

**EVALUATING LEGAL AND POLICY RESPONSES TO ONLINE CHILD GROOMING AWARENESS IN KENYA**

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By

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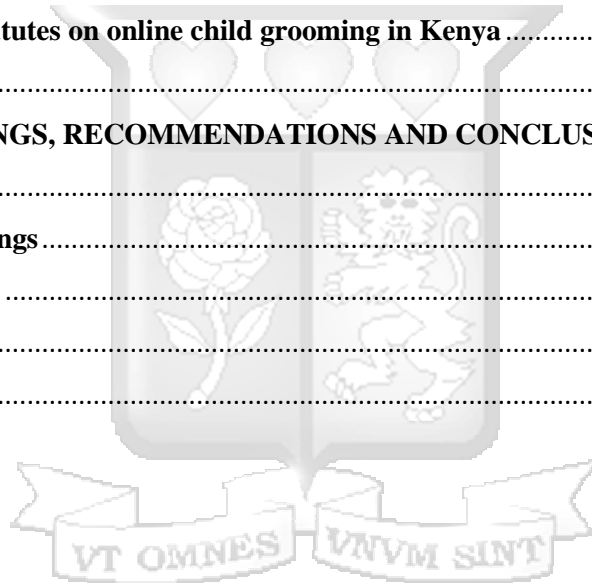
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**Declaration**

I, ONYANGO BEATA CYNTHIA, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:  .....

Date: 3<sup>RD</sup> FEBRUARY, 2024 .....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:  .....

Dr. Jane Wathuta

## **ABSTRACT**

The digital age has revolutionized access to information and communication, but it has also created fertile ground for online child exploitation, including grooming. This phenomenon, where perpetrators manipulate and build trust with minors online for malicious purposes, poses a growing threat in Kenya. This paper delves into the complexities of online child grooming in the Kenyan context. It analyses how algorithms and digital platforms both enable and complicate efforts to identify and prevent such offenses.

The focus then shifts to the legal and policy frameworks in place to tackle this issue. The paper evaluates the effectiveness of existing laws and examines the policy initiatives aimed at curbing online child exploitation. Crucially, the paper analyses the limitations of these existing frameworks and identifies key gaps in legal and policy responses.

Finally, the paper proposes solutions and recommendations for strengthening Kenya's response to online child exploitation and grooming. This could involve legislative reforms, enhanced collaboration between law enforcement and tech companies, and the development of effective awareness-raising campaigns targeting both children and their caregivers.

### **Keywords:**

Online child exploitation, grooming, Kenya, digital age, legal framework, policy responses, technology.

## LIST OF ABBREVIATIONS

ACCCE	Australian Centre for Missing and Exploited Children
AIC	Australian Institute for Criminology
CCU	Cyber Crimes Unit
CEOP	Child Exploitation and Online Protection Command
CII	Critical Information Infrastructure
CRC	Convention on the Rights of the Child
CSAM	Child Sexual Abuse Material
CSO	Civil Society Organization
ECPAT	End Child Prostitution in and Trafficking
EU	European Union
ICT	Information Communications and Technology
IOTA	Internet Organized Crime Threat Assessment
IWF	Internet Watch Foundation
KNCB	Kenya National Children's Bureau
NCMEC	National Center for Missing and Exploited Children
NCSS	National Cyber Security Strategy
NPA	National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse
NSPCC	National Society for the Prevention of Cruelty to Children
OCSE	Online Child Sexual Exploitation
OPSCEC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
UK	United Kingdom
UNICEF	United Nations International Children's Emergency Fund

WHO

World Health Organization



## **LIST OF LEGAL INSTRUMENTS**

Children Act (2022)

Computer Misuse and Cybercrimes Act (2019)

Constitution of Kenya (2010)

Employment Act (2007)

Kenya Information and Communications Act (1998)

Sexual Offences Act (2006)

Victim Protection Act (2014)



## **INTERNATIONAL INSTRUMENTS**

African Charter on the Rights and Welfare of the Child, 1999

Budapest Convention on Cybercrime

Convention on the Rights of the Child, 1989.

Criminal Code (Act LXII of 2012

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children,  
Child Prostitution and Child Pornography, (2009).



## CHAPTER 1 INTRODUCTION TO THE STUDY

### 1.1 Background

Heightened use and accessibility of information communication technologies have brought about professional and personal development, broken down cultural, distance, and communication barriers, and the rise of opportunities, with the recent pandemic, the use of technology has become indispensable for working, learning, accessing basic services, and communicating.<sup>1</sup> The Kenya National Children's Bureau (KNCB) released a report entitled 'Children and the Internet' which found that more than 30% of Kenyans use the Internet regularly, with children and young people making up almost half of that figure.<sup>2</sup>

According to a 2017 report by the World Health Organization (WHO), there are around 250 million internet users worldwide, which is expected to grow to 350 million by 2025. Adults still see the world, and their identities, as merely offline or online. They tend to think of the online world as a tool used more for utility than anything else. However, for more young people there is less of a distinction.<sup>3</sup> They merely see the world, and their identities existing in both realms. The online world to them is a place where they can extend their personality, as well as explore and experiment.

However, given the rising number of internet users worldwide and the increased availability of high-speed broadband internet in developing countries, risks associated with social media are likely to increase in the coming years.<sup>4</sup> It is therefore important to take action to address these risks and protect children from the harm they can cause. This

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<sup>1</sup> Bosamia M, 'Positive and negative impacts of information and communication technology in our everyday life', International conference on 'Disciplinary and interdisciplinary approaches to knowledge creation in higher education', Bhavnagar, December 2013, 4.

<sup>2</sup> <https://www.internetsociety.org/wp-content/uploads/2017/11/bp-childrenandtheinternet-20129017-en.pdf>, on 10 April 2024.

<sup>3</sup> World Health Organization, 'Monitoring health for the SDGs,' 2017, 25.

<sup>4</sup> International Telecommunication Union, ICT data for the world, by geographical regions, by urban/rural area, and by the level of development ( 2005-2021),2021.

includes the number of threats to the safety of children<sup>5</sup> and facilitated opportunities for online child abuse and exploitation.<sup>6</sup>

While the internet has many benefits for children such as helping them develop new skills, connect, communicate with others, and access information, some risks can impact children's safety and well-being such as cyber bullying, child trafficking, extortion, sextortion, and child pornography all take place on social media networks and can have severe negative impacts on children. Nevertheless, such technology presents new occasions for offenders to link and share encrypted information, and the use of the darknet for facilitating offenses covered by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography is giving rise to new oppositions for law enforcement. In a world where Internet access is expanding at unprecedented levels, the risk of children being sexually exploited or bought and sold as a commodity is becoming ever greater.<sup>7</sup>

Online Grooming is the process of building a relationship with a child or adult through ICT, the Internet, or other digital technologies to encourage online or offline sexual contact with them.<sup>8</sup> It includes offenders encouraging the child or the adult to engage in sexual conversation or activity such as role-play, to send the offender sexually explicit material, to meet in person for sexual purposes, and on some occasions, to sell or trade the child's or adult's sexual images to others.<sup>9</sup> Online grooming takes place on social

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<sup>5</sup> EUROPOL, 'Internet Organized Crime Threat Assessment (IOCTA),' 2021, 25.

<sup>6</sup> UNDOC, 'Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children,' May 2015 <[https://www.unodc.org/documents/Cybercrime/Study\\_on\\_the\\_Effects.pdf](https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf) > on 10 April 2024.

<sup>7</sup> Article 3, United Nations Convention on the Rights of the Child, 1989, 27531 UNTS 1577.

<sup>8</sup> Interagency Working Group on Sexual Exploitation of Children, *Terminology Guidelines for the Protection of Children from Sexual Exploitation*, 2016, 51; ECPAT, *Summary paper on Online Child Sexual Exploitation*, 2020, 3; ECPAT, *Online Child Sexual Exploitation Booklet*, 10.

<sup>9</sup> Interim Code of Practice on Child Sexual Exploitation and Abuse, 2020, 11; ECPAT, *Summary paper on Online Child Sexual Exploitation*, 2020, 3; National Centre for Missing and Exploited Children (NCMEC), *The Online Enticement of Children: Executive summary*, 2017, 1.

networking sites, instant messaging apps, via email, online gaming sites, and chat rooms.<sup>10</sup>

Grooming was not invented by technology. Abuse of this technique has been occurring offline long before we all carried little computers in our pockets. However, the abundance of digital surroundings in our life and the diversity of platforms available have expanded the reach and opportunities for abusers. Adults that seek to harm children will go where children are.<sup>11</sup> Grooming is therefore potentially possible almost anywhere. Predators can connect with children through chat rooms on video games, either fabricating characters to feel more connected to their victims or projecting a reliable adult image in an environment where other adults are scarce.<sup>12</sup> For a child livestreaming may initially seem harmless, it could be something to cheer her on while she dances to the newest song or commemorates a new gymnastic move but predators can manipulate technology and sexualise such innocent moments.<sup>13</sup>

In the dynamic and evolving realm of Kenyan law, my proposed work is an analysis of the existing laws and policies. Kenya's Children Act 2022, recognizes grooming as establishing a relationship of trust or emotional connection with a child. This could either be personally or through electronic means, to manipulate the child or adult caregiver. As a result, the relationship may facilitate sexual contact or other child abuse that promotes or normalizes sexual activity or behavior among or with children. It also provides the punishment accorded with regards to sexual abuse.<sup>14</sup> The Children Act 2022 has taken steps to try to protect children from online sexual exploitation. The Sexual Offences Act acknowledges that both adults and children can experience sexual abuse.<sup>15</sup> It therefore aims to ensure that both adults and children are protected against any form of sexual abuse.

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<sup>10</sup> International Centre for Missing & Exploited Children, *Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review*, 2017, 2; Terre des Hommes Netherlands, *The Dark Side of the Internet: Online Child Sexual Exploitation in Kenya- A Rapid Assessment Report*, 2018, 25.

<sup>11</sup> Terre des Hommes Netherlands, 'The dark side of the internet: Online child sexual exploitation in Kenya- A rapid assessment report', 2018, 32.

<sup>12</sup> UNICEF, 'Disrupting harm in Kenya: Evidence on online child sexual exploitation in Kenya', 2018.

<sup>13</sup> UNICEF, 'Disrupting harm in Kenya: Evidence on online child sexual exploitation in Kenya', 2018.

<sup>14</sup> Section 2, Children Act, (2022).

<sup>15</sup> Section 18, Sexual Offences Act, (2006).

