent of boys' sexual exploitation in commercial sex needs to be further explored and legislation should be gender neutral.
- Laws must be enforced and agencies of enforcement including police, immigration officials, prosecutors and the judiciary must be adequately resourced and staffed to function well.
- Psycho-social support for victimized children should be provided.
- There needs to be cultural change of consciousness as some religious, traditional and cultural norms still inhibit protection of children from sexual abuse and exploitation.

SECTION III. LEGAL PROTECTION CENTRES, LAW ENFORCEMENT AND BEST PRACTICES

The protection of children relies on a multitude of mechanisms. Two interrelated mechanisms are:

- (a) The establishment of child protection units, and
- (b) The establishment of children’s legal protection centres who provide legal assistance to both child victims and to children in conflict with the law.

Support services for children escaping sexual exploitation and other forms of abuse have predominantly been provided by NGOs and have included legal protection centres, safe houses and shelters that provide medical support, counselling, legal aid and assistance with reintegrating children with their families and communities.

A. CHILD PROTECTION CENTRES

The Children’s Legal Protection Centre (CLPC) Addis Ababa, Ethiopia

The African Child Policy Forum established the CLPC in 2005, the only one of its kind in Ethiopia. Its main aims are:

- Providing legal counselling to children and their families both for those who are victims of abuse and those in conflict with the law;
- Providing judicial representation to cases involving violations of children’s rights;
- Providing in-house counselling to children with legal cases at the CLPC and facilitating the access of children who are survivors of abuse to other complementary support such as temporary shelter and psychosocial assistance;
- Providing legal education and training for various target groups and
- Advocating for law and policy reform.

The Centre has played an instrumental role in assisting child victims of sexual abuse in Ethiopia. As a front line defender, they deal every day with children in contact with the law and in need of protection. The Centre litigates mass impact cases and functions as a ‘watchdog’ in order to ensure government accountability for the fulfilment of children’s rights. The Centre also ensures that children have access to procedures that are child-friendly in order to prevent secondary trauma through the criminal justice system.

In Ethiopia, there are few reports indicating the response of law enforcement agencies, particularly the police, to prosecute those who sexually, physically and emotionally abuse women and children. More often, the police are more concerned about the future of child victims instead of prosecuting those who have abused them. There is less effort everywhere as far as actively investigating and prosecuting such horrendous crimes. At the same time, sizable sections of vulnerable groups of children, including children trafficked for sexual exploitation are often put in prisons and detention centres for minor offences. Detention facilities have inadequate facilities such as free legal counselling for children. Under the Ethiopian Criminal Procedure Code, the court may appoint a publicly funded lawyer to a child who has no parent or guardian to represent him or her, or who is charged with an offence punishable by a sentence of ten years imprisonment or death. In practice, however, children are rarely represented in court. Consequently, there is currently no juvenile court in Ethiopia except for some pilot benches. Due to reasons enumerated above, the Ethiopian legal system is not easily accessible to children. This deficiency is observed in civil claims when children are victim of sexual violence or suspected of a crime.¹⁷ In order to address this gap, the CLPC provides legal service to vulnerable children through its staff and pro-bono lawyers¹⁸. The service includes legal counselling and judicial representation in courts. Other forms of legal services such as providing verbal advice, preparing legal documents (application, affidavit and pleading), preparing supporting letters, and following up cases (at different law enforcement institutions and administrative offices), facilitating lodging of application (effect court fee and stamp duty) and mediating/negotiating cases are also available for children. Since its establishment, the CLPC has provided legal service to around 4000 children and won a number of landmark cases¹⁹.

