

# Disrupting Harm

**Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.**

Detailed Analysis of Interviews with Government Duty bearers  
Kenya

*Last updated 28/04/21*

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Fund to End Violence Against Children does not constitute endorsement.

## Introduction

*Disrupting Harm: evidence to understand online child sexual exploitation and abuse (OCSEA)*, is a unique and collaborative research partnership between ECPAT International, INTERPOL, and UNICEF Office of Research – Innocenti. Leveraging their specific expertise, each partner sheds light on separate but interconnected areas: context, threats and children’s perspectives on online child sexual exploitation.

- Context by ECPAT International through portraying laws & policies in action;
- Threat by INTERPOL through the collection of crime and other data;
- Children’s voices by UNICEF Office of Research - Innocenti through surveys with children and their caregivers.

The countries of focus in Southern and Eastern Africa region are: Ethiopia, Kenya, Mozambique, Namibia, Rwanda, South Africa, Tanzania, and Uganda. The countries of focus in the Southeast Asian region are: Cambodia, Indonesia, Malaysia, Philippines, Thailand, and Vietnam.

Research took place between 2019 and 2021. Up to nine separate research activities were undertaken in each country by the three project partners. Preliminary analysis for each activity was first conducted before the results across all the nine activities were consolidated into each national country report.

This report is the preliminary analysis conducted by ECPAT International of interviews conducted with an identified sample of government duty bearers whose mandates include addressing online child sexual exploitation and abuse at a national level. The aim of interviews was to identify emerging issues and trends, recent progress and upcoming plans and priorities in Kenya’s current legislative and policy environment. In Kenya, 12 interviews with a total of 17 participants were conducted from May 2020 to July 2020. The analysis in this report also includes information from three participants from research activity four.

ID Number	Ministry/Government Agency	Position
RA1-KY-01-A	UNICEF Kenya Country Office	Child Protection Officer
RA1-KY-01-B	UNICEF Kenya Country Office	Chief of Child Protection
RA1-KY-02-A	National Council of Children’s Services	Principal Children’s Officer
RA1-KY-03-A	Communications Authority of Kenya	
RA1-KY-04-A	NCAJ Special Task Force on Children Matters	Judge Court of Appeal and Chairperson
RA1-KY-05-A	Communications Authority of Kenya	Manager- Regulatory Affairs
RA1-KY-06-A	Kenya Film and Classification Board	Chief Executive Officer

RA1-KY-07-A	Office of the Director of Public Prosecutions	Head- Children Division and Anti FGM Unit
RA1-KY-08-A	Child Online Protection Unit, Department of Children's Services	Principal Children's Officer
RA1-KY-08-B	Ministry of Labour and Social Protection	Deputy Director, Department of Children's Services
RA1-KY-09-A	Kenya Law Reform Commission	Senior Legal Officer
RA1-KY-09-B	Kenya Law Reform Commission	Senior Researcher
RA1-KY-09-C	Kenya Law Reform Commission	Legal Officer
RA1-KY-10-A	Deputy Director E- Learning	Kenya Institute of Curriculum Development, Ministry of Education
RA1-KY-11-A	Acting Head of the National KE-CIRT/CC	
RA1-KY-11-B	AM National KE-CIRT/CC	
RA1-KY-12-A	State Counsel	
RA4-KY-02-A	Executive Director and Child Rights Advocate	Mtoto News
RA4-KY-08-A	Investigator	Anti Human Trafficking and Child Protection Unit
RA4-KY-08-B	Officer in Charge	Directorate of Criminal Investigations, Anti Human Trafficking and Child Protection Unit

In Kenya, the Interviews were conducted utilizing a semi-structured interview schedule that allowed for exploration of emerging issues. Due to the COVID-19 pandemic, interviews were conducted both in-person and virtually.

## Public awareness

Out of the 12 interviews done with a total of 17 respondents, at least 90% perceived OCSEA as an emerging but growing child protection threat in Kenya. One participant indicated her changing perception and awareness of the threat as follows: *“As much as online child sexual exploitation and abuse has been there for some time, it was not as it is now. With the advancement in technology, we find that there is more online child sexual exploitation and abuse than what we used to know several years ago. For example, when I was in the field, we would hear of pornographic materials, children being put in a room and somebody trying to come up with some videos but that time it was ‘a foreign issue’. It was something done by ‘Wazungus’ (white people) in secluded and affluent areas. It was not as big as it is now”* – (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

The outbreak of the COVID-19 pandemic was indicated as having increased the exposure of children to potential OCSEA by half of the respondents interviewed. Most respondents explained that children have been online for longer hours than usual, in part due to online classes<sup>1</sup> and other movement restrictions.

Despite OCSEA being an emerging threat, respondents were in agreement that the level of awareness of OCSEA was low among the Kenyan public. One participant noted *“the level of awareness of the public on OCSEA is low. A sign of this is that the members of the public are not able to identify the OCSEA manifestations”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services), while another commented *“currently, there is little awareness among the public on OCSEA and how to report it. There is therefore a need to sensitise the public so they can be reporting these emerging cases”* (RA1-KY-07-A, Head - Children Division and FGM Unit - Office of the Director of Public Prosecutions). Another participant highlighted the importance of extending awareness raising campaigns to communities around Kenya: *“awareness is a big problem because I don’t think we even know there is a crime like that. (...) Awareness should be wide including also the communities themselves because if they don’t report, then there is a problem. That is where we need to begin”* (RA1-KY-04-A, Court of Appeal Judge and Chairperson, NCAJ Special Task Force on Children Matters).

During the COVID-19 pandemic, mainstream media outlets – both print and audio, have increased coverage of OCSEA cases, especially incidences of teenagers in urban settings, who are invited through social media platforms to house parties where perpetrators allegedly involve them in the production of child sexual abuse materials.<sup>2</sup> One respondent (RA1-KY-01-A) noted this has helped to increase public awareness of the online risks faced by children.

Respondents indicated that there have been and still are ongoing awareness creation activities on child online protection. One example is the Communication Authority of Kenya’s *‘Be the COP’* campaign which was launched in 2015. This campaign had clear messaging on OCSEA including

<sup>1</sup> Kenyan schools have been closed since March 2020 and most private schools in urban areas where there is good Internet connection opted to conduct online classes.

<sup>2</sup> See for example: <https://www.capitalfm.co.ke/news/2020/11/how-7-girls-were-lured-after-meeting-online-then-disappeared/>; <https://www.standardmedia.co.ke/nairobi/article/2001394978/40-more-teenagers-arrested-in-alcohol-filled-house-parties>

messages about perpetrators soliciting children online for sexual purposes and child sexual abuse materials. Though this awareness campaign has concluded, the Communications Authority of Kenya indicated that they have not undertaken an evaluation to measure its effectiveness. The Communications Authority of Kenya still runs ongoing awareness raising initiatives on child online protection as part of ongoing programmes under its consumer affairs function. An example of such a programme is the *'Kikao Kikuu'* county forums,<sup>3</sup> which target consumers of Information and communication technology services – both children and adults - in the 47 counties of Kenya. The Kenya Film Classification Board also confirmed that it raises awareness on child online protection in collaboration with the Ministry of Education and civil society organisations. The Kenya Film Classification Board runs a media literacy program dubbed *'You are what you consume'*, and recently launched a Google supported programme on 'digital parenting' that is meant to educate parents on the kind of online content their children are consuming. Both of these programmes intend to eventually be country-wide campaigns with large audiences. It was also noted that though the initial focus on the *'You are what you consume'* campaign in 2015 was on content on television and radio, during its implementation, it was learned that children were very active on digital platforms which necessitated the expansion of the focus in 2017 to include safety on digital platforms. The campaign identified a wide gap in the level of digital awareness between parents and children, which led to the creation of the *'Google parenting program'* to educate Kenyan parents on how to protect their children online.

Respondents also indicated that the Ministry of Education is currently undertaking the integration of child online protection into the new school curriculum which is still in the process of being finalised. The Kenya Institute of Curriculum Development respondent (RA1-KY-10-A) clarified that OCSEA is not directly tackled but topics relevant to OCSEA such as online predators and how to avoid them are included. Additionally, it was indicated that the Ministry of Education has been partnering with other state and non-state actors in ensuring awareness raising on child online protection remains ongoing in schools, however, this is not standardised across all schools in Kenya. Further, in partnership with Terre des Hommes Netherlands, the Ministry of Education recently launched the first children and facilitators manuals for training on online safety and security.<sup>4</sup> It was reported that the manuals will be used to create awareness among children, parents and caregivers to be able to identify, respond and prevent online abuse and exploitation. It was not possible to establish from interviews if the manuals are intended to be rolled out and used across the country.