The African Charter on the Rights and Welfare of the Child has a provision that endeavors to protect children from all forms of sexual exploitation and sexual abuse.<sup>16</sup> The Convention on the Rights of the Child (CRC), ratified by Kenya in 1990, is a legally binding international treaty setting out the basic human rights that all children everywhere have. While the CRC itself doesn't directly address online child grooming, several articles within the Convention can be interpreted as relevant to the issue. Article 19 recognizes the right of every child to protection from all forms of physical or mental violence, injury, or abuse, including sexual abuse. This could be interpreted as applying to online child grooming, which can have significant negative consequences on a child's mental and emotional well-being.<sup>17</sup> Article 34 places an obligation that States Parties (including Kenya) should protect children from all forms of sexual exploitation and abuse, including through the production, dissemination, or possession of child pornography.<sup>18</sup> While not directly addressing grooming, article 34 demonstrates the state's responsibility to protect children from online threats that can lead to abuse.

Article 42 promotes the development and dissemination of information and educational materials to help children take care of their health and well-being, including the risks associated with online behavior. This highlights the importance of raising awareness among children and parents about online child grooming and how to stay safe online.<sup>19</sup>

The Kenyan Computer Misuse and Cybercrimes Act 2019, addresses online child grooming through several sections, though it does not explicitly criminalize the act itself. However, provisions within the Act can be interpreted and applied to prosecute offenders involved in online child grooming activities.

## **1.2 Problem statement**

The problem of online child grooming is exacerbated by the fact that children today spend more time online than ever before. With the widespread use of social media, messaging apps, and online gaming platforms, predators can easily hide their true

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<sup>16</sup> Article 27, African Charter on the Rights and Welfare of the Child, 1990, CAB/LEG/24.9/49.

<sup>17</sup> Article 19, United Nations Convention on the Rights of the Child, 1989, 27531 UNTS 1577.

<sup>18</sup> Article 34, United Nations Convention on the Rights of the Child, 1989, 27531 UNTS 1577.

<sup>19</sup> Article 42, United Nations Convention on the Rights of the Child, 1989, 27531 UNTS 1577.

identities and interact with children in ways that were not possible before. This creates a dangerous environment for children who may not be aware of the risks associated with online interactions. The problem is further compounded by the fact that online grooming often involves cross-border communications, which can make it challenging for law enforcement agencies to investigate cases effectively. Online child grooming is a serious problem that requires a multi-faceted approach involving parents, law enforcement agencies, and technology companies. The internet can be a wonderful tool for learning and connecting with others, but we must also be aware of the risks associated with online interactions and take steps to protect our children from harm. This study will thus evaluate the effectiveness of the existing laws and policies in creating awareness of online child grooming.

### **1.3 Research objectives**

1. To assess the state of online child grooming in Kenya and the rest of the world.
- 2(a) To examine the laws and policies that relate to online child grooming in Kenya.
- (b) To determine what other jurisdiction's policies and statutes have on online child grooming
3. To examine the gaps that exist in the policies and statutes on online child grooming in Kenya.

### **1.4 Research questions**

1. What is the state of online child grooming in Kenya and the rest of the world?
2. (a) What are the laws or policies that relate to online child grooming in Kenya?
- (b) What do other jurisdiction's policies and statutes have on online child grooming?
3. What are the gaps in the policies and statutes on online child grooming in Kenya?

### **1.5 Hypothesis**

Kenya's Children's Act 2001 was recently repealed. The Children Act 2022 recognises the punishment given to offenders found guilty of online abuse. It also goes ahead to

define what grooming is. As such it is my claim that the punishment accorded to the said offense is only a stepping-stone to addressing the prevalence of online child grooming. Nevertheless, an inclusion of the definition of online child grooming would have given a foundation to help spread its awareness. This is because it will help set a clear ground especially when it comes to legal matters about online child grooming. As such it is my hypothesis that since the law cannot exist in exclusion, a review of the existing laws and policies will also increase the process of addressing online child grooming.

### **1.6 Justification**

Online grooming is an issue that affects all online users. However, the researcher's focus is on children as they are more vulnerable. It affects children as it exposes them to emotional and psychological trauma. Online grooming can also put children at risk of exploitation, including exploitation for labor or trafficking. It can also lead to sexual abuse, which can have long-lasting effects on the child's physical and emotional well-being. Online grooming comes about because of the misuse of social media and information communication technologies. This becomes a serious problem because it harbors the intended use of these networks for people to network, grow their social circles, and build up their businesses. The main issue comes about when this misuse extends to innocent children who are vulnerable to online predators.

My study will therefore examine the adequacy of the existing laws and policies in addressing online child grooming. This will be useful to lawmakers by guiding them on how they can amend or revise the laws and existing policies and come up with handbooks for parents/guardians to help address the issue of online child grooming. It will also benefit students and scholars working in this area as a clear ground will have been set to assess how the existing policies and laws are addressing online child grooming. Lastly, it will greatly benefit bodies such as UNICEF that aim to protect children. This is because from the handbooks a thorough evaluation will have been made to include parents, guardians and those closely involved with the children as to how best they can create awareness and be alert as to any form of online child grooming.

## **1.7 Theoretical Framework: Interest Theory of Rights in application to the Best Interest principle**

Online child grooming is a serious and growing problem that poses significant risks to children's safety and well-being. The interest theory of rights provides a useful framework for understanding why children have a right to protection from harm and why it is important to take action to prevent and address online child grooming. The interest theory of rights is a moral and legal theory that asserts that rights are grounded in an individual's interests. Specifically, it holds that an individual has a right to something if they have an important interest in it.

In this regard, the interest theory of rights highlights the importance of protecting children from online child grooming by recognising their best interest in being safe from harm. This is through their parents or guardians and society. It underscores the need to balance the interests of all parties involved in these cases while prioritizing the protection of vulnerable children. In the context of online child grooming, the interest theory of rights suggests that children have a right to protection from harm because their best interest is always the state's priority and concern in any matter involving them. Online child grooming, which involves an adult using the internet to communicate with a child to engage in sexual activity, poses a significant risk of harm to children.

Fink argues that the interest theory of rights provides a useful framework for addressing the problem of online grooming, as it emphasizes the importance of protecting children's interests and recognizing them as rights-holders.<sup>20</sup> Fink suggests that the interest theory of rights can be used to justify legal and ethical protections for children online, including the regulation of online platforms, the development of educational programs for children and parents, and the criminalization of online grooming.<sup>21</sup> Online grooming violates several fundamental children's rights including the right to privacy, the right to be free from discrimination, and the right to be protected from all forms of abuse.

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<sup>20</sup> Fink S, 'The Interest Theory of Rights and the Protection of Children Online' 23, *International Journal of Children's Rights* 23, 2017.

<sup>21</sup> Fink S, 'The Interest Theory of Rights and the Protection of Children Online' 23, *International Journal of Children's Rights* 23, 2017.

McGrath examines the legal and policy frameworks that are in place to address online grooming, including international human rights law, regional human rights instruments, and national laws and policies. The article suggests that these frameworks provide a basis for addressing online grooming and for protecting the rights of children online, but that there are still significant gaps in protection.<sup>22</sup> In addition, Bergstrom explores the ethical responsibilities of individuals and institutions about online grooming, arguing that individuals have a responsibility to be aware of the risks of online grooming and to take steps to protect children, while institutions such as online platforms have a responsibility to take action to prevent online grooming and to ensure the safety of children online.<sup>23</sup>

Borden's article provides a thoughtful analysis of the application of the interest theory of rights to the problem of online child sexual exploitation and offers important insights into the legal, policy, and ethical challenges of addressing this complex and pressing problem. The article highlights the need for stronger legal and policy measures to prevent and respond to online child sexual exploitation, as well as the need for greater awareness and education about the risks of online sexual exploitation among children, parents, and the wider community.<sup>24</sup>

This theoretical framework, the interest of rights theory will be used to assess the interest of children in comparison to other rights upheld by adults. It will help create a necessity on how the interest in children being protected against online harm can be achieved. This will also help in creating a clear understanding of what online grooming is for the interest of the children to be well protected and looked out for. The protection of children from online child grooming is a matter of safeguarding their interests. The right to protection from harm can be seen as an extension of the child's interest in their well-being, safety, and security.

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<sup>22</sup> McGrath S, 'Online Child Grooming: A Human Rights Analysis', *International Journal of Human Rights*, 2019.

<sup>23</sup> Bergstrom A, 'The Interest Theory of Rights and the Ethical Evaluation of Online Child Grooming', 2020.

<sup>24</sup> Sandra L 'Online Child Sexual Exploitation and the Interest Theory of Rights', 2019.

When it comes to online child grooming, the best interest concept is crucial. In cases of child grooming online, it serves as a guide. By placing the child's safety and wellbeing first, it motivates adults to take the necessary precautions to keep them safe while also trying to maintain as much privacy as possible. Children who are subjected to online grooming may suffer serious emotional and psychological repercussions. Every action must put the child's safety and wellbeing first, according to the best interest concept. The best interest concept requires adults (parents, guardians, and authorities) to intervene if they suspect someone is engaging in internet grooming. This could entail informing law enforcement and the platform where the grooming is taking place about the circumstances.

It's critical to strike the correct balance between the child's protection and privacy. The best interest principle promotes identifying solutions that limit the child's future harm while protecting their privacy to the greatest extent feasible. The best interest principle is thought to be relevant in situations where gathering proof of grooming (messages, chats) may be necessary to disclose the crime while yet protecting the child's privacy. The best interest principle emphasises putting the child's long-term safety ahead of their immediate discomfort, even if this can be a difficult balance to strike.

### **1.8 Literature Review**

There has been an attempt by previous students through their dissertations aimed at how Kenyan law can better protect children from online grooming. They acknowledged a gap in Kenyan law regarding online grooming. This was before the current Children Act 2022 and their reference was based on the Children's Act 2001 which had not given a proper background of what grooming was and accorded the punishment to the said offense.<sup>25</sup> Other authors have only tried to put out what the impact of online grooming is and on what platforms it arises from social media platforms being a dominant source. The law has stepped up through the Children's Act 2022 which now acknowledges grooming. It can however use this as a steppingstone and thrive towards creating more awareness of

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<sup>25</sup> Children's Act, 2001.

what online grooming is and how society, parents, or guardians can better protect children from any form of sexual abuse including online grooming.

### **1.8.1 On Prevalence of online grooming**

The prevalence of online grooming, also known as online child sexual exploitation, has been a growing concern in recent years due to the increased use of the internet and technology. Several studies have attempted to estimate the prevalence of this issue. The prevalence of online grooming may be underestimated due to underreporting and the covert nature of the crime. Many victims may not disclose the abuse they have experienced, and offenders may use methods such as encryption and anonymous messaging to avoid detection.