In Ethiopia, law enforcement bodies that are responsible to protect children from violence are inadequately equipped and lack the necessary human and financial resources to discharge their responsibilities. Consequently, many sexual abuse reports may not be properly investigated, prosecuted or followed up. As a result, whenever sexual abuse cases are brought to the attention of the CLPC, it endeavours to fill in the gap observed in the law enforcement bodies and throughout the criminal justice process, starting from early investigation of crimes committed against children. Accordingly, the CLPC, in collaboration with the police and prosecution office, is more actively

¹⁷ Once convicted, children are often imprisoned in adult prisons. A judge from the child friendly bench in Addis Ababa said that without representation, children often pleaded guilty because they didn't understand the importance of the *mens rea* element of an offence (that is the mental intention required to be guilty of an offence) when in fact they may not be guilty at all.¹⁷

¹⁸ The CLPC has 22 pro-bono lawyers who provide legal counselling and judicial representation. (August 2008)

¹⁹ As of August 2008, the CLPC provided legal aid to around 4000 children who are in contact with the law either as victims of violence or suspects of crime in its premise, court compound and in epithet prisons in Ethiopia.

involved in locating witnesses to a crime, covering medical expenses needed for evidence, and sometimes tracing the whereabouts of alleged sexual offenders who have concealed themselves.

The following example highlights how the CLPC has been able to effectively address the multifaceted elements of sexual exploitation in a holistic manner.

Responding to the needs of children escaping sexual exploitation in Ethiopia

‘The Centre has done everything for me. They helped me just in time.’ (Eleven year old girl)

An eleven year old girl was brought to the CLPC in Addis Ababa in 2007 by the daughter of a neighbour, who had heard of the CLPC through the media. The neighbour had heard the girl crying and scratching the walls of her house in distress for some time and had finally acted when she came across the girl walking and crying alone on the streets of the neighbourhood. When she came to the CLPC and talked to a counsellor, it emerged that the girl had been sexually and physically abused by her father since she was two years old as a result of which she was suffering from very bad fistula. The girl’s mother had left the family home when the girl was two and her whereabouts remained unknown.

The girl received extensive counselling from the CLPC where they found her temporary housing in a shelter for abused children. The CLPC notified the police of the father’s name and contact details, however, due to poor law enforcement, it took nearly a year for him to be arrested. The CLPC was instrumental in ensuring that the girl’s father was arrested for the abuse and the case was properly prosecuted to the extent that they hired a private detective to locate him. The father is now in prison although he may be eligible for bail.

The girl wants more than anything for the CLPC to help her find her mother so she can live with her. In the future, the girl wants to help abused children like her by setting a home for them since as she says very practically.

‘They need to understand the risks of abuse like disease and pregnancy.’

(Eleven year old girl)

The Child Rights Advisory Documentation and Legal Centre (CRADLE): The Children’s Foundation Nairobi, Kenya

The CRADLE was founded in 1997 following the baseline survey that showed an urgent need for children in need of care and protection and in conflict with the law to receive legal aid. The mission of the CRADLE is to enhance the rights of the child and contribute towards the promotion and enhancement of the status of women by improving the status of the girl-child. The main objectives of the CRADLE are to enhance access to justice for children, ground children’s rights in development and within communities, enhance a child sensitive legislative and policy framework towards the



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eradication of violence and exploitation of children and to contribute to the general development of human rights in Kenya.

Kenya has a comprehensive law on children (the Children's Act of 2001) and a Sexual Offences Act that protects children from sexual exploitation. Although the Children's and Sexual Offences Act means that children are better protected from sexual exploitation under the law, there are a myriad problems between laws and practice. For example, rehabilitation tailored to the needs of child victims of sexual exploitation is virtually nonexistent. Furthermore, children in conflict with the law are often grouped with child victims of sexual exploitation and many children remain in detention for far longer than legally stipulated where sexual abuse is rampant. In addition, there is no government run legal aid scheme so indigent children are largely unrepresented.

The CRADLE's strength lies in the way in which its different components of policy reform, legislative advocacy, working with children to raise awareness of their rights, research and case work are all integrated together to feed into each other.

Fighting abuse and sexual exploitation in Kenya

The CRADLE became aware through their Legal Aid Clinic that they were dealing with an increasing number of cases concerning children who had been trafficked. They conducted research into trafficking (Grand Illusions, Shattered Dreams: Report on the state of human trafficking in Kenya, the CRADLE 2006) and took the lead on anti-trafficking initiatives in Kenya.

The CRADLE drafted a Trafficking Bill and training manual, trained magistrates and the police as well as developing infomercial for television and comic book and other educational materials to raise awareness on the state of child trafficking.