Participants also identified limitations in awareness raising activities, highlighting that they do not reach all segments of society, either due to limitations in geographical focus for the projects under which they are implemented, or due to the methodologies used that leave out poorer households: *"So far I would say they are not reaching everyone. They have tried to do that but they are only reaching the rich. (.....) Because if there is a programme on TV and you are sensitising parents on how*

<sup>3</sup> A respondent from the CA explained that the Kikao Kikuu county forums are designed to reach consumers of ICT services in all the 47 counties in Kenya and each year a certain number of counties are targeted. So far, 18 counties have been covered. These forums educate consumers on ICT services and one recently recurring theme has been Child Online Protection. The forums are 5 days long and the first three days are roadshows where participants include schools and the general public. There are also radio programmes and in the last two days, there are exhibitions and stands on various ICT services. Students and the public are enlightened on child online safety from both mobile use and computer use perspectives.

<sup>4</sup> KBC News channel. (November, 2020) [Education ministry launches online safety manual.](#)

*to keep their children safe online, there are so many other parents out there who may not have that TV” (RA1-KY-02-A, Principal Children’s Officer, National Council of Children’s Services). Other participants also noted the limited reach of some communication methods: “the medium of communication may not be the most appropriate even when its national television because how many people will sit to watch TV? So we should look at the medium we use when we try to sensitise people in the grassroots since its where the problems are. We should use different approaches” (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).*

The Department of Children’s Services confirmed that awareness activities have been in a limited number of counties and have not included rural counties. [Watoto Watch Network](#) confirmed that their awareness raising activities under the [UNICEF project](#) funded by End Violence Against Children targeted only 4 out of 47 counties.<sup>5</sup> They also confirmed that the child online activities carried out on Safer Internet Days since 2014 have been organised exclusively in Nairobi, except for the 2020 Safer Internet Day celebrations which were conducted in Mombasa.

The Department of Children’s Services stated that stakeholders with the knowledge to educate others on OCSEA are few and hence have limited coverage to only a few counties. They recommended ‘Training of Trainers’ who can then educate the public in more counties *“the people who should be sensitizing others are not everywhere, for example you find Watoto Watch Network is only reaching a few counties. So we need to train more stakeholders like ‘Training of Trainers’ and have them in every county, and then now they are able to train others”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

The Department of Children’s Services also recommended that other mediums other than national television should be used for raising awareness, as a limited number of people have access to television, while the Communications Authority of Kenya also acknowledged that there is a lot more that needs to be done in terms of broadening the scope of awareness raising campaigns: *“there is still a lot more to be done and it needs to go a level deeper in content including talking about the underlying issues as technology is only an enabler and also to broaden the scope”* (RA1-KY-03-A, Representative, Communications Authority of Kenya).

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<sup>5</sup> The four counties were Mombasa, Machakos, Nairobi and Nakuru.

## Government Ministries/Agencies

The following are the government agencies indicated by respondents as having clear, designated mandates on OCSEA:

- [Department of Children's Services](#) (under Ministry of Labour and Social Protection);
- [Communications Authority of Kenya](#), under which [the Kenya Incident Response Team](#) falls;
- [The National Council of Children's Services](#);
- [The Ministry of Education](#);
- [The Kenya Film Classification Board](#);
- The Judiciary;
- [Office of the Director of Public Prosecutions](#);
- [Directorate of Criminal Investigations](#) under which the [Anti-Human Trafficking and Child Protection Unit](#) falls;
- [The Ministry of Health](#).

At least four respondents indicated that the existence of the National Technical Working Group on Child Online Protection has contributed to this clarity as all the mandated agencies are represented there.<sup>6</sup> One respondent shared that though the mandates are clear, there are instances where roles overlap and when this happens, there is a lack of synergy between the agencies involved: *"the agencies know their mandates but when it comes to OCSEA which is a new and emerging issue, the roles are in some instances intertwined. In such instances, sometimes there is no proper synergy. For example, when it comes to reporting of cases and how cases should be handled, agencies tend to talk about their mechanisms yet there is need to find ways of working together with others"* (RA1-KY-03-A, Representative, Communications Authority of Kenya).

From the interviews, it was clear that there is an awareness among policy makers in Kenya on the importance of a multi-sectoral approach in tackling OCSEA. 6 out of the 12 interviewees identified that a multi-sectoral approach was important in addressing OCSEA, with one respondent noting *"OCSEA is not just one department's problem. It cuts across government and state agencies"* (RA1-KY-08-A, Principal Children's Officer, Department of Children's Services) while another commented *"OCSEA requires a multisectoral approach and it's not for the government to work alone without the civil society organisations"* (RA1-KY-01-A, Child Protection Officer, UNICEF Country Office).

The Department of Children's Services and the Communications Authority of Kenya were identified by respondents as playing leading roles in the coordination of OCSEA at the national level. They are secretary and chair respectively of the Technical Working Group on Child Online Protection.

### Capacity

Respondents indicated that all the mandated government agencies are actively involved in addressing OCSEA by implementing programmes that touch on either prevention, response or policy formulation.

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<sup>6</sup> The Working Group on Child Online Protection was indicated by respondents to have Terms of Reference with the roles of the different agencies.



Mandated agencies indicated by respondents as implementing response<sup>7</sup> activities were: The Department of Children’s services, which provides child protection services - rescue, shelter, psychosocial support- to victims of OCSEA; the Anti-Human Trafficking and Child Protection Unit under the Directorate of Criminal Investigations which is specialised in investigating OCSEA; Kenya Computer Incident Response Team, which hosts a reporting page and ensures removal of child sexual abuse and exploitation materials; the Office of the Directorate of Public Prosecutions which prosecutes perpetrators; the Kenya Film Classification Board, which contributes in the reporting of OCSEA cases to law enforcement agencies as well as in flagging child sexual abuse and exploitation materials to the Kenya Computer Incident Response Team for removal.<sup>8</sup> Government agencies actively involved in policy formulation for OCSEA were said to be the Ministry of Information Communication Technology, Innovation and Youth Affairs and the National Council of Children’s Services. The Ministry of Information Communication Technology included a section on OCSEA in the National Information Communication Technology policy of 2019.<sup>9</sup> The National Council of Children’s Services is playing a leading role in the formulation of the National Action Plan on Child Online Protection which is currently under development, in collaboration with the Department of Children’s Services.

The Department of Children’s Services and UNICEF indicated that responses to OCSEA are and should continue to be embedded within the broader child protection framework and not handled in a silo. This means that OCSEA victims utilise and benefit from the same services that exist for other child victims of violence and OCSEA is included within existing coordination mechanisms for violence against children: *“for Department of Children’s Services, we look at OCSEA from the broader perspective of child protection, maybe within sexual exploitation. We do not want it to be in a silo”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services); *“OCSEA should be part of the regular work on violence against children and the regular child protection coordination mechanism”* (RA1-KY-01-B, Chief of Child Protection, UNICEF Kenya Country Office).

In implementing OCSEA related activities, respondents indicated that there is collaboration between the government and other stakeholders including civil society organisations and industry. Some of the local and international civil society organisations and UN agencies mentioned by respondents include [Childline Kenya](#), [Watoto Watch Network](#), [Mtoto News](#), [Terre des Hommes Netherlands](#), [ECPAT International](#), [Arigatou](#), [UNICEF](#) and the [United Nations Office on Drugs and Crime](#). Civil society organisations were indicated as supporting in awareness raising activities, capacity building of the child protection workforce, reporting of cases of OCSEA as well as supporting the government in the provision of child protection services including shelter, counselling and legal aid.

Childline Kenya was reported to be a critical stakeholder in the response to OCSEA as it hosts the only 24/7 toll-free helpline dedicated for children to report abuse and other issues of concern. Due to the crucial role Childline Kenya plays in addressing OCSEA, one respondent strongly recommended that the government increase support to the organisation: *“concerning support of child victims, the Child Helpline does this but they are severely incapacitated and don’t have sufficient personnel to tackle this issue (OCSEA) which is time-consuming. The work they do is commendable,*

<sup>7</sup> Government agencies involved in prevention were indicated in the previous section.

<sup>8</sup> The Kenya Film Classification Board only notifies but does not demand that the materials be taken down.