A study by the Internet Watch Foundation (IWF) in 2019 reported that they identified and removed 105,047 web pages containing child sexual abuse material, with an estimated 74% of these web pages being hosted in Europe.<sup>26</sup> The National Center for Missing and Exploited Children (NCMEC) reported that they received 16.9 million reports of online child sexual exploitation material in 2019. A study conducted by the United Kingdom's National Society for the Prevention of Cruelty to Children (NSPCC) found that there were over 5,000 police-recorded offenses of online grooming in England and Wales in the year leading up to March 2020.<sup>27</sup> In the United States, the NCMEC reported that they received 1.1 million reports of suspected online child sexual exploitation in 2019, with grooming being one of the primary methods used by offenders.<sup>28</sup>

A study by Finkelhor found that 15% of youth aged 10-17 had experienced online sexual solicitation or harassment, with 4% being subjected to more serious forms of grooming, such as being asked to meet offline.<sup>29</sup> Another study by Wolak found that one in seven children who use the internet have been propositioned for sex online, with groomers often

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<sup>26</sup> Internet Watch Foundation (IWF), 'The number of web pages containing child sexual abuse material', 2019.

<sup>27</sup> Holly B & Andrew F, 'National Society for the Prevention of Cruelty to Children (NSPCC), August 2020.

<sup>28</sup> Holly B & Andrew F, 'National Society for the Prevention of Cruelty to Children (NSPCC), August 2020.

<sup>29</sup> Finkelhor D & Ormrod R, 'Sexual Abuse: Child Pornography: Patterns from NIBRS', Journal of Research and Treatment, 2010.

targeting vulnerable youth with low self-esteem.<sup>30</sup> Another systematic review analyzed 57 studies on online grooming to identify the prevalence of the behavior and risk factors associated with it. The review found that online grooming was a common problem, with estimates ranging from 1% to 30% of youth experiencing unwanted sexual solicitation or grooming online.<sup>31</sup> UNICEF provides an overview of the prevalence and impact of online child sexual abuse and exploitation worldwide. The report notes that online grooming is a common tactic used by perpetrators and that children are at increased risk of victimization which escalated during the COVID-19 pandemic due to increased online activity.<sup>32</sup>

### **1.8.2 On the Methods Used by Groomers**

The grooming process typically involves several stages, including initial contact, relationship building, isolation, and sexualization. Groomers often use deception and manipulation to gain a child's trust and to keep them from disclosing the abuse to others. They may also use threats or blackmail to control their victims, for example by threatening to harm the child or their family if they tell anyone about the abuse. Grooming can take place through a variety of online platforms, including social media, messaging apps, and gaming platforms. Aside from this, other notable methods used by groomers include Targeting; offenders may identify potential victims online through social media platforms or other online spaces.<sup>33</sup> They may use various techniques to gain access to the victim's personal information, such as pretending to be a young person themselves.

Offenders may also initiate contact with the victim and start to build a relationship with them.<sup>34</sup> They may use flattery and compliments to gain the victim's trust and make them

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<sup>30</sup> Wolak J., Finkelhor, D., & Mitchell, K., 'Online 'Predators' and Their Victims: Myths, Realities, and Implications for Prevention and Treatment,' 2008.

<sup>31</sup> Gámez-Guadix, M., de Santisteban, P., & Resett, S, 'Online grooming: A systematic review. Aggression and Violent Behavior, 2019,49.

<sup>32</sup> UNICEF, 'Online child sexual abuse and exploitation < <https://www.unicef.org/reports/online-child-sexual-abuse-and-exploitation-global-phenomenon>, > 2020.

<sup>33</sup> Child sexual exploitation and online protection: understanding offender pathways and building resilience among young people, University of Lincoln (UK), 2018.

<sup>34</sup> Child sexual exploitation and online protection: understanding offender pathways and building resilience among young people, University of Lincoln (UK), 2018.

feel special. They go further to test the victim's boundaries by asking them to engage in small acts of sexual behavior, such as sending explicit photos or engaging in sexual chat. They may use emotional manipulation to convince the victim to comply with their requests. The offenders gradually escalate their requests for sexual behavior, desensitizing the victim to the inappropriate nature of the interactions. They may use threats or intimidation to keep the victim compliant.<sup>35</sup>

### **1.8.3 On the Impact on Children**

Victims of online grooming are more likely to experience emotional and psychological distress, including anxiety, depression, and suicidal thoughts or attempts, compared to non-victims.<sup>36</sup> There is a need for more awareness of online grooming and its potential negative effects on the mental health of victims.

Bovarnick stresses the importance of providing appropriate support and interventions for those affected by online grooming.<sup>37</sup> Child victims of online grooming often experience a range of negative impacts, including shame, guilt, anxiety, and fear of retaliation. Some victims have also reported feeling disconnected from their peers and family and experiencing a loss of self-esteem.<sup>38</sup> It is also worth noting that children who are groomed online are more likely to engage in risky behaviors, such as substance abuse and self-harm.<sup>39</sup> It is important to note that the impact of online grooming on children can vary depending on the individual and the circumstances of the grooming.

However, there is a need for effective prevention and intervention strategies to address the negative impacts of online grooming on children. Adult survivors of online grooming reported a range of negative outcomes, including problems with relationships, sexuality,

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<sup>35</sup> Child sexual exploitation and online protection: understanding offender pathways and building resilience among young people, University of Lincoln (UK), 2018.

<sup>36</sup> Bovarnick S, Scott S, Pearce J, 'Direct work with sexually exploited or at-risk children and young people: a rapid evidence assessment,' University of Bedfordshire, 2017.

<sup>37</sup> Bovarnick S, Scott S, Pearce J, 'Direct work with sexually exploited or at-risk children and young people: a rapid evidence assessment,' University of Bedfordshire, 2017.

<sup>38</sup> Hébert, Lavoie, and Frappier, 'Beyond the Screen: Understanding the Etiology of Online Grooming and Its Impact on Child Victims', 2016.

<sup>39</sup> Quayle & Taylor, 'Child Online Sexual Abuse: An Examination of Offender Characteristics and Victim Impact' ,2014.

and self-esteem. Children who are groomed online may also be at risk of being sexually abused offline. A study by Wolak found that 23% of youth who had been groomed online reported meeting their offender in person. Children who are groomed online may also be at risk of being coerced into producing and sharing sexually explicit material.<sup>40</sup>

## 1.9 Methodology

The study will consist of two major parts: the first part assesses the state of online child grooming in Kenya and the rest of the world, and the second part gives recommendations as to the policies that can be introduced concerning online child-grooming based on the existing gaps.

To do so, the study will rely on qualitative evidence from mostly secondary sources such as books, articles, case law, and reports. The study will also utilize primary sources such as the Children's Act, the Sexual Offence Act, and relevant newspaper articles<sup>41</sup> to highlight the prevalence of online grooming and methods used by groomers to trap children. In general, a deductive approach will be preferred with the first two chapters thus setting up a premise, from which the claim will be derived. Following this, the first chapter seeks to explain the prevalence of online grooming and the methods used by the groomers that go unnoticed or ought to be looked out for. This will thus be the basis for analysing the dominance of interest theory of rights in determining the ultimate purpose of adding on to what online grooming is.

I intend to analyse the prevalence of online grooming and the methods used by the groomers through a historical analysis i.e., by examining the history of online grooming and the shift from the protection of exclusive rights in comparison to the interest of the child in alignment with being protected from online exploitation and grooming with an in-depth search on the methods used before by groomers and how it has currently shifted

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<sup>40</sup> Wolak J, Finkelhor D& Mitchell K 'Online 'Predators' and their Victims: Myths, Realities, and Implications for Prevention and Treatment,' 2008.

<sup>41</sup> Martin L, 'Kayleigh: How tragic teen who was groomed by depraved sick loners fought for her life and how her brave legacy lives on' The Mirror, 26 April 2017 < <https://www.mirror.co.uk/tv/tv-news/kayleigh-haywood-how-tragic-teen-10297436>> on 26 April 2017.

with the advancement in technology. This will be done through articles, reports, books, and other scholarly sources that have a gradational account of this history.<sup>42</sup>

This study will then proceed to examine the gaps that exist in the policies and statutes in Kenya and compare them to what Australia and Hungary have. Australia's laws are designed to prevent the online grooming of minors. Law enforcement can more easily intervene in as many components as possible of cyber grooming that are criminalised by the Australian Federal Police Act 1979 and the Criminal Code Act 1995. Education and awareness are the main focuses of Australia's cyber safety measures. Children, parents, and educators are educated about online safety practices through initiatives like the "ThinkUKnow" project and the Cybersafety Strategy. Australia also works closely with tech businesses to create channels for reporting issues and get rid of offensive material. Using a multi-stakeholder approach is essential to effectively addressing online grooming. Hungary places a high priority on victim protection by providing support services to victims of online grooming and specialised law enforcement units. A safe place for children to report abuse is provided by initiatives such as the Hungarian hotline "Kék Gomb". Hungary supports parental control programs, which give parents the ability to keep an eye on their kids' internet activities. Even while there may be benefits, it's crucial to strike a balance when it comes to kids' privacy.

Kenya can benefit from the UK's emphasis on teamwork and reporting systems in combating cyber-child exploitation. In the UK, organisations such as the CEOP unit of the National Crime Agency have been set up to enable both adults and children to report issues immediately. Furthermore, IT companies are required by UK law to actively detect and remove internet information that involves child sexual abuse. Kenya should improve its National Plan of Action by incorporating certain elements, such as establishing a specific reporting entity and encouraging collaboration between IT firms, NGOs, and law enforcement. This would encourage internet platforms to assume greater responsibility for content control and give a clearer reporting mechanism.

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<sup>42</sup> The Internet Safety Strategy, a government report published in the UK in 2017, provides an overview of the prevalence and impact of online grooming.

This will incorporate the interest theory of rights as the dominant approach to determining a case of violation of children's rights against protection from online child sexual exploitation. To do so, a doctrinal analysis will be utilised. This will entail an analysis and critique of determined cases where the theory was utilized and the outcomes resulting from this reliance.

Finally, the study will assess how Kenya can emulate and take lessons from the working policies in other jurisdictions on online child grooming.

### **1.10 Chapter breakdown**

**Chapter 1: Introduction to the study:** This chapter is an introductory part and details among others the research objectives, theoretical framework, and justification of the study and thus sets the foundation of the subsequent chapters.

**Chapter 2: An analysis of the state of online child grooming in Kenya and the rest of the world:** This chapter will establish the current situation concerning online child grooming. It will analyze its prevalence not only in Kenya but also in other jurisdictions.

**Chapter 3: An analysis of the laws and policies that relate to online child grooming in Kenya:** This chapter goes into detail to examine the existing laws and policies in Kenya on online child grooming. It will also go into detail to examine what other jurisdiction's laws and policies have that aid in curbing the prevalence of online child grooming.

**Chapter 4: An analysis of the gaps that exist in the policies and statutes on online child grooming in Kenya:** This chapter will assess the gaps that exist in the policies and statutes on online child grooming in Kenya.

**Chapter 5: Conclusions, findings, and recommendations:** The final chapter will serve as a conclusion to the dissertation and will give recommendations on what can be incorporated into the policies or statutes on online child grooming in Kenya.