B. CHILD PROTECTION UNITS

Within the criminal justice system, child protection units are designed to provide specialized care for child victims of sexual exploitation. This includes child-friendly procedures to ensure that child victims of commercial sexual exploitation are not further harmed and victimized through the criminal process. Under the UN *Convention on the Rights of the Child* and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, States Parties must protect children within the legal system.

In general, there are very few child protection units in African countries that provide assistance to children victimized in commercial sexual exploitation. This responsibility has predominantly fallen on the shoulders of NGO sector.

The following table presents examples of mechanisms and plans in place to address sexual abuse and exploitation in selected African countries.

Selected examples from African countries of mechanisms and plans to address sexual exploitation and abuse

Country	Mechanism and plans to address sexual exploitation and abuse
Burundi	<p>A special Unit for Minors has been established in the national police, which work closely with NGOs and other partners focusing on children’s rights and addressing violence.</p> <p>The Ministry of Health, together with multilateral partners has developed a manual on the care of victims of violence.</p>
Comoros	<p>In Anjouan, Grande Comore and Moheli islands, the Ministries of Health and Social Affairs have put in place a communication desk for children who are victims of abuse, aimed at creating awareness about the prevalence of all forms of abuse against children and at providing assistance to victims.</p> <p>There is a national strategy for the protection of the Most Vulnerable Children, which prescribes provisions to protect and reintegrate child victims of sexual exploitation and abuse, such as training of teachers and the establishment of village committees for vulnerable children that aim to fight sexual abuse of children.</p>
Egypt	<p>The Government of Egypt established a special unit within the police force – the Delinquency Police – to deal with the problems of prostitution, early marriage linked to prostitution and forced marriage.</p>
	<p>The Ministry of the Interior also has a department responsible for:</p> <ul style="list-style-type: none"> • combating offences against ‘public decency’, linked to the social security sector • combating prostitution, trafficking and other forms of sexual exploitation of females, also suppressing activities linked to international prostitution • stipulating measures and procedures to track and monitor the activities of Egyptians who travel abroad for the purpose of

	<p>facilitating and exploiting prostitution, or who introduce foreigners into the country for the same purpose</p> <ul style="list-style-type: none"> • monitoring the activities of agencies that arrange for young women to travel abroad on the pretext of employment in legitimate work, as some of these agencies “use young women for work, which offends against public decency”.
Gambia	<p>Gambia does not have a unit that specifically deals with CSEC offences. However, the Department of Social Welfare and the police have Child Care and Child Welfare Units respectively, which deal with sexual abuse and exploitation of children. In 2006, the police set up a Vulnerable Persons Unit to better assist at-risk persons, including children.</p>
Lesotho	<p>A dedicated Gender and Children Unit has been set up within the police to deal with rape, abuse and other related offences.</p>
Mauritius	<p>In May 2004, the Mauritian Police Force established the Brigade for the Protection of Minors, whose priorities include acting as a watchdog against all forms of sexual exploitation and abuse against children. It aims to provide meaningful and sound protection for children and to offer guidance and support to parents whose children have been subjected to abuse.</p> <p>Officers of the Family and Remand Protection Unit of the Police are trained to combat CSEC specifically. In 2005-2006, funding was granted to increase the human resources of the Brigade.</p>
Namibia	<p>Women and Child Protection Units (WCPU) have been established by the Namibian Police to provide integrated services to victims of violence and any form of abuse, including rape, sodomy, incest, and assault with the intent to cause grievous bodily harm, especially if the victim is under eighteen years. WCPU services are free of charge and consist of:</p> <ul style="list-style-type: none"> • providing police protection; • basic counselling to survivors of rape and assault; • temporary shelter for victims in dire need of protection; and • advise and referral to other agencies where necessary.
South Africa	<p>The Family Violence, Child Protection and Sexual Offences Unit (FCS) was established by the South African Department of Safety and Security in 1995. At the moment there are 32 Child Protection Units and 13 Family Violence,</p>