<sup>9</sup> Ministry of Information, Communications and Technology (2019). [National Information, Communications and Technology \(ICT\) Policy](#)

*but the government needs to offer the strategic commitment that would strengthen their role both from a reporting perspective and from the perspective of providing psychosocial support to victims” (RA1-KY-03-A, Representative, Communications Authority of Kenya).*

The involvement of the private sector in addressing OCSEA was reported as minimal. Examples given included Safaricom,<sup>10</sup> which was reported to be more proactive in matters of both prevention and response to OCSEA compared to other Internet Service Providers. Google was mentioned as having recently partnered with the Kenya Film Classification Board in a ‘Digital Parenting Programme’ to educate parents and guardians on how to protect children against inappropriate content.<sup>11</sup> Further, in 2018, GSMA and Kenya Mobile Operators – Safaricom, Telkom Kenya, Airtel Kenya, and Jamii Telecom signed a Charter to protect children online dubbed the WE CARE campaign (#WeCareKenya)<sup>12</sup>, however, respondents were not aware of the activities or impact of any of these campaigns so far. While these programmes are positive, they are merely a drop in the ocean and without measurement of impact are difficult to attribute as impacting this problem. Due to the minimal involvement of industry in providing solutions, the Department of Children’s Services indicated that it had initiated discussions with Internet Service Providers in the first quarter of 2020 to discuss their role in addressing OCSEA and other child online protection issues: *“now for Internet Service Provider’s, there is a big gap. We are working on it. We had the first meeting with them early this year (2020). (...) They did not even know about these OCSEA cases. When we had that meeting with them and we educated them, we told them they can innovate and prevent these abuses even from being uploaded on their platforms” (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).*

Most respondents indicated that adequate coordination existed at the national level between government agencies with a mandate on OCSEA. Respondents pointed out that the government has formed a National Technical Working Group on Child Online Protection which brings together mandated government agencies, civil society organisations, industry, and UN agencies.<sup>13</sup> Due to this working group, agencies update each other on what they are doing. The working group was described by one respondent as a vibrant, well-coordinated and an embodiment of a multi-sectoral approach (RA1-KY-02-A, Principal Children’s Officer, National Council of Children’s Services).

At the county and lower levels, the Department of Children’s Services established that coordination on OCSEA is done through the existing child protection mechanisms, namely the Area Advisory Councils. According to UNICEF, a lack of awareness of OCSEA at the county and sub-county level hinders coordination: *“coordination [regarding OCSEA cases] at the county level should happen*

<sup>10</sup> Techweez. (2018). [Safaricom Highlights Plans to Make the Internet Safe for Children as it Marks Safer Internet Day.](#)

<sup>11</sup> The Standard. (2020). [KFCB and Google partner to protect children.](#)

<sup>12</sup> [Techweez. \(2018\). GSMA and Kenya Mobile Operators Sign Charter to Protect Children Online.](#)

<sup>13</sup> The National Technical Working Group on Child Online Protection is Comprised of: The Department of Children Services, Directorate of Criminal Investigations-Anti Human Trafficking, Child Protection Unit, Directorate of Criminal Investigations HQs - Cyber-Crime Forensic Lab, Information and Communication Technology Authority, Department of Information, Kenya Institute of Curriculum Development , Judiciary, Kenya Film Classification Board, Communication Authority of Kenya, Ministry of Education, Kenya Police Service, Office of the Director of Public Prosecutions, Attorney General’s office, Kenya Computer Incidence Response Team, UN agencies- UNICEF, UNODC, INGOs/ National NGO’s- Terres de Hommes, Child Line- Kenya, African Institute of Child Studies, Watoto Watch, ECPAT.

*within existing child protection networks and working groups but because of this lack of awareness [on OCSEA], there is not much focus on it” (Chief of Child Protection, UNICEF Kenya country office. RA1-KY-01-B Kenya).*

One respondent also mentioned that since OCSEA is an emerging issue, government agencies are still learning about it and processes and procedures are still being put in place to ensure there is seamless flow between the agencies during response: *“OCSEA being an emerging issue, it means all these agencies may not be fully conversant with it and the process and procedures to be followed, and we are still learning and putting measures in place to ensure we address such gaps so there is seamless flow” (RA1-KY-02-A, Principal Children’s Officer, National Council of Children’s Services).*

The Department of Children’s Services was described as having taken a proactive step in building its expertise on OCSEA at the national level. A representative from the department indicated that in 2017, a specialised unit on child online protection was formed within its Child Protection Division. This unit, which currently has one officer, provides child protection services to victims - including rescue and trauma focused counselling and closely works with the specialised law enforcement unit on OCSEA.<sup>14</sup>

The Department of Children’s Services also indicated that it recognises the need to have more officers in the child online protection unit to make its response more effective. The lone officer currently supports other children’s officers in the field on matters of OCSEA and ensures OCSEA cases emerging from the field officers are reported to the specialised law enforcement unit. She explained her support as follows: *“The children’s officers, because they know we have a presence as Department of Children’s Services and we have a subdivision of OCSEA, they know and they normally call to say we have this case, how do we go about it? We have done sensitisation in some areas, so you find in those areas the officers are keen and they are able to say we have such and such a case. Once I receive, I pass it on to my Directorate of Criminal Organisation colleagues, because it requires cyber skills investigation, so they know how to go about it” (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).*

It emerged from the interviews that there have been limited opportunities for building the capacity of frontline workers on OCSEA at the field level. It was indicated that the number of government frontline workers sensitised on OCSEA is negligible. The participant from the Department of Children’s Services commented: *“It’s a negligible number of officers that have been trained on OCSEA. We sensitised children’s officers, police officers and prosecutors. We reached four counties with Terre des Hommes Netherlands as they have a project on the same. The trainings were multidisciplinary” (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).*

Terre des Hommes Netherlands confirmed that the trainings they did with the Department of Children’s Services involved a total of 76 officers from 4 counties - Nairobi, Nakuru, Kisumu and Mombasa. The trainings were two days each and targeted children officers, police, magistrates and prosecutors. The objective of the training was to equip the officers with knowledge specifically on OCSEA and topics covered included manifestations of OCSEA, supporting children to keep themselves safe online, case management and referral pathways.

<sup>14</sup> The Anti-human Trafficking and Child Protection Unit – Directorate of Criminal Investigations.

According to the Ministry of Information Communication Technology, a Child Online Protection Training programme has been developed by the Communication’s Authority of Kenya, AFRALTI and International Telecommunications Union, Centre of excellence. This is a fully sponsored five-day training open to professionals from both government agencies and non-governmental organisations. So far, two training workshops<sup>15</sup> have been conducted and though it was not possible to establish the number of professionals that participated, the Communications Authority of Kenya noted that due to budget, the number of people per training is limited.

Training of frontline workers on OCSEA was pointed out as one of the areas that needs attention from the government. The Department of Children’s Services noted that identification of OCSEA cases is a challenge due to lack of awareness among children officers in the field: *“A person or a guardian may go to a children’s officer, and what they report as the presenting case, unless you probe deeper, you might not know that is a case of OCSEA. (...) This is what has been coming out. So the presenting case can be misleading. We therefore need to empower our officers, our staff, even the police, everyone at the grassroots how can they identify a case of OCSEA. So that identification of how OCSEA manifests is what maybe could actually be an obstacle to sharing information with relevant actors (..) as they don’t know that it is a case of OCSEA”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

UNICEF also pointed out that frontline workers who have no awareness that OCSEA is an emerging form of violence against children are unlikely to take it into consideration in their work: *“the challenge is that there is still not much awareness at the county level in regard to OCSEA prevalence. Take a children’s officer somewhere in west Pokot, they probably have low levels of awareness that this is an emerging issue and that it’s something they need to consider in their broader work of violence against children”* (RA1-KY-01-B, Chief of Child Protection, UNICEF Kenya Country Office). To try and combat these issues, UNICEF indicated that they had produced a violence against children booklet which has a component on OCSEA and this was used to sensitise children’s officers across different counties.<sup>16</sup>

In connection to a lack of awareness of OCSEA, respondents noted that the existing Child Protection Information Management System under the Department of Children’s Services does not currently capture data on OCSEA. Though cases that are raised via the 116 hotline are directly input into the system, there is no category or flagging of cases of ‘online’ abuse or exploitation. However, he Department of Children’s Services confirmed they are already working with the system developers to include specific categories of online abuse: *“the capturing of OCSEA in the Child Protection Information Management System is something we have discussed. The developers are within the Department of Children Services and they said they would update in the new financial year. We need*

<sup>15</sup> AFRALTI. (March, 2020). [Child online protection training workshop 2020.](#); AFRALTI. (December, 2019). [November child online protection training workshop.](#)

<sup>16</sup> UNICEF mentioned that they have been involved in sensitisation of civil society organisations on either OCSEA or child online protection. Though they have partnered with civil society organisations (namely Watoto Watch Network and Childline Kenya) to create awareness on child online protection, these organisations had pre-existing experience on this.