## **CHAPTER 2: THE STATE OF ONLINE CHILD GROOMING IN KENYA AND THE REST OF THE WORLD**

### **2.1 Introduction**

Online child grooming is a grave concern in the digital age due to the rapid advancement of technology and increased online interactions. In the digital space, online child abuse is a unique form of child abuse also known as “Cyber Molestation” due to its virtual, distanced, and anonymous nature.<sup>43</sup> Such abuse may not happen face-to-face, nor does it necessarily require physical contact. It can take diverse manners such as cyberbullying, online grooming, and online sexual abuse.<sup>44</sup> Online child grooming is the process of manipulating and exploiting minors for sexual purposes and has become an alarming concern in Kenya. This chapter therefore aims to shed light on the current state of online child grooming in Kenya compared to the rest of the world.

### **2.2 Deciphering the Definition of Online Child Grooming**

The Children’s Act under section 2 defines child grooming as "Any act or behavior that is likely to entice or encourage a child to engage in sexual activity." This definition is broad and encompasses a wide range of behaviors, including sending sexually suggestive messages or images to a child, engaging in online conversations with a child for sexual purposes, and meeting with a child to engage in sexual activity. The law also recognizes that child grooming can be a gradual process and that it does not always lead to sexual abuse. However, any act or behavior that is likely to entice or encourage a child to engage in sexual activity is child grooming, regardless of whether it results in sexual abuse.

The purpose of this definition is to make it clear that any behavior that is intended to make a child more vulnerable to sexual abuse is illegal. This includes not only overt acts such as sending sexually suggestive messages but also subtler behaviors such as trying to

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<sup>43</sup> S. Manthi & N. Marvis, ‘The Kenyan Child and the Evolving digital space: An appraisal of the state of Online Children rights in Kenya,’ Moi University School of Law, June 25, 2023.

<sup>44</sup> S. Manthi & N. Marvis, ‘The Kenyan Child and the Evolving digital space: An appraisal of the state of Online Children rights in Kenya,’ Moi University School of Law, June 25, 2023.

gain a child's trust or isolating them from their friends and family. This is an important step in protecting children from online sexual abuse.

### **2.3 The current state of online child grooming in Kenya**

The increasing access to the internet in Kenya, particularly through mobile phones, has brought immense benefits but also opened a dangerous door for online predators. Child grooming, the process of building trust and emotional connections with a child online to exploit them sexually, is a pressing issue posing serious threats to Kenyan children.

#### **2.3.1 Navigating the Dark Web of Online Child Grooming in Kenya**

The internet, a boundless web of information and connection, unfortunately also casts a dark shadow where predators lurk. Online child grooming, the insidious process of manipulating and exploiting children for sexual purposes, transcends geographical boundaries and plagues both Kenya and the rest of the world. Understanding this complex issue requires examining its nuances in the Kenyan context while drawing parallels with global trends. In the vast and often unregulated corners of the internet, predators weave webs of deceit, preying on the innocence and vulnerability of Kenyan children.

In Kenya, the rise of internet access through mobile phones has made children, particularly those from underprivileged backgrounds, vulnerable to online grooming. The lack of digital literacy and awareness among both children and parents leaves them susceptible to the tactics of skilled groomers who often pose as friends, confidantes, or even romantic interests.<sup>45</sup> Social media platforms become hunting grounds, where carefully crafted online personas and manipulative conversations reel children into a web of deceit. Cybercafes, often the only point of internet access for many children, present another layer of vulnerability. The anonymity and lack of supervision create an environment where predators can operate freely, preying on the isolation and naivety of

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<sup>45</sup> UNICEF Innocenti, 'Global Office of Research and Foresight; International, ECPAT; INTERPOL; Kardefelt Winther, Daniel; Saeed, Mariam; Twesigye, Rogers (2022). Disrupting Harm in Kenya: Evidence on online child sexual exploitation and abuse, *Innocenti Research Report*, UNICEF Office of Research - Innocenti, Florence.

young minds.<sup>46</sup> The cultural stigma surrounding sexual abuse can also deter children from reporting instances of grooming, further silencing their voices and perpetuating the cycle of abuse.<sup>47</sup>

Driven by advancements in mobile technology and internet access, Kenya has witnessed a surge in online activity, particularly among children. Unfortunately, this digital boom has come at a cost.<sup>48</sup> Unfamiliarity with digital safety and the pervasive cultural stigma surrounding sexual abuse leaves children susceptible to the manipulative ploys of online groomers.<sup>49</sup> These predators, often masquerading as friends, confidantes, or even romantic interests, exploit social media platforms and chat rooms to establish rapport and trust. Through careful crafting of online personas and manipulative conversations, they lure children into a web of deceit, gradually blurring the lines between virtual connection and emotional dependence.

ECPAT and UNICEF's "Disrupting Harm" report reveals that between 5-13% of internet-using children aged 12-17 have experienced online child sexual exploitation and abuse (OCSEA) in the past year.<sup>50</sup> This translates to roughly 350,000 children per year subjected to grooming, sexting, and even live-streaming of abuse. The true number, however, is likely higher, as many children remain silent due to fear, shame, or lack of awareness.<sup>51</sup> Online predators aren't always faceless strangers lurking in the shadows. The report highlights a chilling reality: in many cases, the perpetrators are people the

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<sup>46</sup> < <https://www.interpol.int/en/News-and-Events/News/2021/Ground-breaking-insights-into-the-risk-of-online-child-sexual-exploitation-and-abuse-in-Kenya>> 27 October 2021.

<sup>47</sup> < <https://www.interpol.int/en/News-and-Events/News/2021/Ground-breaking-insights-into-the-risk-of-online-child-sexual-exploitation-and-abuse-in-Kenya>> 27 October 2021.

<sup>48</sup> Craig J, ' Violence against Kenyan Children, < <https://www.voanews.com/a/kenyan-girls-at-risk-of-sexual-violence/1571132.html> > 24 December 2012.

<sup>49</sup> Craig J, ' Violence against Kenyan Children, < <https://www.voanews.com/a/kenyan-girls-at-risk-of-sexual-violence/1571132.html> > 24 December 2012.

<sup>50</sup> UNICEF Innocenti, 'Global Office of Research and Foresight; International, ECPAT; INTERPOL; Kardefelt Winther, Daniel; Saeed, Marium; Twesigye, Rogers (2022). Disrupting Harm in Kenya: Evidence on online child sexual exploitation and abuse, *Innocenti Research Report*, UNICEF Office of Research - Innocenti, Florence.

<sup>51</sup> UNICEF Innocenti, 'Global Office of Research and Foresight; International, ECPAT; INTERPOL; Kardefelt Winther, Daniel; Saeed, Marium; Twesigye, Rogers (2022). Disrupting Harm in Kenya: Evidence on online child sexual exploitation and abuse, *Innocenti Research Report*, UNICEF Office of Research - Innocenti, Florence.

child already knows - trusted relatives, teachers, community members, or even peers.<sup>52</sup> This adds a layer of complexity and emotional trauma to the abuse, blurring the lines of safety and betrayal.

However, amidst the shadows, rays of hope emerge. Initiatives like the National Centre for Missing and Exploited Children (NCMEC) are working tirelessly to raise awareness, provide support to victims, and collaborate with law enforcement agencies.<sup>53</sup> Furthermore, community-based organizations are engaging in digital literacy programs, equipping children with the knowledge and skills to navigate the online world safely. To truly dismantle the networks of online predators, a multi-pronged approach is crucial.<sup>54</sup> Strengthening child protection laws, prioritizing cybercrime investigation units, and establishing accessible reporting channels are vital steps toward creating a safer digital environment.<sup>55</sup> Parents and educators must be empowered to engage in open communication with children about online safety, fostering an environment of trust and support. Tech companies also have a responsibility to develop robust content moderation mechanisms and reporting systems to curb the spread of harmful content.<sup>56</sup>

#### **2.4 The state of online child grooming in Australia, UK and Hungary**

Australia and Hungary are all developed nations with similar levels of internet penetration and technology use, reducing potential biases due to infrastructure differences. They also share common legal frameworks related to child protection and online offenses, facilitating comparison across systems. Lastly though not identical, they share some cultural influences and norms, making potential cultural factors influencing

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<sup>52</sup> UNICEF Innocenti, 'Global Office of Research and Foresight; International, ECPAT; INTERPOL; Kardefelt Winther, Daniel; Saeed, Mariam; Twesigye, Rogers (2022). Disrupting Harm in Kenya: Evidence on online child sexual exploitation and abuse, *Innocenti Research Report*, UNICEF Office of Research - Innocenti, Florence.

<sup>53</sup> <https://bettercarenetwork.org/sites/default/files/2020-10/Kenya%202018%20online%20sexual%20exploitation%20rapid%20assessment.pdf> > on 10 April 2024.

<sup>54</sup> <https://bettercarenetwork.org/sites/default/files/2020-10/Kenya%202018%20online%20sexual%20exploitation%20rapid%20assessment.pdf> > on 10 April 2024.

<sup>55</sup> <https://bettercarenetwork.org/sites/default/files/2020-10/Kenya%202018%20online%20sexual%20exploitation%20rapid%20assessment.pdf> > on 10 April 2024.

<sup>56</sup> <https://bettercarenetwork.org/sites/default/files/2020-10/Kenya%202018%20online%20sexual%20exploitation%20rapid%20assessment.pdf> > on 10 April 2024.

online behaviour more comparable. Australia to be more specific has a strong data collection and research on online child grooming, establishing reporting systems, and proactive law enforcement strategies. Hungary has a strong focus on prevention and early intervention, including educational programs and support services for potential victims and perpetrators.

Online child grooming in Hungary casts a long and disquieting shadow, revealing gaps in legislation, growing numbers of cases, and an urgent need for comprehensive protection. While data is limited, existing research and reports paint a concerning picture.<sup>57</sup> A 2020 study by ECPAT International highlights the lack of a legal definition for child sexual abuse material, leaving children vulnerable and hindering proper reporting and prosecution. Further evidence comes from the Hungarian Internet Hotline, where "pedophilia content" skyrocketed from 7.7% in 2011 to 41.6% in 2020, with nearly a quarter constituting confirmed child sexual abuse material.<sup>58</sup>

Beyond statistics, high-profile cases like the 2020 scandal involving a Hungarian ambassador possessing child pornography amplify the issue's severity. These incidents expose not only the prevalence of online grooming but also the potential inadequacy of legal frameworks to address it effectively.<sup>59</sup> The path forward requires a multi-pronged approach. Strengthening legislation with clear definitions of child sexual abuse material is crucial. This should be coupled with increased law enforcement resources and training to combat online grooming and exploitation.<sup>60</sup> Equally important is empowering children

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<sup>57</sup> The Sexual Exploitation of Children in Hungary, ECPAT International. (2020), <<https://ecpat.org/story/the-sexual-exploitation-of-children-in-hungary/#:~:text=The%20growing%20need%20for%20Hungary,be%20child%20sexual%20abuse%20material>>, February 15 2021.