	Child Protection and Sexual Offences Units in the main centres in South Africa. Specialised individuals are policing crimes against children in the smaller centres. These members are attached to the Detective Service. The primary task of the Child Protection Unit is to render a sensitive service endearing to the child victim.
Togo	There are no programmes or centres that provide specific assistance to children victimized in commercial sexual exploitation. However, a number of shelters have been set up to receive trafficked children.
Uganda	The NGO Slum Aid and Uganda Youth Development Link are working to prevent child prostitution and to rehabilitate exploited children. The Slum Aid project focuses in the Kampala slums and provides rehabilitation and support to survivors of gender-based violence and children engages in commercial sex by providing temporary shelter, emergency relief funds, counselling, mediation and referrals to other organizations or institutions that better equipped to handle certain cases. The Youth Development Link provides child-friendly services to sexual exploitation victims at outposts and drop-in centres. Between April 2002 and October 2003, they provided medical services to 29,564 youth and child victims of commercial sexual exploitation, while 24, 680 received psychosocial counselling and support.

C. CONCLUSION

The work of the child protection units reveals the daily realities of children's lives and often this reality is grim and hard to look at. These child protection units deal every day with children in contact with the law and in need of protection in all sorts of different contexts: in court rooms, at their offices, on the street, in family homes and in children's institutions. Based on this ground-level knowledge and experience of the realities of children's lives, the child protection units and centres channel this upwards and outwards both to expose what is happening and also to influence the concentric circles of care surrounding children: their families, communities, local government, the executive, the judiciary, the legislature and media. Advocacy founded upon first-hand experience can be very powerful because it has conviction and experience behind it.

The over-arching framework of the child protection units is rights-based. This approach helps them to easily identify rights holders (principally children and their families) on the one hand and duty bearers (principally the state and its agents) on the other. The child protection units attempt to strengthen the capacities of rights holders to make their claims and of duty bearers to satisfy their claims. Their



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work often acts as a bridge between different institutions and sectors relevant for children and create a synergy between them which otherwise would not be there preventing children from being subject to fragmented and therefore muddled and weakened interventions.

This multi-disciplinary and multi-sectoral approach strengthens the capacity of the government, children themselves, families and communities to protect children and to develop systems and mechanisms that provide meaningful protection for all children in the longer term.

IV. RECOMMENDATIONS

It must be emphasized that the legal environment often reflects the political environment, and unless a State and its society give priority to the protection of children, the laws will not protect them. This Paper has attempted to identify the legal norms which have set the standards to be observed and to look at the responses from national legislatures, also taking into account the enforcement and implementation mechanisms which are available. It is hoped that States, in formulating their own national plans, will be able to draw on the good practice experiences outlined in this paper and find solutions in the interests of children.

In order to foster effective protection for children against sexual exploitation, the following general recommendations are made.

Ten things the law should say and do.

1. Governments that have not already done so, are **urged to ratify the *Trafficking and Optional Protocols*** in order to provide enhanced protection for children against sexual exploitation;
2. Governments must amend and/or enact new legislation **explicitly defining and prohibiting child prostitution, child pornography and child trafficking** in accordance with the *Optional and Trafficking Protocols*;
3. Governments must **harmonise customary and religious laws** and practices with national laws and international standards to ensure that children's rights are fully protected;
4. Interventions should **target the demand** aspect of commercial sexual exploitation of children;
5. Governments need to acknowledge that the sexual exploitation of children is a serious child rights violation and must **devote sufficient resources** to develop and implement plans of actions to eliminate all forms of exploitation and abuse against children;
6. In order to effectively combat sexual exploitation of children, **large-scale awareness raising** programmes must target children, youth and their parents. It is also important to foster the engagement of community and religious leaders in promoting child protection at the community level;
7. Governments need to develop and establish **a system of rehabilitation and reintegration** of children who escape sexual exploitation. This task should not be left to NGOs and child protection units. Such a system should entail the creation of child-friendly channels for children to report abuse and seek help, establish a referral system, define the minimum standards of care for institutionalized children, and systematically train staff assisting child victims;
8. The establishment of **child protection units** at police stations, as well as child-friendly courts, must be expedited;
9. Better coordination amongst governments and maintaining **extra-territorial legislation** to combat exploitation particularly amid sex the tourism industry;
10. In collaboration with civil society, governments should **build the knowledge base essential for properly monitoring** and effectively combating the sexual exploitation of children. Relevant ministerial or government departments should pay a key role in facilitating and coordinating the process.



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