*to categorise OCSEA as a specific category since it can be swallowed by the other categories” (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).*

In terms of staffing, respondents indicated that there are staffing challenges within the Department of Children’s Services. The department confirmed that it does not have representation in all 295 sub-counties and that the children’s officers in the field have to cover wide geographical areas with huge populations. Due to this challenge, the Department of Children’s Services stated that it is not able to respond to cases in the field in a timely manner and hence often refers cases to partners: *“we have officers in 283 out of the 295 sub-counties. In those 283, you will find in a sub county it is only one officer without a driver, goes to the post office, goes to court (...) The Department of Children’s Services is underrepresented (...) Where a child is abused, we are not able to reach the child in good time. We have to refer to partners” (RA1-KY-08-B, Deputy Director - Department of Children’s Services, Ministry of Labour and Social Protection).*

Another respondent explained that the Department of Children’s Services relies on volunteers to mitigate the staffing challenge which she perceived as ineffective: *“robustness on the role and mandate of Department of Children’s Services needs to be strengthened. The Department for example on the ground works with volunteers which might not make it a strong approach in carrying out its mandate” (RA1-KY-03-A, Representative, Communications Authority of Kenya).*

## Budget

Funding was mentioned as a challenge that cuts across various mandated government agencies including the Department of Children’s Services, the judiciary and law enforcement agencies.

The Department of Children’s services indicated they receive minimal budget for child protection and this affects their capacity to undertake their mandate in responding to abuse. In the last financial year, the department indicated that the activities undertaken on OCSEA were funded by partners. A respondent from the Department of Children’s services explained: *“when it comes to the financial resources for children’s services, it’s minimal (...) but when we flag out our programmes properly, then we can get some funding from partners, not from mainstream government. [The children’s officer heading the child online protection unit] is funded by partners to do activities (...) I can confidently say that last year, we did not have any resources from the government for that work(...)all our activities were supported by partners, OCSEA being a part [of this]” (RA1-KY-08-B, Deputy Director - Department of Children’s Services, Ministry of Labour and Social Protection).*

The National Council of Children’s Services also indicated child protection is not prioritised during budgeting and that the government agencies in the children’s sector are not adequately funded to effectively implement activities and programmes. The respondent from the National Council of Children’s Services recommended for a balance in budget allocation that takes into consideration child protection: *“child protection is a very key component but it is not given the weight it deserves (...) we find that the children’s sector is inadequately funded so that whatever you are given is not adequate to address or to realise the projects and plans that you have. (...) We have other government agencies with a mandate on children and more often than not, in case of any emergency or something, some components are more prioritised - health and education but they ignore child*

protection. There is, therefore, need for a balance in the distribution of resources for child protection services” (RA1-KY-02-A, Principal Children’s Officer, National Council of Children’s Services.

The gap in funding for children was echoed by the chair of the Special Task Force on Children’s Matters. This respondent noted that budget to safeguard the rights of children within the criminal justice system is a challenge, not only for the judiciary but also for other law enforcement agencies handling children’s matters: *“we don’t have any budget that is designated for children. We just use what is given for other court operations. We know children have their own needs even when they come to court, they require lunch, we require to set up the place where they stay, we need a caretaker for them, we need toys and games (...) yet there is no budget for children. The police deal with children every day, they have a child protection unit yet there is no budget for children”* (RA1-KY-04-A, Court of Appeal Judge and Chairperson, NCAJ Special Task Force on Children Matters).

### Good practices

The Child Online Protection programme implemented by the Communications Authority of Kenya under the International Telecommunication Union’s global [Child Online Protection Initiative](#) has a range of activities which include awareness raising, research and policy formulation. The first phase of this programme focused on awareness creation and it’s under this phase that the Communications of Kenya launched the ‘Be the COP’ media campaign.<sup>17</sup> OCSEA was included as part of the child online protection messages in the campaign. As noted earlier, evaluation of the awareness creation activities under the International Telecommunication Union’s Child Online Protection programme have not been done, though these activities formed the first phase of the programme which has been completed. Information on the achievements of the activities and their effectiveness, as well as lessons learnt were therefore not available. Phase two of the International Telecommunication Union’s programme was indicated by the Communication Authority to include research – there are plans to conduct a national survey on online child protection in collaboration with the Kenya National Bureau of Statistics - and strategy formulation -there are plans to develop a National Strategy on Child Online Protection with the support of the International Telecommunication Union.

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<sup>17</sup> GSMA. (n.d.). [Child Online protection launch in Kenya](#)

## Policies and laws

According to respondents, the main laws and policies on OCSEA in Kenya are as follows: -

1. [Computer Misuse and Cyber Crime Act No. 5 of 2018](#);
2. [Children Act No. 8 of 2001](#);
3. [The Sexual Offences Act No. 3 of 2006](#).

### Assessments

According to respondents, the enactment of the Computer Misuse and Cyber Crime Act was necessitated by the rising number of cyber threats. Respondents noted that though the Kenya Information and Communication Act covered cybercrime, it was inadequate in that it lacked investigation procedures necessary for effective prosecution: *“the numerous cases of hacking that were happening in the country are what led to the initial discussions to develop a more comprehensive law that dealt with the developing and emerging cybercrimes. Though the Information and Communication Act was addressing cybercrime to some extent, it was found to be inadequate”* (RA-KY-05-A representative, Communications Authority of Kenya). Another participant commented *“the main reason for forming the Computer Misuse and Cyber Crime task force was to look at procedural aspects of how to effectuate substantive criminal law. There was a gap in the procedural tools - especially in assisting the police officers to bring criminal aspects into court. National Police Service Act did not have procedural tools that spoke to the times, therefore, the Ministry of Information Communication Technology thought we needed a comprehensive review of the Kenya Information and Communication Act and that also led to the review of related laws”* (RA1-KY-09-A, Senior Legal Officer, Kenya Law Reform Commission).

The Kenya Law Reform Commission explained that though emerging manifestations of OCSEA were discussed, the task force undertaking the review did not deem it fit to include all OCSEA manifestations under the Computer Misuse and Cyber Crime Act. The task force was aware that the Children Act 2001 and the Sexual Offences Act 2006 were both under review and these were seen as more relevant: *“issues of children were discussed but the task force felt the Computer Misuse and Cyber Crime Act was not the best Act to domicile those kinds of offences because we knew the Children Act<sup>18</sup> and Sexual Offences Act<sup>19</sup> were under review”* (RA1-KY-09-A, Senior Legal Officer, Kenya Law Reform Commission).

The task force did however cover child sexual abuse materials (unfortunately retaining the outdated term ‘child pornography’) under Section 24, as it was felt the penalty under Section 16 of the Sexual Offences Act was too lenient.<sup>20</sup> Section 24 of the Computer Misuse Act was therefore a remedy for

<sup>18</sup> The Kenya Law Reform Commission confirmed that the Children Act 2001 was being reviewed ongoing process which started in 2006.

<sup>19</sup> The Kenya Law Reform Commission indicated the review of the Sexual Offences Act was ongoing and the process started in 2018.

<sup>20</sup> The Computer Misuse and Cyber Crime Act provides for the penalty of child pornography as a fine not exceeding twenty million or to imprisonment for a term not exceeding twenty-five years, or both, whereas the Sexual Offences Act provides for imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, for imprisonment to a term of not less than seven years without the option of a fine.

this: *“the compromise was child pornography. The Sexual Offences Act was found to be very lenient hence the amendment”* (RA1-KY-09-A, Senior Legal Officer, Kenya Law Reform Commission).