<sup>58</sup> The Sexual Exploitation of Children in Hungary, ECPAT International. (2020), <<https://ecpat.org/story/the-sexual-exploitation-of-children-in-hungary/#:~:text=The%20growing%20need%20for%20Hungary,be%20child%20sexual%20abuse%20material>>, February 15 2021.

<sup>59</sup> The Sexual Exploitation of Children in Hungary, ECPAT International. (2020), <<https://ecpat.org/story/the-sexual-exploitation-of-children-in-hungary/#:~:text=The%20growing%20need%20for%20Hungary,be%20child%20sexual%20abuse%20material>>, February 15 2021.

<sup>60</sup> <[https://home-affairs.ec.europa.eu/fight-against-child-sexual-abuse/we-protect-global-alliance-end-child-sexual-exploitation-online\\_en](https://home-affairs.ec.europa.eu/fight-against-child-sexual-abuse/we-protect-global-alliance-end-child-sexual-exploitation-online_en)> 10 April 2024.

and parents through digital literacy programs and open communication about online safety. Only through collaborative efforts can Hungary shed light on the shadowlands of online grooming and ensure a safer digital space for its children.<sup>61</sup>

While legal frameworks and awareness campaigns have been established, the evolving nature of technology and perpetrator tactics necessitate continuous vigilance.<sup>62</sup> Recent reports by the Australian Centre to Counter Child Exploitation (ACCCE) and the Australian Institute of Criminology (AIC) paint a concerning picture. In 2022, the ACCCE received over 55,000 reports of online child sexual abuse material, a 13% increase from the previous year.<sup>63</sup> The AIC highlights that online platform present offenders with unparalleled access to young people, blurring geographical boundaries and facilitating anonymity.<sup>64</sup>

Social media, gaming platforms, and live streaming services have become favored hunting grounds for perpetrators. Predators pose as peers, offering friendship and understanding, often mirroring the interests and vulnerabilities of their targets.<sup>65</sup> They build trust through emotional manipulation, sharing secrets, and offering gifts. Over time, the conversation can become sexualized, escalating to the sharing of intimate images or even requests for in-person meetings. This gradual process can leave victims feeling isolated, confused, and trapped, making them highly vulnerable to further exploitation<sup>66</sup>.

Law enforcement agencies like the ACCCE work to identify and apprehend perpetrators, while organizations like the E-Safety Commissioner provide resources and support for

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<sup>61</sup> < [https://home-affairs.ec.europa.eu/fight-against-child-sexual-abuse/we-protect-global-alliance-end-child-sexual-exploitation-online\\_en](https://home-affairs.ec.europa.eu/fight-against-child-sexual-abuse/we-protect-global-alliance-end-child-sexual-exploitation-online_en)> 10 April 2024.

<sup>62</sup> Australian Centre to Counter Child Exploitation, Report on Cybercrime Against Children 2022-23, 29 August 2023.

<sup>63</sup> Australian Centre to Counter Child Exploitation, Report on Cybercrime Against Children 2022-23, 29 August 2023.

<sup>64</sup> Australian Centre to Counter Child Exploitation, Report on Cybercrime Against Children 2022-23, 29 August 2023.

<sup>65</sup> Online child grooming laws, Australian Institute of Criminology, < <https://www.aic.gov.au/publications/htcb/htcb17>> , 1 April 2008.

<sup>66</sup> Online child grooming laws, Australian Institute of Criminology, < <https://www.aic.gov.au/publications/htcb/htcb17>> , 1 April 2008.

parents and children.<sup>67</sup> Open communication between parents and children about online safety is crucial, empowering young people to recognize grooming tactics and seek help.<sup>68</sup> Additionally, continued investment in technological solutions to detect and flag suspicious activity remains vital. In an increasingly digital world, protecting children online demands both proactive safeguards and ongoing education, ensuring that the virtual world doesn't become a breeding ground for predators.

Online spaces in the UK have become increasingly fertile ground for child grooming, posing a dire threat to the safety and well-being of the nation's young population. Statistics paint a grim picture, with recorded offenses of "Sexual Communication with a Child" soaring by a staggering 82% since 2017, reaching a record high of 6,350 in 2023.<sup>69</sup> This figure represents just the tip of the iceberg, as many cases remain unreported due to fear or shame. Moreover, research by the NSPCC indicates that a quarter of victims reside in primary school, highlighting the alarming vulnerability of younger children.<sup>70</sup>

Perpetrators often employ insidious tactics, masquerading as peers or potential romantic partners on social media platforms like Snapchat and Meta-owned websites.<sup>71</sup> They build trust and manipulate through emotional attachments, gradually enticing their targets into sharing personal information and engaging in increasingly explicit behavior. This process can lead to devastating consequences, including sexual abuse, and even offline encounters with devastating ramifications.<sup>72</sup>

This rampant online grooming epidemic necessitates immediate and multifaceted action. The Online Safety Bill, currently in parliament, offers a glimmer of hope by proposing stricter regulations on tech companies for content moderation and child protection

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<sup>67</sup> E-Safety Commissioner. (n.d.). Child grooming and unwanted contact.

<sup>68</sup> E-Safety Commissioner. (n.d.). Child grooming and unwanted contact.

<sup>69</sup> NSPCC, "82% rise in online grooming crimes against children in the last 5 years" (August 14, 2023).

<sup>70</sup> NSPCC, "82% rise in online grooming crimes against children in the last 5 years" (August 14, 2023).

<sup>71</sup> The Guardian, "Tens of thousands of grooming crimes recorded in wait for online safety bill" (August 15, 2023).

<sup>72</sup> The Guardian, 'Tens of thousands of grooming crimes recorded in wait for online safety bill' <<https://www.theguardian.com/technology/2023/aug/15/digital-grooming-crimes-online-safety-bill-nsppc>> 15 August, 2023.

protocols.<sup>73</sup> However, concerns remain regarding its effectiveness, with some urging faster implementation and stronger accountability measures. Simultaneously, education and awareness campaigns aimed at children, parents, and educators are crucial to equip them with the tools to identify and report grooming attempts. Only through a comprehensive approach that combines legislative pressure, proactive safety measures, and empowered communities can we effectively combat this insidious threat and ensure a safer online environment for every child in the UK.<sup>74</sup>

Across the globe, the battle against online child grooming demands a united front. Sharing best practices, implementing stricter tech regulations, and empowering communities with awareness and reporting tools are crucial steps in safeguarding young minds in the digital age. Only through international collaboration and unwavering commitment can we dismantle the shadowy web of online predators and create a safer online world for every child.

## 2.5 Conclusion

The insidious threat of online child grooming lurks across Kenya and the globe, demanding a multifaceted response. While legal frameworks must adapt to the ever-shifting digital landscape, collaborative efforts between governments, technology companies, and communities are crucial. Empowering children with digital literacy and open communication with caregivers is vital. Simultaneously, we must hold perpetrators accountable and foster international cooperation to dismantle these criminal networks. Only through unwavering vigilance and a concerted global effort can we safeguard our children in the digital age, ensuring a safer future where technology empowers, not exploits, the most vulnerable among soc

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<sup>73</sup> Sky News, 'Online child grooming crimes hit record high - as figures reveal social apps where it's happening' < <https://news.sky.com/story/online-child-grooming-crimes-hit-record-high-as-figures-reveal-social-apps-where-its-happening-12939979>> 15 August, 2023.

<sup>74</sup> Sky News, 'Online child grooming crimes hit record high - as figures reveal social apps where it's happening' < <https://news.sky.com/story/online-child-grooming-crimes-hit-record-high-as-figures-reveal-social-apps-where-its-happening-12939979>> 15 August, 2023.

## **CHAPTER 3: THE LAWS AND POLICIES THAT RELATE TO ONLINE CHILD GROOMING IN KENYA AND OTHER STATES**

### **3.1 Introduction**

The idyllic landscape of Kenya's digital frontier hides a sinister threat: online child grooming. To protect its young citizens from this manipulative web, Kenya has woven a tapestry of laws and policies, aiming to deter predatory adults and empower children. From the recent Children Act's harsher penalties to the multi-pronged National Plan, a concerted effort is underway to safeguard innocence in the digital age. Yet, challenges remain, demanding a critical examination of awareness gaps, enforcement hurdles, and the ever-evolving technological landscape. This journey into Kenya's legal armor against online child grooming promises to reveal not only the strength of its defenses but also the areas where vigilance and innovation are still needed.

### **3.2 An Overview of Kenya's Policies that address online child grooming**

Given the fast-growing digital landscape, the revised Children Act 2022 explicitly states the need and obligation to protect children from harm in the online world.<sup>14</sup> It protects children from any form of “online abuse, harassment or exploitation”. This online abuse includes cyberbullying, grooming and solicitation, cyber-enticement, harassment, the transmission of any obscene material, and cyber-stalking, occurring “through any electronic system, network, or other communication technology”.<sup>75</sup>

The legal provision for online protection follows the promising trend of many governments around the world strengthening legal protection of online safety of children, such as the EU’s new groundbreaking proposed legislation to make a safer Internet through new policies to tackle online child sexual abuse.

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<sup>75</sup> < <https://www.end-violence.org/articles/kenyas-new-children-act-takes-effect>>, 10 April 2024.

### **3.2.1 The National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (NPA)**

The 'National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse' is a comprehensive plan outlining the Kenyan government's approach to preventing and responding to online child sexual exploitation and abuse (OCSEA) which includes among others online child grooming.<sup>76</sup> The policy aims to raise awareness about OCSEA and to implement measures to prevent children from being exposed to OCSEA material and online grooming.<sup>77</sup>

The key objective of this policy includes prevention which seeks to curb OCSEA by raising awareness of the issue among children, parents, and other stakeholders; developing and implementing prevention programs; and strengthening child protection systems.<sup>78</sup> It also seeks to protect children from OCSEA by providing support to victims and survivors; ensuring that law enforcement agencies can effectively investigate and prosecute OCSEA cases and working with technology companies to remove child sexual abuse material from the internet.<sup>79</sup> Besides this the NPA also aims to prosecute offenders by strengthening the legal framework for OCSEA; enhancing the capacity of law enforcement agencies to investigate OCSEA cases; and promoting international cooperation on OCSEA.<sup>80</sup>

In a bid to achieve this, the NPA has also set out specific actions to achieve these objectives. This includes developing and implementing a national awareness-raising

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<sup>76</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>77</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>78</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>79</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>80</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

campaign on OCSEA, establishing a national hotline for reporting OCSEA,<sup>81</sup> training law enforcement officers on how to investigate and prosecute OCSEA cases, working with technology companies to develop and implement effective tools for detecting and removing child sexual abuse material from the internet, providing support to victims and survivors of OCSEA and enacting legislation to make it easier to prosecute OCSEA offenders.<sup>82</sup>

In the fight against this horrible crime, the National Plan of Action to Combat Online Child Sexual Exploitation and Abuse has made great progress. One noteworthy accomplishment is the creation of an all-encompassing framework that brings together child protection organisations, law enforcement agencies, and technology specialists to confront online child exploitation in a cooperative manner. The strategy has improved legal frameworks to pursue offenders and protect victims through strong legislative measures and policy reforms. To ensure a comprehensive approach to the problem, this includes provisions for victim support programmes and harsh sanctions for offenders. Additionally, the plan has put preventative measures in place to stop child exploitation online, like educational programmes that educate parents, carers, and kids about potential threats and online safety precautions. In order to effectively counteract this growing threat, cutting-edge technology solutions have also been created as part of the effort to trace, identify, and destroy networks involved in online child exploitation. In recognition of the worldwide nature of online child exploitation and the necessity for a coordinated response, international cooperation and partnerships have been formed to promote information sharing and coordinated operations across borders.