In 6 out of the 12 interviews, respondents noted that one of the limitations of the Computer Misuse and Cyber- Crime Act was that it does not cover all the emerging forms of OCSEA including online grooming of children for sexual purposes or live streaming of child sexual abuse. The effect of this is that prosecuting these crimes is therefore a challenge as they are not defined in any law. One respondent commented *“about addressing the emerging forms of OCSEA – live streaming of child sexual abuse and online grooming- these laws are inadequate as they do not expressly mention these crimes. There is, therefore, need to amend laws to integrate these emerging forms of online child sexual abuse and exploitation”* (RA-KY-05-A representative, Communications Authority of Kenya), while another concurred *“live streaming is not defined in our law; so prosecuting such a case is difficult because it's not anchored and is not defined in any law”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

The participant from the Anti Human Trafficking and Child Protection Unit also highlighted the limitations of current legislations not covering online grooming, commenting *“there is no law that penalises online grooming as an offence. We rely on the Computer Misuse Act which penalises exposing a child to sexualised content and the sexual offences Act where we use the child pornography section. But we cannot directly charge grooming as an offence”* (RA4-KY-08-A, Investigator, Anti Human Trafficking and Child Protection Unit).

To address the above gap, the Kenya Law Reform Commission confirmed that the Children Act (Amendment) Bill covers OCSEA under Section 20. Only three of the respondents interviewed were aware that OCSEA is covered in the Children Act (Amendment) Bill.) The Law Reform commission confirmed this as follows:

Under Section 20 (3) (a) online grooming is expressly included as an offence liable to imprisonment not exceeding 10 years or a fine not exceeding 2 million shillings or both, for any person, who through any electronic system, network or communication technology proposes or solicits to meet a child for the purposes of engaging in sexual activities contrary to the provisions of the Sexual Offences Act 2006. Sharing child sexual abuse material is also an offence under section 20(3) (b) and is an offence liable to imprisonment not exceeding 10 years or a fine not exceeding 2 million shillings or both, for any person, who through any electronic system, network or communication technology “transmits or causes to be transmitted any obscene material, or otherwise makes such material accessible to children.”

The respondent from the Law Reform Commission expanded: *“the current Children Act (Amendment) Bill addresses OCSEA. This is the first time out of this entire process.<sup>21</sup> Key provisions include section 20 which is the actual provision on online child sexual exploitation and abuse. It makes provisions for protection from psychological abuse including abuse through a computer network and communication technology - grooming, soliciting, transmitting, harassing, or exploiting - OCSEA which can occur through social networks, online games, use of mobile phones or electronic*

<sup>21</sup> The Kenya Law Reform Commission explained that the Children Act amendment process started in 2006 and there have been two drafts done in 2011 and 2014, but these had not included provisions on OCSEA.



devices. All of that is a component of an offence. On conviction, the liability is imprisonment for a term of 10 years or less or a fine of up to 2 million shillings or to both. It defines online abuse to include cyberbullying, grooming, solicitation, cyber harassment and cyberstalking. It's comprehensive and also addresses obscene material and the definition of obscene materials includes electronic or social media that is targeted at or likely to fall into the hands of children" (RA1-KY-09-B, Senior Researcher, Kenya Law Reform Commission).

Live streaming of child sexual abuse is not expressly defined in the Children Act (Amendment) Bill, however, in section 20 (3) (c), the bill does make it an offence liable to imprisonment not exceeding 10 years or a fine not exceeding 2 million shillings or both, for any person who through any electronic system, network or communication technology in any other way, subjects a child to online abuse, harassment or exploitation, whether through social networks, playing games, or by use of mobile phone or other electronic devices. The respondent from the Kenya Law Reform Commission in her opinion stated that this covers live streaming: *"I certainly would argue that clause 20 would cover live streaming of child abuse or exploitation. In this respect, both 20(3)(b) covering transmission of obscene material, and 20(3)(c) covering online abuse and exploitation (including the catchall phrase "in any other way"), would in my opinion cover live streaming of child abuse"* (RA1-KY-09-B, Senior Researcher, Kenya Law Reform Commission).

The Kenya Law Reforms also confirmed that the Children Act Amendment Bill in Subsection 20 (4), clarifies that online abuse as referred to under subsection 20(3)(c) includes cyber bullying, grooming and solicitation, cyber enticement, cyber harassment and cyber stalking.

It was also indicated that the Children Act Amendment Bill has also expanded the definition of obscene material to include electronic or social media or other mediums which are of a kind targeted at or are likely to fall into the hands of children and which consist wholly or mainly of stories sold in pictures with or without addition of written matter, or video films and cassette tapes which contains pictures or stories which portray harmful information.

Further, the Law Reform Commission also highlighted there is an ongoing process to review the Sexual Offences Act 2006. Though a first draft, it was confirmed however that OCSEA was not included or even discussed *"OCSEA is not something that was discussed by the task force reviewing the Sexual Offences Act. The review of the Sexual Offences Act focused on the Romeo and Juliet cases<sup>22</sup> as it was big in 2016 and 2017"* (RA1-KY-09-C, Legal Officer, Kenya Law Reform Commission).

However, the respondent shared that there is still a window of opportunity to include OCSEA as the draft did not proceed beyond stakeholder consultations: *"since the draft is still at the raw stages, I believe OCSEA should be addressed. (...) It needs to be put in the new Sexual Offences Amendment Bill - especially now with COVID and what's happening. Online abuse is a major thing"* (RA1-KY-09-C, Legal Officer, Kenya Law Reform Commission).

In regard to the procedures included in the Computer Misuse and Cyber Crime Act, the Kenya Law Reform Commission noted that the most relevant sections for criminal justice actors when investigating OCSEA cases are section 48 on the seizure of stored computer data, section 51 on the

<sup>22</sup> The Commission indicated that the main focus was on the rising cases where teenagers were having consensual sex but being prosecuted – often at the behest of the girl's parents (Romeo and Juliet cases). OCSEA was an issue that had not come to the attention of the task force.

expedited preservation of partial disclosure of trafficked data, section 52 on the real-time collection of trafficked data and Section 53 which is on the interception of content data. The Commission indicated that if used by criminal justice actors, these provisions will aid them in investigating OCSEA and thus in protecting children from online abuse: *“If you don't have procedural tools to cater to these crimes, you will not be effective in that regard. All these tools under part four of the Computer Misuse and Cyber Crime Act if used by criminal justice actors, will aid them to get these offenders and therefore protect our children from abuse online. This would buttress them in the interest of the child”* (RA1-KY-09-A, Senior Legal Officer, Kenya Law Reform Commission).

The Anti-Human Trafficking and Child Protection unit confirmed that they have obtained information from Internet Service Providers by applying for court orders as provided for in the Computer Misuse and Cyber- Crime Act. The agency confirmed that having this Act in place has given them more authority to approach Internet Service Providers when they require information as they have the backing of court orders and the Act as a reference: *“with the Computer Misuse and Cyber Crime Act, it has helped us to bring on board the Internet Service Providers on what we need to prove OCSEA cases. It has created that kind of platform. We can go to Internet Service Providers and they are more compliant because we have the Act as a reference”* (RA4-KY-08-A, Investigator, Anti Human Trafficking and Child Protection Unit).

### Challenges and limitations

The Anti-Human Trafficking and Child Protection Unit indicated that though they may get court orders that are served to Internet Service Providers requesting for information in relation to prosecution of OCSEA cases, the information requested is sometimes not available due to a lack of a policy that regulates the length of time Internet Service Providers must store data for. The respondent indicated this as a gap, as each service provider is guided by their own internal policy: *“the Internet Service Providers respond to court orders, but you realise, there is no policy that controls the data. You find that the Internet Service Providers store data for some time. It is not regulated so at times you don't get because they have done away with the data as they have their own policy to control the data, what to store and for how long. If it is data that has overstayed, we don't get it. When they have it, they comply”* (RA4-KY-08-A, Investigator, Anti Human Trafficking and Child Protection Unit).

It was also noted that Internet Service Providers are also slow to respond to requests even when legislation has been followed, thus delaying the prosecution of cases: *“challenges come in when you are involving industry like Internet Service Providers. (...) when we request for IP address data, you find they take time to respond or they don't even respond at all. Because we are relying on that to even reach the victim and the offender, at times, it is a challenge”* (RA4-KY-08-A, Investigator, Anti Human Trafficking and Child Protection Unit).

The Anti Human Trafficking and Child Protection Unit did however share that Safaricom has taken steps to ensure faster processing of information requested for the prosecution of OCSEA cases: *“Safaricom identified a specific liaison officer for this unit. An officer of the Directorate of Criminal Investigations who is attached there to deal specifically with the unit's requests. We are yet to have the same with other Internet Service Providers”* (RA4-KY-08-B, Officer in Charge, Directorate of Criminal Investigations, Anti Human Trafficking and Child Protection Unit).

The Anti Human Trafficking and Child Protection Unit also noted that with the number of cases they receive, the process of obtaining court orders is tedious *“with the many OCSEA cases we get, filing for a court order is tedious”* (RA4-KY-08-A, Investigator, Anti Human Trafficking and Child Protection Unit).

The Kenya Law Reform Commission indicated that though the imposition of legal duties on Internet Service Providers to filter and/or block and/or take down child sexual abuse material and report companies and/or individuals disseminating or distributing these materials was discussed during the drafting of the Computer Misuse and Cyber Crime Act, this provision was unfortunately not included. A respondent indicated that inclusion of this provision would have assisted in controlling the wide distribution of child sexual abuse materials due to the immediate action that would need to be taken by Internet Service Providers: *“If reporting for Internet Service Providers is made mandatory, it will assist in that immediately they detect OCSEA material from their side, it will be controlled and the materials will not be widely distributed. If it is Safaricom and they report to us, it means it will be under control and will not be spread to other networks”* (RA4-KY-08-A, Investigator, Anti Human Trafficking and Child Protection Unit).

Another challenge highlighted by respondents about the Computer Misuse and Cyber Crime Act is the clash with other fundamental rights. This clash resulted in the issuance of a conservatory order suspending the entry into force of the 26 sections of the Act,<sup>23</sup> barely two weeks after the presidential assent. A petition was filed at the High Court challenging the constitutionality of these 26 sections for contravening the constitutional provisions on freedom of opinion, freedom of expression, freedom of the media, freedom and security of the person, right to privacy, right to property and the right to a fair hearing. Fortunately, in February of 2020, the High Court declined to quash the 26 sections and declared the Act valid in its entirety. One respondent gave their view on this challenge, commenting *“one key challenge concerning the implementation of the Computer Misuse and Cybercrime Act was that as soon as it was passed, it was challenged by the Bloggers Association of Kenya and certain key sections were immediately suspended pending the conclusion of the matter in court. This is because of the thin balance between protection and other fundamental rights such as freedom of speech and free dissemination of information. (...) There is a clash with other fundamental rights and freedoms such as the freedom of media, the right to access information, among others”* (RA1-KY-05-A, Manager - Regulatory Affairs, Communications Authority of Kenya).

Another challenge identified was the serious knowledge gap regarding OCSEA among the implementers of the law. From the interviews, it became clear that there is a need to create awareness as well as build the technical capacity for law enforcement officers on both OCSEA and the relevant legislative provisions in order to ensure a common understanding. One respondent noted that OCSEA is a crime that is not obvious to law enforcement officers yet as there is a serious gap in knowledge. So while the law may be well constructed, without widespread knowledge, it remains impotent as it simply won't be utilised: *“we are not short of laws. Our challenges are however in terms of knowledge, we have a very serious knowledge gap. (...) OCSEA, because of its insidious nature, may not be obvious to a local police officer, an investigator, a prosecutor, a*

<sup>23</sup> Among the sections suspended were those touching on OCSEA (s. 24) and the procedural provisions on investigation- sections related to seizure of stored computer data, expedited preservation of partial disclosure of trafficked data, real-time collection of trafficked data, and interception of content data.

*magistrate, and even to the victims themselves”* (RA1-KY-04-A, Court of Appeal Judge and Chairperson, NCAJ Special Task Force on Children Matters).

Another respondent also noted that law enforcement officers have not yet appreciated the grave impact of online abuse and do not regard online abuse against children as a crime on the same standing as offline abuse: *“people do not consider digital crime as a crime like physical crimes, so if you say a child has been abused online, you find a policeman will not see the damage”* (RA1-KY-06-A, Chief Executive Officer, Kenya Film and Classification Board).

A representative from the Office of the Directorate of Public Prosecutions also indicated that the awareness and technical capacity of prosecutors on OCSEA is low and this impacts on how effective they can be in prosecuting OCSEA. She noted that only a few prosecutors have been trained specifically on OCSEA and recommended that more be trained: *“awareness and technical capacity is a challenge. Though prosecutors know their roles, these cases are technical and there are forensic issues as well. Unless the prosecutors have this specialised training, then there is a gap in how effective they can be. In Kenya currently, except for the few prosecutors trained and working with the Directorate of Criminal Investigations Child Prosecution Unit, there is need for training not only for prosecutors but police and the bench as well (magistrates and judges)”* (RA1-KY-07-A, Head - Children Division and Anti FGM Unit, Office of the Director of Public Prosecutions). Urgent and extensive investment in building capacity and awareness amongst law enforcement and justice actors on OCSEA was therefore recommended as an important component to support the effective implementation of the existing law on OCSEA.

The relevant national action plans and policies relating to OCSEA were identified as:

- [The National Plan of Action for Children in Kenya 2015-2022](#);
- [The National Plan of Action Against Sexual Exploitation of Children in Kenya 2018 – 2022](#);
- [The National Information, Communications and Technology Policy \(2019\)](#).

According to the National Council of Children’s services, the National Plan of Action for Children in Kenya 2015-2022 did not include any measures relating to OCSEA. While the Council did indicate it planned to incorporate OCSEA into this Plan of Action during the mid or end term review, at the time of writing, this had not yet happened: *“for the National Plan of Action for Children in Kenya 2015-2022, I would say not much has been achieved in regard to OCSEA. We were supposed to do a midterm review<sup>24</sup> so we can incorporate emerging issues as there are several emerging issues that needed to be captured including OCSEA and care reforms. (...) So this National Plan of Action does not address OCSEA as we have not been able to review to address the emerging issues”* (RA1-KY-02-A, Principal Children’s Officer, National Council of Children’s Services).

The National Council of Children’s Services did note that the National Plan of Action Against Sexual Exploitation of Children in Kenya 2018 – 2022 did touch on OCSEA. However, according to the National Council of Children’s Services, this policy has not yet been launched<sup>25</sup> and disseminated

<sup>24</sup> The National Council of Children’s services explained that there is still an ongoing discussion on if to have a mid term review or an end term review since there are only two years remaining. The decision has not yet been made.

<sup>25</sup> The launch, which was planned for early 2020 was interrupted the outbreak of the COVID 19 pandemic.

meaning there is no progress on its implementation.<sup>26</sup> Further, the National Council of Children’s Services pointed out that the previous National Plan of Action Against Sexual Exploitation of Children in Kenya 2013 -2017 had not made much progress in regard to OCSEA. One objective of this 2013 to 2017 National Plan of Action was to enhance online protection of children against sexual exploitation. Key activities included conducting a baseline survey on the extent of child sexual exploitation in the online environment, training cyber business owners and operators on child online protection and developing and implementing a community and school-based child online protection programme.

According to the Ministry of Information Communication and Technology, the National Information, Communications and Technology Policy 2019 was only gazetted in July/ August of 2020 and therefore no concrete steps towards implementation had been taken at the time of interviews. Respondents noted that there has not been dissemination of the policy as yet, nor is there any implementation matrix for this policy that has been developed to guide the various mandated agencies on activities they need to implement on child online protection.

A respondent representing the Department of Children’s Services expressed her view on the importance of disseminating the Information Communication Technology policy in order to support its effective implementation: *“the impact of the Information Communication Technology policy will depend on how widely it will be disseminated. Do the various government agencies know what they are supposed to do? (...) There needs to be an implementation plan. Each arm of the government needs to know what they are required to do. The policy talks about the removal of the illegal content which touches on industry, but does the industry know? (...) So I think it needs to be disseminated. The agencies with a role in implementing the policy need to be aware so they can develop activities”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

### Future developments

It was indicated by the Ministry of Information and Communication Technology and the Communications Authority of Kenya that they are in the process of securing the requisite approvals to progress with the development of the National Strategy on child online protection. The Ministry of Information Communication Technology indicated that the National Strategy On Child Online Protection is a move to domesticate the International Telecommunication Union global strategy on Child Online Protection of which Kenya is a signatory to. The International Telecommunication Union has therefore been engaged and has agreed to support Kenya in this process: *“there is also the plan to develop a National Strategy on Child Online Protection. The Communications Authority has engaged with the International Telecommunications Union who are committed to supporting Kenya. The proposal is awaiting cabinet approval”* (RA1-KY-03-A, Representative, Communications Authority of Kenya). The respondent from the Ministry of Information and Communication Technology also highlighted the collaboration with the International Telecommunications Union, commenting *“we are in the process of domesticating the global strategy on child online protection that is being championed by the International Telecommunications Union. We are signatories to the International Telecommunications Union so it’s in our best interest to also come up with a national*

<sup>26</sup> Without the dissemination of the policy, this affects its implementation in that the various stakeholders (including Communications Authority of Kenya, County Governments, relevant ministries, MOEST, County Area Advisory Councils and strategic partners such as NGOs, FBOs, CBOs and the private sector may not be aware of the activities they need to implement.