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<sup>81</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>82</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

### **3.2.2 The ICT Policy for Children and Young People in Kenya 2019**

The ICT Policy for Children and Young People in Kenya is a comprehensive policy outlining the Kenyan government's approach to promoting the safe and responsible use of information and communications technology (ICT) by children and young people.<sup>83</sup> The policy seeks to among others empower children and young people with the skills and knowledge they need to use ICT safely and responsibly, protect children and young people from online harm, including cyberbullying, online sexual exploitation and abuse, and exposure to harmful content and to ensure that all children and young people have access to ICT and can participate in the digital economy.<sup>84</sup>

The ICT is grounded on some principles including digital inclusion where all children and young people in Kenya should have access to ICT and the skills to use them effectively.<sup>85</sup> Digital safety seeks to protect children and young people from online risks and harm. It also aims for digital literacy. Children and young people should develop the skills to use ICTs critically and safely. Nevertheless, the policy also endeavors towards empowerment. Children and young people should be empowered to use ICTs to create positive change.<sup>86</sup>

The ICT Policy for Children and Young People outlines several strategies to achieve its objectives. These strategies include developing and implementing ICT education and training programs for children and young people, raising awareness of online risks and harms among children and young people,<sup>87</sup> providing support to parents and educators on how to help children and young people use ICTs safely, encouraging the development of

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<sup>83</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>84</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>85</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>86</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>87</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

child-friendly ICT content and applications and working with the private sector to develop safe and responsible ICT products and services for children and young people.<sup>88</sup>

The policy includes several key initiatives, including promoting digital literacy which can be done through school-based education programs, public awareness campaigns, and training for parents and caregivers.<sup>89</sup> It also enhances online safety measures, which will involve developing and implementing new regulations and guidelines for internet service providers and online platforms, as well as providing support to parents and caregivers to help them protect their children online.<sup>90</sup> Promoting the development of safe and appropriate ICT content for children and young people will entail supporting the development of local content creators and working with international organizations to share best practices. Finally, it will also be addressing the digital gender divide. This will involve providing girls with access to ICT training and opportunities and promoting the development of ICT solutions that address the needs of girls and young women.<sup>91</sup>

### **3.2.3 The National Cybersecurity Strategy (NCS)**

The Kenyan government has also implemented the National Cybersecurity Strategy.<sup>92</sup> This strategy aims to create a secure and resilient cyberspace for Kenya by establishing effective governance structures, developing robust cybersecurity laws, protecting critical infrastructure, cultivating a skilled cybersecurity workforce, minimizing cybercrimes, and fostering international cooperation.<sup>93</sup>

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<sup>88</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>89</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>90</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>91</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>92</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022.

<sup>93</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022.

The strategy's emphasis on prevention education and awareness-raising is crucial for empowering children, parents, and caregivers to recognize and prevent online child grooming. Clearer guidelines and expectations for technology companies' role in protecting children online are needed to ensure accountability and responsible practices. International cooperation and information sharing are essential for combating online child grooming across borders, as perpetrators often operate in transnational networks. Addressing gaps in the strategy's enforcement mechanisms and reporting requirements is crucial for effective implementation and ensuring that perpetrators are held accountable.<sup>94</sup>

The NCS is based on the following guiding principles: Protecting confidentiality, integrity, and availability. The NCS aims to protect the confidentiality, integrity, and availability of computer systems, programs, and data. It also aims to prevent unlawful use of computer systems.<sup>95</sup> The NCS aims to prevent the unlawful use of computer systems, such as hacking and cyberattacks. Besides this, it also facilitates the prevention, detection, investigation, prosecution, and punishment of cybercrimes. The NCS aims to facilitate the prevention, detection, investigation, prosecution, and punishment of cybercrimes.<sup>96</sup>

The NCS is being implemented through a multi-stakeholder approach that involves the government, the private sector, and civil society. The government is responsible for coordinating the implementation of the NCS and providing leadership on cybersecurity matters. The private sector is responsible for implementing cybersecurity measures within their organizations. Civil society is responsible for raising awareness of cybersecurity issues and advocating for government action.

### **3.3 An examination of the specific laws relating to online child grooming**

Predators exploit the anonymity and allure of the virtual world to target vulnerable children, manipulating their trust and innocence for exploitative purposes. However,

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<sup>94</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022.

<sup>95</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022.

<sup>96</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022.

Kenya is not powerless. A complex web of laws, weaving together international conventions, national statutes, and emerging jurisprudence, stands guard against this heinous crime. From the overarching principles of the Children's Act to the targeted provisions of the Computer Misuse and Cyber Crimes Act, Kenya's legal framework seeks to deter, investigate, and punish perpetrators, while offering essential protection and support to victims. This intricate tapestry of legislation reflects a growing awareness of the dangers lurking online, but challenges remain in effectively enforcing these laws and ensuring children's online safety in a rapidly evolving digital terrain.

Kenya has ratified key international instruments regarding the rights of children and has incorporated these international standards within domestic laws.<sup>97</sup> There are a range of laws that aim to create and maintain an enabling environment for child protection.

The Constitution of Kenya 2010 includes a comprehensive Bill of Rights, including the right of every child to be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child's welfare. Further, the Children Act 2022 provides that "A child shall be protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials."<sup>98</sup> This is complemented by the Sexual Offences Act 2006, which provides for the prevention and protection of all persons from sexual violence and exploitation.

Also highly relevant is the Employment Act 2007 (the Act), whose part VI is dedicated to the protection of children. Section 53 provides that "no person shall employ a child in any activity which constitutes the worst form of child labour".<sup>99</sup> The definition in the Act of the "worst form of child labour" includes the use, procuring, or offering of a child for prostitution, for the production of pornography or pornographic performances, and work which, by its nature or the circumstances in which it is carried out, is likely to harm the

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<sup>97</sup> Kenya ratified the UN CRC in 1990, the African Charter on the Rights and Welfare of the Child (ACRWC) in 2000, the International Labour Organization (ILO) Convention No. 182 (Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) in 2001; and the Optional Protocol on the Involvement of Children in Armed Conflict on 28 January 2002. It has not yet ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, or the Third Optional Protocol to the CRC which was adopted by the UN General Assembly in 2011 and allows for a complaint procedure for children.

<sup>98</sup> Section 22, Children Act (2022).

<sup>99</sup> Section 53, Employment Act (2007).

health, safety or morals of the child. The Employment Act provides rules and recommendations that can influence the behaviour of people who might participate in such activities, which is an indirect way of addressing online child grooming. The act helps create an atmosphere where those with harmful intent, especially those participating in online child grooming, may be discouraged, or caught more easily through rules pertaining to background checks, codes of conduct, and workplace ethics. Background checks required by the legislation, for example, may disclose prior criminal activity, including offences pertaining to child exploitation. As a result, those with such records are prohibited from applying for jobs that entail working with children or vulnerable adults.

The Victim Protection Act<sup>100</sup> aims to secure victims of crimes from further harm. The Act includes several provisions to ensure that child victims receive support and protection immediately after the abuse is reported as well as during the legal proceedings. The African Charter on the Rights and Welfare of the Child has a provision that endeavors to protect children from all forms of sexual exploitation and sexual abuse.<sup>101</sup> Budapest Convention on Cybercrime is an international treaty focusing on criminalizing cybercrime and providing mutual legal assistance in the investigation and prosecution of cybercrimes.<sup>102</sup> While not exclusively addressing online child grooming, it criminalizes "the production, possession, distribution or dissemination of child pornography," which encompasses material created during online grooming.<sup>103</sup> Kenya became a party to the Budapest Convention in 2009. Therefore, it is highly relevant to consider Budapest Convention as one of the legal statutes that drive towards creating awareness on online child grooming.

Convention on the Rights of the Child (CRC) adopted in 1989 and ratified by Kenya in 1990, the CRC establishes general principles for children's rights, including protection from all forms of violence and exploitation. While not explicitly mentioning online

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<sup>100</sup> Victim Protection Act No. (17 of 2014).

<sup>101</sup> Article 27, African Charter on the Rights and Welfare of the Child, 1990, CAB/LEG/24.9/49.

<sup>102</sup> Budapest Convention on Cybercrime, Council of Europe, Budapest, 23.XI.2001.

<sup>103</sup> Budapest Convention on Cybercrime, Council of Europe, Budapest, 23.XI.2001.

grooming, Article 34 calls for states to protect children from sexual exploitation, which can be interpreted to include online grooming.<sup>104</sup>

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSCEC) was ratified by Kenya in 2009, the OPSCEC explicitly criminalizes online child grooming by defining "child pornography" to include "materials that portray the inducement, coercion or enticement of a child to engage in sexual activity."<sup>105</sup> Additionally, Article 7 requires states to criminalize attempts and aiding attempts at child sexual exploitation, which covers online grooming activities.<sup>106</sup>

### **3.4 A Determination of the specific policies and statutes of other states specifically Australia, UK, and Hungary.**

Across the globe, online child grooming haunts the digital playgrounds of our youth. In response, various policies and statutes has emerged, each nation wielding its legal blade to combat this insidious crime. From the ironclad protections enshrined in the Council of Europe's Lanzarote Convention to the approaches adopted by individual states like the United Kingdom's Online Safety Bill, the legal landscape varies dramatically. Some nations prioritize criminal prosecution, wielding hefty penalties as a deterrent, while others emphasize proactive measures like age verification systems and mandatory reporting obligations.

The United States, for instance, navigates a complex federal-state balance, with national statutes like the Protect Act supplemented by diverse state-level initiatives. Meanwhile, countries like Australia and Singapore champion technological solutions, deploying advanced content filtering and online grooming detection tools. As the digital frontiers expand, so too must the global conversation on safeguarding children, drawing lessons

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<sup>104</sup> Article 34, United Nations Convention on the Rights of the Child, 1989, 27531 UNTS 1577.

<sup>105</sup> Article 7, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2009.

<sup>106</sup> Article 7, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,(2009).

from one another's legal arsenals to forge a future where the internet fosters connection, not exploitation.