*child online protection strategy so this is now going to be the strategy” (RA1-KY-12-A, Representative, State Counsel).*

There is also an ongoing process to develop a National Plan of Action on Child Online protection, which was initiated in 2020 in Nairobi and according to the Department of Children’s Services, there is already a first draft. The Department of Children’s Services plans to hold other stakeholder forums in other counties to build on this draft: *“the process to develop the National Plan of Action on Child Online Protection has started in Nairobi and there is a first draft. Stakeholder forums have started but only for the Nairobi stakeholders. The other stakeholders from other areas have not given their input. We had a roadmap before the COVID-19 lockdown- to have stakeholder forums in Nairobi, Garissa, Mombasa, Kisumu and Nakuru, to build upon this draft. So, for now, we only have a first draft as developed by the Nairobi stakeholders” (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).*

On how the National Strategy on Child Online Protection and National Plan of Action on Child Online Protection link, the Communication Authority of Kenya noted that these two documents are different though they will relate to each other: *“the two documents – that is the National Plan of Action on Child Online Protection and the National Strategy on Child Online are two different documents with different purposes. The National Plan of Action was expected to be an outcome of the National Strategy on Child Online Protection but we cannot be sure when the strategy will be finalised. But it’s important that the two speak to each other” (RA1-KY-03-A, Representative, Communications Authority of Kenya).*

## Law enforcement

### Law enforcement mechanisms

Respondents indicated that the Anti-Human Trafficking and Child Protection Unit, under the Directorate of Criminal Investigations, is the main law enforcement unit specialising in investigating cases of OCSEA. The Department of Children Services described the unit as victim-centred as there is close collaboration between the two agencies in safeguarding the rights of victims: *“the Anti- Human Trafficking and Child Protection unit is a victim-centred unit. Whenever a case is reported, we (the Department of Children’s Services and the investigators from the unit) sit down together, to know the location of this case. (..) We (the Department of Children’s Services) get to our officers on the ground because its a case of rescue, we need to rescue even before the investigators go down there, because the safety of the child is paramount, and we start providing the support that is needed for the child”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

Respondents confirmed that there is effective collaboration among the national law enforcement agencies in addressing OCSEA. The different agencies know and support each other in fulfilling these roles. The Office of the Director of Public Prosecutions indicated that in 2018/2019, 10 prosecutors were trained on OCSEA by the Anti Human Trafficking and Child Protection Unit in order to support in the prosecution of OCSEA cases. The Anti Human Trafficking and Child protection Unit confirmed that they receive referrals on OCSEA from the other law enforcement agencies such as National Kenya Computer Incident Response Team Coordination Centre, Cyber-crime Unit, 116 Hotline and ordinary police stations. However, it was noted that referrals only happen when someone knows to contact this unit, highlighting the need for better integration of the broader reporting and referral system: *“if you want to report to that unit, you have to call an individual you know within that unit, and tell them there is this case then that person passes it on. It should not be like that. Suppose you don’t know any individual who is working there, does that mean the case will go unreported”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

The Kenya Computer Incident Response Team confirmed that they do not undertake criminal investigations but instead refer all OCSEA cases to the Anti-Human Trafficking and Child Protection Unit for investigations. The Kenya Computer Incident Response Team was also reported to be the agency with the core mandate of leading removal of harmful content which other agencies, including the Anti Human Trafficking and Child Protection Unit, flag content to them for this purpose: *“if there are gross materials, we in our own volition, can make a move to request the service providers both local or international to have some content removed. Now that is the core duty of the Kenya Computer Incident Response Team. Considering the 24-hour operations and the pre-existing framework of operations with service providers, we will ensure action with minimal or zero delays. Other government agencies and also private organisations can flag some content and share with us and we will be in a position to analyse, see if it meets the criteria, and if it does, we will occasion the removal”* (RA1-KY-11-A, Representative, National Kenya Computer Incident Response Team, Communication’s Authority of Kenya).

A respondent from the Computer Incident Response Team indicated that for child sexual abuse materials, they compel Internet Service Providers to take content down and there is an agreed timeframe of one hour within which action should be taken. The respondent indicated that the rate

of compliance by the service providers, both local and international, in taking down child sexual abuse material is high: *“we compel Internet Service Providers to remove when the material in question is of a serious criminal nature, for example child sexual abuse materials. And you find that there is a way its structured, that when it [the notice] reaches their servers, they know this is a demand and not a request. A demand is actioned within one hour. We have that arrangement and there is no instance where we have had to penalise”* (RA1-KY-11-A, Representative, National Kenya Computer Incident Response Team, Communication’s Authority of Kenya).

The Kenya Computer Incident Response Team respondent explained that since takedown is the core duty of the Computer Incident Response Team, the agency has memorandums of understandings with international companies on this, whereas for local Internet Service Providers, the provisions of the national law ensures their compliance. There are therefore no memorandums of understanding with local Internet Service Providers: *“for international companies such as Google and Facebook, we have signed memorandums of understanding with them concerning take down, whereas for local Internet Service Providers there are no memorandums of understanding as the provisions in the law guides this”* (RA1-KY-11-A, Representative, National Kenya Computer Incident Response Team, Communication’s Authority of Kenya).

The Computer Misuse and Cybercrimes Act -Section 56 (1) provides that service providers shall be subjected to civil or criminal liability if it is established that they had “actual notice, actual knowledge, or willful and malicious intent and not merely through omission or failure to act, had thereby facilitated, aided or abetted the use by any person of any computer system controlled or managed by a service provider in connection with a contravention of this Act or any other written law.”<sup>27</sup>

Respondents also indicated international collaboration of Kenyan agencies with other international law enforcement agencies. The connection of Kenya to the International Child Sexual Exploitation database<sup>28</sup> was said to be an indication of this collaboration. It was also pointed out that Kenyan law enforcement has been actively working with law enforcement liaison officers in local embassies in Kenya in the arrest of perpetrators, as one respondent highlighted: *“there was a case of a German who was arrested the other day. We had already heard that he had been abusing children in Kwale. The German Embassy informed us that the man had applied for a passport and he would definitely be going for it.(...) When he went to collect his passport, the team was already laying an ambush for him, he was arrested”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

In terms of international cooperation in the prosecution of OCSEA cases, the Office of the Director of Public Prosecutions did not know of any case where this had happened: *“I am not aware of any international collaboration specifically for an OCSEA case though there has been collaboration on other child sexual abuse matters. This is in cases where there are mutual legal assistance agreements between Kenya and those other countries”* (RA1-KY-07-A, Head - Children Division and Anti FGM Unit, Office of the Director of Public Prosecutions).

<sup>27</sup> Republic of Kenya. (2018). [Computer Misuse and Cybercrimes Act No. 5 of 2018](#), Section 56(1).

<sup>28</sup> INTERPOL. (2019). [Kenya first African country to connect to the international child sexual exploitation database.](#)



## Challenges and limitations

One challenge noted by respondents is in the staffing of the Anti-Human Trafficking and Child Protection Unit. Respondents indicated that the investigators are few compared to the work load: *“we have few cyber investigators, although they work together (with other police). (...)Even when we have a case in Mombasa, we still have to sometimes send the ones from Nairobi from the Directorate of Criminal Investigations Child Protection Unit”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

Respondents also indicated challenges in the existing reporting mechanisms on OCSEA. The reporting hotline 116 under Childline Kenya was reported as being incapacitated in terms of receiving OCSEA reports: *“the Child Helpline is severely incapacitated and doesn’t have sufficient personnel to tackle this issue (OCSEA) which is time-consuming. Though the work they do is commendable, the government needs to offer the strategic commitment that would strengthen their role both from a reporting perspective and from the perspective of providing psychosocial support to victims”* (RA1-KY-03-A, Representative, Communications Authority of Kenya).

Further, the reporting portal under the National Kenya Computer Incident Response Team Coordination Centre was also indicated as being ‘not very user friendly’ for reporting child online protection issues: *“the portal for the Communication Authority of Kenya) is not very user friendly. I have used it a couple of times. It takes you round and round and round. If it’s urgent stuff, it’s very difficult for you to report”* (RA4-KY-02-A, Executive Director and Child Rights Advocate, Mtoto News).

Respondents also highlighted that the Anti Human Trafficking and Child Protection Unit lacks a clear mechanism through which members of the public can report OCSEA directly to them: *“if you want to report to the Anti Human Trafficking and Child Protection Unit, you have to call an individual you know within that unit, and tell them there is this case then that person passes it on. It should not be like that.... Suppose you don’t know any individual who is working there, does that mean the case will go unreported?”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

The Anti-Human Trafficking and Child Protection Unit confirmed that members of the public can use the Directorate of Criminal Investigation number and hotline 116 in order to make reports, but reporting has been a challenge and they are working on strengthening it *“reporting is something that we have been working on as it has been a challenge. We have got an email address, and then we use the Directorate of Criminal Investigations as well as 116. But there is no number”* (RA4-KY-08-B, Officer in Charge, Directorate of Criminal Investigations, Anti Human Trafficking and Child Protection Unit).

The Department of Children’s Services respondent noted that having a number specifically for the unit would increase its visibility. It was indicated that there had already been discussions initiated to have such a line that members of the public can call, however, the discussions seemed to not have been concluded yet: *“we had actually talked to the Communications Authority of Kenya, and a letter was done so they can allow Safaricom to give the unit a line, (...) so it can also increase the visibility of the unit, so people can know they can call that line and report matters of children. This will not be*

*for OCSEA only but for all the cases of children that fall under the mandate of the unit” (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).*

It emerged however that the Anti-Human Trafficking and Child Protection unit and Kenya Computer Incident Response Team are in the process of strengthening reporting on OCSEA. The Anti Human Trafficking and Child Protection Unit indicated that it will host the Internet Watch Foundation reporting portal from January 2021: *“this December (2020), we had stakeholder consultations with the Internet Watch Foundation on setting up a reporting portal. This is scheduled to be launched in January of 2021 and the Directorate of Criminal Investigations child protection unit will be the host” (RA4-KY-08-A, Investigator, Anti Human Trafficking and Child Protection Unit).* As planned, the reporting portal was successfully launched on January 27th 2021. Further, the Kenya Computer Incident Response Team respondents indicated that they are working on developing a reporting portal on child online protection: *“even as we speak, we are developing a reporting portal on child online protection. We will have finer reporting which will allow among other things anonymous reporting. This one will be specific for children and separate from the existing portal” (RA1-KY-11-A, Representative, National Kenya Computer Incident Response Team, Communication’s Authority of Kenya).* The interviewee from the Kenya Computer Incident Response Team went on to say *“the shortcomings of the current portal is the all-inclusivity. The child online protection portal will be sharper and people will be having that opportunity to precisely report the nitty-gritty as opposed to right now that we have to filter from among thousands of reports on cybersecurity” (RA1-KY-11-B, representative, National Kenya Computer Incident Response Team , Communication’s Authority of Kenya).*

The Kenya Computer Incident Response Team respondents also confirmed that there is effective collaboration between them and the Anti- Human Trafficking and Child Protection Unit, as any cases that are reported to them through their reporting portal are referred to the Directorate of Criminal Investigation unit for criminal investigations *“when we receive cases, the initial investigation- triaging- is done by the Kenya Computer Incident Response Team to determine what direction will serve the best interest of the child. If it is counselling, that is a decision that can be made and we direct the case to a pool of counsellors; if it's the criminal investigations, we will liaise with our sister agency which is the Anti-Human Trafficking and Child Protection Unit to run with the investigations. We continue providing technical support for them to finalise the investigations” (RA1-KY-11-A, Representative, National Kenya Computer Incident Response Team, Communication’s Authority of Kenya).*

Based on this, there is little chance of conflict between the two agencies despite the set-up of the two reporting portals. The Communications Authority also shared their commitment to harmonise the various reporting channels to ensure seamless linkages: *“the Communications Authority of Kenya plans to facilitate the harmonisation of how OCSEA and other child-related complaints are handled. As a first step toward this, the Communications Authority of Kenya facilitated a meeting between the Directorate of Criminal Investigations - Child Protection Unit, the Department of Children's Services and Communications Authority of Kenya where the discussion was held on setting up a reporting mechanism that would allow the agencies to work independently in line with their jurisdiction (mandate), but have a neutral platform to ensure a seamless transition of OCSEA cases from one stage to another and from one agency to another” (RA1-KY-03-A, Representative, Communications Authority of Kenya).*

Another challenge noted by respondents was on the limited awareness and capacity of law enforcement agencies on OCSEA. The office of the Director of Public Prosecutions indicated that the capacity of prosecutors on OCSEA is low as very few prosecutors have been trained on OCSEA: *“the whole issue is quite new and there are very few prosecutors that are knowledgeable in this new area, especially because it is very technical. Prosecutors know the practice of prosecution and what is required of them to prove a case, but when you have a technical kind of offence involving computers and data information, more an IT specialist kind of offence, then you need to train the prosecutor on this and not even just the prosecutor but also the magistrates. So, there is a serious need for training”* (RA1-KY-07-A, Head - Children Division and Anti FGM Unit, Office of the Director of Public Prosecutions).

Concerning the level of knowledge of the judiciary on OCSEA, the representative from the judiciary commented *“I think it is nil. Other than knowing that it is a crime to exploit a child (...), I think we don't have knowledge of that (OCSEA). I know there has been some training but very little. Very few judicial officers have been trained”* (RA1-KY-04-A, Court of Appeal Judge and Chairperson, NCAJ Special Task Force on Children Matters).

To mitigate this knowledge gap on OCSEA, the Children’s Division of the Office of the Director of Public Prosecutions conducted a ‘Training of Trainers’ session on juvenile justice and one of the topics covered was OCSEA, inviting the Anti- Human Trafficking and Child Protection Unit investigators to train prosecutors<sup>29</sup> on OCSEA.

Other gaps identified in law enforcements response was the lack of a national image database on OCSEA as well as the lack of an offender management system for OCSEA. Respondents noted that there is an awareness on the need to have an image database and that it has been a subject of discussion on the Technical Working Group on Child Online Protection: *“the image data base is one of the things we have been thinking about. (...) We are already connected to the International Child Sexual Exploitation database but we need our own local database. It's something that has been discussed”* (RA1-KY-08-A, Principal Children’s Officer, Department of Children’s Services).

For offender management, it was noted that there is an offender management programme that is generally aimed at preventing recidivism, but it was not clear how it was working with sexual offenders: *“the Probation Department has an offender management programme aimed at preventing recidivism. I am however not aware of specific programmes targeting sex offenders or potential OCSEA offenders”* (RA1-KY-07-A, Head - Children Division and Anti FGM Unit, Office of the Director of Public Prosecutions).

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<sup>29</sup> The prosecutors trained were from the counties with the highest cases of child abuse and included Nairobi, Kisumu, Mombasa and Nakuru. To ensure more prosecutors are sensitised on OCSEA, the Office of the Directorate of Public Prosecutions plans to cascade the Juvenile Justice training in the 47 counties.

## Successes

The establishment of the Anti-Human Trafficking and Child Protection Unit is a great success in Kenya since it has catalysed action in other mandated government agencies, including the Department of Children's Services and the Office of the Director of Public Prosecutions who now have officers dedicated and trained on handling OCSEA. Due to the Anti-Human Trafficking and Child Protection Unit, Kenya is also now connected to the International Child Sexual Exploitation database.

The enactment of the Computer Misuse and Cyber Crimes Act is also a milestone in Kenya's fight against OCSEA, as it provides the procedural rules needed to assist law enforcement officers in the investigation of OCSEA cases. Finalising and enacting the Children's Act amendment is however necessary to properly define OCSEA in law - an unfortunate shortcoming of the cyber crimes act.

## Challenges

A number of challenges were identified in the interviews. The issue of funding was raised as a challenge by multiple respondents, exemplified by the Department of Children's services having to seek funding from external partners due to the minimal budget provided by the government. Other respondents from agencies such as the National Council of Children's Services and the chair of the Special Task Force on Children Matters also suggested that the government needs to provide more adequate funding for agencies tasked with tackling OCSEA.

Multiple respondents also highlighted the lack of awareness of OCSEA, among both the public and key stakeholders. As the Director of Public Prosecutions indicated, the awareness of prosecutors on OCSEA remains very low due to a lack of training on the issue. Similarly, the representative from the judiciary described level of knowledge of OCSEA as 'nil'.

While steps have been taken to mitigate this lack of knowledge among key stakeholders, it is essential that these trainings are provided to as many prosecutors and members of the judiciary nationwide as possible. Equally, these trainings must be adequately funded by the government to ensure all stakeholders have, at the very least, a basic understanding of OCSEA and its different manifestations.