Hungary has among other laws the Criminal Code (Act LXII of 2012). Section 195/C of this law makes it a crime to "induce a child under 18 years of age to perform a sexual act or to tolerate a sexual act performed on them, using information and communication technology." It goes ahead to give a maximum penalty of 5 years imprisonment.<sup>107</sup> The act goes further to criminalize the production, possession, and distribution of child pornography with various penalty levels depending on the severity of the act and the age of the victim.<sup>108</sup> In addition, section 201/A prohibits luring or enticing a child under 18 to meet face-to-face to commit a sexual offense. Maximum penalty: 8 years imprisonment.<sup>109</sup> Other relevant legislation associated with Hungary is the National Strategy for the Protection of Children in the Digital World (2015-2020) which outlines comprehensive measures for online child protection, including awareness campaigns, educational programs, and support services for victims.<sup>110</sup>

Australia, like many nations, grapples with the complex and evolving issue of online child grooming. The digital landscape offers both boundless opportunities and hidden dangers for young people, making their safety a paramount concern. The Criminal Code Act makes it a crime to use a carriage service (e.g., internet, phone) to procure a child for sexual activity, with a maximum penalty of 15 years imprisonment.<sup>111</sup> It also gives a provision that criminalizes transmitting information through a carriage service intended to groom a child for sexual activity, with a maximum penalty of 10 years imprisonment.<sup>112</sup> The Act also prohibits knowingly transmitting indecent or offensive child pornography content, with a maximum penalty of 7 years imprisonment.<sup>113</sup>

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<sup>107</sup> Criminal Code (Act LXII of 2012). Section 195/C

<sup>108</sup> Criminal Code (Act LXII of 2012). Section 189/B

<sup>109</sup> Criminal Code (Act LXII of 2012). Section 201/A

<sup>110</sup> National Strategy for the Protection of Children in the Digital World (2015-2020)

<sup>111</sup> Criminal Code Act, Australia, Section 132

<sup>112</sup> Criminal Code Act, Australia, Section 132.1

<sup>113</sup> Criminal Code Act, Australia, Section 134

Besides the statutes, Australia also has some policy initiatives that seek to protect children from online sexual exploitation. The National Strategy for Combating Online Child Sexual Abuse Exploitation (OCSEA) outlines a comprehensive framework for prevention, detection, investigation, and victim support.<sup>114</sup> It also has the Online Safety Bill 2023<sup>115</sup> which is still currently in parliament. It proposes additional measures to hold social media platforms accountable for protecting children from harm, including online grooming. Most importantly Project Cybersafe is an education program for schools and communities to raise awareness about online safety and responsible digital citizenship.

The UK has woven a complex tapestry of laws and policies aimed at safeguarding its young citizens from the manipulative tactics of predators. This encompasses both criminal prosecutions for grooming offenses and preventative measures, all striving to create a safer digital environment where children can freely explore without fear of exploitation. For instance, the Criminal Justice and Courts Act 2015<sup>116</sup> makes it a criminal offense to "cause or procure a child to engage in sexual activity" online, with a maximum penalty of life imprisonment. It also prohibits "child grooming," defined as building trust and emotional dependence with a child for a sexual purpose, with a maximum penalty of 14 years imprisonment.<sup>117</sup> Section 63 criminalizes possessing, distributing, or making indecent images of children.<sup>118</sup>

Besides the Criminal Justice and Courts Act, the Child Protection and Online Grooming Act 2017 also goes ahead to empower law enforcement to obtain warrants for data extraction, account suspension, and online communication intercept to identify and apprehend perpetrators. It places a requirement on technology companies to report suspected child abuse content and cooperate with investigations.<sup>119</sup> It also has additional

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<sup>114</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022.

<sup>115</sup> The Online Safety Bill 2023

<sup>116</sup> Section 61, Criminal Justice and Courts Act (2015).

<sup>117</sup> Section 62, Criminal Justice and Courts Act (2015).

<sup>118</sup> Section 63, Criminal Justice and Courts Act (2015).

<sup>119</sup> Child Protection and Online Grooming Act , 2017.

policies and initiatives: The National Strategy for Combating Online Child Abuse<sup>120</sup> which outlines a comprehensive approach to prevent, detect, and prosecute online child grooming, including education, reporting mechanisms, and support services. The UK Safer Internet Centre provides resources and advice for children, parents, and professionals on online safety and reporting abuse.<sup>121</sup> It also has the Thinkuknow which is an educational program run by the National Society for the Prevention of Cruelty to Children (NSPCC) to teach children about online risks and responsible internet use.

### 3.5 Conclusion

To summarize, online child grooming is a worldwide issue that requires a coordinated and coordinated response. We can build a safer online environment for children, free of the threat of online predators, by combining the strengths of governments, law enforcement agencies, technology businesses, and civil society organisations.



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<sup>120</sup> Edwards G, Christensen L & Jones C, ‘ Cyber Strategies used to combat child sexual abuse material,’ 1 September 2021.

<sup>121</sup> Edwards G, Christensen L & Jones C, ‘ Cyber Strategies used to combat child sexual abuse material,’ 1 September 2021.

## **CHAPTER 4: THE GAPS THAT EXIST IN THE POLICIES AND STATUTES ON ONLINE CHILD GROOMING IN KENYA**

### **4.1 Introduction**

The internet has revolutionized communication and access to information, providing a vast and interconnected world for children to explore, learn, and connect with others. However, this digital landscape also harbors potential dangers, including online child grooming, the process by which adults manipulate and befriend children online with the intention of sexual abuse. In Kenya, as in many other countries, online child grooming is a growing concern, and addressing this issue effectively requires a comprehensive understanding of the gaps that exist in the legal and policy frameworks.

### **4.2 Addressing the Gaps in the Policies on Online Child Grooming in Kenya**

The pervasiveness of online spaces and the increasing vulnerability of children in the digital realm necessitates a comprehensive approach to combating online child grooming. While Kenya has taken steps towards safeguarding children, there persist critical gaps in the existing policies and statutes that demand immediate attention.

#### **4.2.1 The 'National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse' (NPA)**

The 'National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse' is a comprehensive document that outlines the Kenyan government's strategy for preventing and combating online child sexual exploitation and abuse (OCSEA). The NPA is based on the recognition that OCSEA is a serious and growing problem that requires a coordinated and multi-pronged approach.<sup>122</sup>

However, several gaps in the NPA still need to be addressed to effectively protect children from OCSEA. This is because firstly, it has a limited scope. The NPA focuses primarily on prevention and response measures, with less attention given to rehabilitation

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<sup>122</sup>National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

and reintegration of victims.<sup>123</sup> This means that there is a risk of survivors of OCSEA being left without the support they need to recover from their experiences and reintegrate into society. However, the Plan does not specify how these resources will be secured. Without adequate funding, the NPA will be difficult to implement effectively.

There is also a lack of clear coordination mechanisms. The NPA calls for improved coordination among different government agencies, civil society organizations, and the private sector.<sup>124</sup> However, the plan does not provide clear mechanisms for achieving this coordination. This could lead to duplication of effort and missed opportunities to protect children. Aside from this, there is inadequate data collection and analysis. The NPA acknowledges the need for better data on OCSEA in Kenya. However, the plan does not specify how this data will be collected and analyzed.<sup>125</sup> This lack of data could hinder the development and implementation of effective prevention and response measures.

Most importantly there is insufficient focus on the role of technology companies.<sup>126</sup> The NPA recognizes the role of technology companies in preventing and responding to OCSEA. However, the plan does not outline specific measures that technology companies should take. This could limit the effectiveness of the NPA in addressing OCSEA online.<sup>127</sup>

Overall, the National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse is a welcome development that has the potential to make a real difference in the lives of children in Kenya. However, the NPA is just one step in the fight against

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<sup>123</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>124</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>125</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>126</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

<sup>127</sup> National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes State Department for Social Protection, Senior Citizens Affairs and Special Programmes Directorate of Children's Services, 2021.

OCSEA. It is important to continue to raise awareness of the issue, develop and implement prevention programs, and strengthen child protection systems.

#### **4.2.2 The National Cybersecurity Strategy (NCS)**

The National Cybersecurity Strategy (NCS) is a comprehensive framework for addressing cybersecurity challenges and threats in Kenya. It was launched in August 2022 and covers five years from 2022 to 2027.<sup>128</sup> The NCS is aligned with the Computer Misuse and Cybercrimes Act (CMCA) of 2018 and aims to protect the confidentiality, integrity, and availability of computer systems, programs, and data.<sup>129</sup>

There are still some flaws within this strategy. To begin with, it has a limited scope. The strategy states that "The focus of the strategy is on protecting CII, as it is recognized that a disruption to any of these critical systems could have a significant impact on the national security and economy of Kenya."<sup>130</sup> The strategy focuses primarily on cybersecurity threats to critical information infrastructure (CII), with less attention given to cybersecurity risks faced by individuals, in this case, children. This means that there is a risk of children not being adequately protected from cyber threats, such as phishing attacks, online abuse, and ransomware attacks.

The NCS also puts insufficient emphasis on cybersecurity awareness and education. The strategy states that "Cybersecurity awareness and education are essential for empowering Kenyans to protect themselves from cyber threats."<sup>131</sup> However, the strategy does not provide specific guidance on how to raise cybersecurity awareness and educate Kenyans about cybersecurity risks. It also fails to place enough emphasis on the importance of

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<sup>128</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 10.

<sup>129</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 12.

<sup>130</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 12.

<sup>131</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 25.

cybersecurity awareness and education for all Kenyans.<sup>132</sup> Cybersecurity awareness and education are essential for empowering Kenyans and the society at large which also partakes in protecting children from cyber threats. However, the strategy does not provide specific guidance on how to raise cybersecurity awareness and educate Kenyans about cybersecurity risks.<sup>133</sup>

In addition to this, the NCS strategy lacks clear guidelines for incident reporting and response. The strategy states that "The government will develop and implement a national cybersecurity incident reporting and response framework."<sup>134</sup> However, the strategy does not provide specific details on what this framework will look like or how it will be implemented. It also fails to provide clear guidelines for incident reporting and response. This means that organizations may not know how to report cybersecurity incidents to the government or how to respond to cybersecurity incidents effectively.<sup>135</sup>

The strategy also goes ahead to state that "The government will need to secure adequate funding to implement the strategy."<sup>136</sup> However, the strategy does not specify how much funding will be needed or where the funding will come from. The strategy does not specify how the provisions of the strategy will be funded. Without adequate funding, the strategy will be difficult to implement effectively.<sup>137</sup>

The NCS also lacks a clear monitoring and evaluation framework. The strategy states that "The government will develop and implement a monitoring and evaluation framework to assess the effectiveness of the strategy." The strategy does not specify how it will be monitored and evaluated. This means that it will be difficult to assess the effectiveness of

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<sup>132</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 25.

<sup>133</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 25.

<sup>134</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 32.

<sup>135</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 35.

<sup>136</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 41.

<sup>137</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 41.

the strategy and make necessary adjustments.<sup>138</sup> In addition to these gaps, there are also several concerns about the implementation of the National Cybersecurity Strategy of Kenya. For example, the strategy does not specify how it will be coordinated with other relevant policies, such as the data protection policy and the ICT policy for children and young people.

#### **4.2.3 The Information, Communications, and Technology policy for children and young people**

The ICT Policy for Children and Young People in Kenya was developed by the Ministry of Information, Communications and Technology (ICT) in 2019.<sup>139</sup> The policy aims to promote the safe and responsible use of ICTs by children and young people in Kenya. The policy is based on a few principles.

The ICT Policy for Children and Young People is being implemented by the Ministry of ICT in partnership with a few stakeholders, including the Ministry of Education, the Ministry of Youth Affairs and Sports, the Communications Authority of Kenya, and the Kenya ICT Authority.

Nonetheless, despite the strategies and objectives, there are a few gaps that exist in the policy. The policy has a limited scope as it focuses primarily on access to ICTs for children and young people, with less attention given to the risks associated with ICT use. This means that there is a risk of children and young people not being adequately protected from online harms, such as cyberbullying, online sexual exploitation, and exposure to harmful content.<sup>140</sup> The policy also places insufficient emphasis on digital literacy. The policy does not place enough emphasis on the importance of digital literacy

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<sup>138</sup> National Cybersecurity Strategy (2022-2027), National Computer and Cybercrimes Coordination Committee, 5 August 2022, 43.

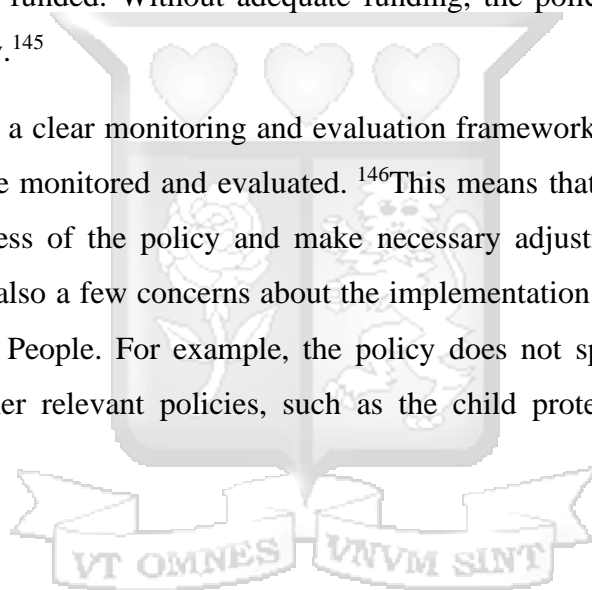
<sup>139</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>140</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

for children and young people.<sup>141</sup> Digital literacy is the ability to use ICTs in a safe, responsible, and effective way. Without adequate digital literacy skills, children and young people are at risk of falling prey to online scams, phishing attacks, and other forms of online harm.<sup>142</sup>

Besides this, there is also a lack of clear guidelines for parental involvement. The policy does not provide clear guidelines for parental involvement in children's and young people's ICT use.<sup>143</sup> Parents play an important role in helping children and young people to use ICTs safely and responsibly. However, the policy does not provide specific guidance on how parents can do this.<sup>144</sup> The policy does not specify how the provisions of the policy will be funded. Without adequate funding, the policy will be difficult to implement effectively.<sup>145</sup>

The policy also lacks a clear monitoring and evaluation framework. The policy does not specify how it will be monitored and evaluated.<sup>146</sup> This means that it will be difficult to assess the effectiveness of the policy and make necessary adjustments. In addition to these gaps, there are also a few concerns about the implementation of the ICT Policy for Children and Young People. For example, the policy does not specify how it will be coordinated with other relevant policies, such as the child protection policy and the education policy.



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<sup>141</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>142</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>143</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>144</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>145</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

<sup>146</sup> The ICT Policy for Children and Young People in Kenya, Ministry of Information Communications and Technology, 2019.

### 4.3 The gaps in the statutes on online child grooming in Kenya

The Computer Misuse and Cybercrimes Act<sup>147</sup> provides a quite comprehensive definition of child sexual abuse material and explicitly criminalizes acts associated with it<sup>148</sup> as well as the attempt to commit these crimes.<sup>149</sup> The Kenyan Computer Misuse and Cybercrimes Act 2019 addresses content pertaining to child sexual abuse; nonetheless, it contains restrictions on child grooming on the internet. The Act favours reactionary measures over proactive preventative techniques like online safety education, and it does not specifically address the deceptive tactics used in grooming. Additionally, the Act does not provide clear definitions for these behaviours. Due to the gap created by this emphasis on the product (material) rather than the grooming process, children are left open to exploitation and have no legal remedy against the manipulative tactics used by those who take advantage of them.

The Sexual Offences Act sets the age of sexual consent at 18<sup>150</sup> but provides no close-in-age exemption for consensual sexual relationships between peers under 18. It also prohibits certain forms of conduct associated with child sexual abuse material (CSAM).<sup>151</sup> The provisions of these laws relating to CSAM could potentially be applied to live streaming of child sexual abuse. However, this is not explicitly stated and there is no separate provision criminalizing live streaming of abuse. Similarly, there are no provisions prohibiting online grooming for sexual purposes and sexual extortion committed in the online environment.

Whereas the Children's Act 2022 attempts to define what grooming is, there is still a lack as to what online child grooming is. Nevertheless, the definition of child grooming is not explicitly defined.

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<sup>147</sup> Section 24 (3), The Computer Misuse and Cybercrimes Act, (No. 5 of 2019).

<sup>148</sup> Section 24, The Computer Misuse and Cybercrimes Act , (No. 5 of 2019).

<sup>149</sup> Section 42(2), The Computer Misuse and Cybercrimes Act , (No. 5 of 2019).

<sup>150</sup> Section 6, The Sexual Offences Act, ( No. 3 of 2006).

<sup>151</sup> Section 16, The Sexual Offences Act, ( No. 3 of 2006).

#### 4.4 Conclusion

Online child grooming is a pervasive and concerning issue in Kenya, posing a serious threat to the safety and well-being of children. Despite notable efforts to combat this menace, several gaps persist in the policies and statutes designed to safeguard children from online predators. The protection of children from online child grooming demands an approach that addresses the gaps in policies and statutes. By elevating awareness, enhancing resources, fostering collaboration, and strengthening the legal framework, Kenya can effectively safeguard its children in the digital age. By addressing these gaps and implementing the recommended measures, Kenya can significantly enhance its efforts to protect children from the dangers of online child grooming.



## **CHAPTER 5: FINDINGS, RECOMMENDATIONS AND CONCLUSION**

### **5.1 Introduction**

This chapter highlights the findings, recommendations, and conclusions of this study. It also demonstrates whether the research objectives and the hypothesis of this study have been fulfilled.

### **5.2 Summary of Findings**

This study has scrutinised online child grooming from a general point of view to understand it from the perspective of its nature and the laws and policies that try to curb it. Chapter one formed the basis of the research establishing the lack of a clear understanding of this concept. This Chapter also illustrated the problems that Kenya is facing because of not understanding the nature of online child grooming in its entirety. The Chapter also laid out the objectives of the research, established the specific questions to be researched, reviewed relevant literature, and laid out the theoretical framework of the study. The first research question sought to assess the state of online child grooming in Kenya and the rest of the world. The second research question sought to examine the laws and policies that relate to online child grooming in Kenya. It also went further to determine what other states' policies and laws have on the same subject matter and the third research question sought to determine the gaps if any that exist within these laws and policies.

Chapter Two analysed the state of online child grooming in Kenya and the rest of the world. This Chapter further went ahead and tried to decipher the definition of what online child grooming is. This discussion disclosed the importance of a legal or known definition as the starting point to identify what constitutes online child grooming.

Chapter three examined the different laws and policies governing online child grooming in Kenya. It also went further to assess the laws and policies in other jurisdictions. A discussion around this realised that both Kenya and other states indeed have laws that try to curb the prevalence of child grooming. However, there was still a need to address the ever-evolving digital platform that was identified as a big contributor to online child

grooming. This Chapter concluded by noting the differences in the policies and statutes governing online child grooming in Kenya as compared to those in the most relevant states for this study which were Hungary, Australia, and the United Kingdom.

Chapter four explored the gaps that existed in Kenya's laws and policies. The shortfalls were recognized from the comparison of the laws and policies in chapter three. This Chapter ended with the conclusion that both Kenya and other states indeed had more to do to ensure that the prevalence of online child grooming is curbed.

The present Chapter concludes the analysis of this study by summarising the findings and offers recommendations to address the present dilemma of the state of online child grooming in Kenya. It also gives recommendations that will apply instantly if proposed and approved as it awaits a long-term solution which could include amendment of a specific law.

### **5.3 Recommendations**

This study proposes the following recommendations:

First, there should be preparation and implementation for training programs and information campaigns to increase awareness of online/digital safety aimed at children, young people, parents, teachers, and the public at large. Key line ministries at the Government of Kenya, such as the Ministry of Education, Science and Technology, and the Ministry of Information, Communications and Technology, together with the Communications Authority could lead the effort to design, develop and implement national digital safety programs. Such programs should be aimed at stimulating communication on this topic between children and caregivers and ensuring that children's digital activities are safe and in their best interests while raising awareness on how to manage risks such as online child grooming. There is a wide range of non-governmental organizations, both national and international, that have worked with schools to put together content and support the rollout of similar programs in countries across the world. Particular attention should be paid to target the most vulnerable groups and to ensure meaningful participation in the design and implementation of the programs by those most familiar with growing up in a digital world: children and young people themselves.

Secondly, a handbook should be created to empower the role of the family, parents, guardians, domestic workers, and those closely involved with the children. The handbook should be a beacon of clarity, offering age-appropriate explanations of grooming tactics, red flags to recognize, and concrete steps to take if targeted. Imagine a child confidently using this handbook to identify manipulative behavior, a parent equipped with tools to foster open communication, and an educator empowered to guide students toward safer online choices. This handbook wouldn't just be a shield, but a sword- forging critical thinking skills in children, fostering open dialogue within families, and equipping schools with proactive preventative measures.

Lastly, creating a National Online Child Protection Task Force to support training programmes. This multi-stakeholder group, which includes representatives from the government, digital businesses, child rights organisations, and the legal community, will not just concentrate on training. Rather, it would develop a national policy to address OCSE, specifically with regard to online grooming. The Task Force might promote capacity-building programmes and maximise resource allocation by encouraging cooperation and knowledge exchange. By utilising the knowledge of various stakeholders, this strategy provides a long-lasting and all-encompassing solution to the problem of online child grooming in Kenya.

#### **5.4 Conclusion**

In conclusion, curbing online child grooming demands a collective effort by parents, teachers, guardians, and all those close to children. By fostering open communication, encouraging responsible digital citizenship, equipping ourselves with knowledge, and prioritizing child safety both online and offline, we can create a protective web that empowers children to navigate the digital world safely and confidently.

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