



UNIVERSITY OF NAIROBI

SCHOOL OF LAW

**AN ANALYSIS OF THE DEPARTMENT OF CHILDREN SERVICES' ROLE IN
PROTECTING CHILDREN FROM CHILD SEXUAL ABUSE IN KENYA**

**LLM THESIS SUBMITTED IN FULFILMENT OF THE AWARD OF THE MASTER OF
LAWS (LLM) DEGREE**

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G62/38298/2020

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15TH AUGUST 2023

DECLARATION

I hereby declare that this thesis is my original work submitted in partial fulfillment of the Masters of Laws (LL.M) at the University of Nairobi and has not been submitted in its entirety or part at any other University for a degree. All citations have been duly acknowledged.

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APPROVAL

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DEDICATION

This work is dedicated to all children, particularly victims of child sexual abuse. I hope Kenya prioritizes your safety and protection sooner rather than later.

ACKNOWLEDGMENTS

“So then it is not of him that willeth, nor of him that runneth, but of God that showeth mercy”

(Romans 9:16, KJV). My heartfelt gratitude goes to the Almighty Living God, whose sustaining Grace has remained sufficient. He is the source of my strength and salvation.

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Special thanks to my parents for giving me the wings to fly. To my mother, Miriam Staus Makanga, the epitome of strength and the reason I am the woman I am today, it is from you that I draw my inspiration.

To my father, John Mark Udalang’, your dedication, continuous encouragement, and constant support have inspired me to achieve greater things.

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The United Nations Convention on the Rights of the Child 1989

The UN Convention on the Rights of Persons with Disabilities

LIST OF ABBREVIATIONS

AAC	Area Advisory Council
ACPF	African Child Policy Forum
AFC	Alternative Family Care
CAC	Child Advocacy Centers
CARG	The Child Abuse Reporting Guide
CCO	County Children’s Offices
CEOS	The Department of Justice’s Child Exploitation and Obscenity Section
CPC	Child Protection Centers
CPIMS	Children Protection Information Management System
CPS	Child Protective Services
CSA	Child Sexual Abuse
CPSC	Child Protection Specialist Centres
CPU	Child Protection Unit
DCFS	Department of Children and Family Services
DCS	Department of Children Services
ECAP	The Endangered Child Alert Program
FBI	Federal Bureau of Investigations
FGM/C	Female Genital Mutilation/Cutting
FSC	Family Service Centres
GBV	Gender-Based Violence
LMIC	Low- and Middle-Income Countries
LSK	Law Society of Kenya
MFS	Ministry of Social and Family Development
NCC	National Council for Children’s Services

NGO	Non-Governmental Organization
ODPP	Office of the Director of Public Prosecution
OVC	Orphans and Vulnerable Children
SCCO	Sub-county Children Offices
SSSG	The Sector-Specific Screening Guide
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNGA	United Nations General Assembly
UNICEF	United Nations International Children’s Emergency Fund
USA	United States of America
VAC	Violence Against Children
VACS	Violence Against Children Survey
VANE	Violence, Abuse, Neglect, and Exploitation
WHO	World Health Organization

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ABSTRACT

According to the Children Act 2001, one of the critical mandates of the Department of Children Services (DCS) is to safeguard and protect children's rights and welfare, which includes protecting children from child sexual abuse (CSA). Nonetheless, despite the DCS's numerous efforts and initiatives over the years, the prevalence of child sexual abuse in the country remains high. As a result, this research aims to assess the extent to which the Department of Children Services has implemented the Children Act to protect children from child sexual abuse. This is discussed by examining the department's accomplishments and challenges in carrying out its mandate. This is achieved by employing a qualitative approach to solicit the perspectives of children officers on the accomplishments and challenges in various Kenyan counties. This study also examines best practices from other jurisdictions, such as the United States of America and Singapore, to learn about the measures enacted to protect children from child sexual abuse. The study reveals that the Department of Children Services' inability to protect children from child sexual abuse adequately limits its ability to fulfil its role and mandate under the Children Act. The study also reveals and recommends that the Department of Children Services can sufficiently protect children from child sexual abuse only if it addresses the internal challenges that impede its efforts. Additionally, it can only fulfill its role once it receives much-needed support from the National Government to promote its initiatives.

It is also worth noting that this study was conducted between 2020 and 2021, before the enactment of the Children Act No. 29 of 2022, which repealed the Children Act No. 8 of 2001 and took effect on 26th July 2022.

CHAPTER ONE

INTRODUCTION

1.1. Background to the Research

Today, there are more than 2.2 billion children on Earth.¹ It is estimated that more than half of these children, one billion, aged between 2 and 17 years, reported being physically, sexually, or emotionally abused in the past year. However, it is also estimated much more abuse is underreported.² The reason children face high rates of violence is because of their vulnerability. There are various reasons for the heightened vulnerability of children. One is the power imbalance between a minor and an older person.³ In society, power imbalance exists not only between men and women but also between adults and children.⁴ Children are more vulnerable than their adult caregivers, whatever the extenuating social circumstances.⁵ The presumption that adults have limitless rights in a child's upbringing undermines any efforts to deter violence against children perpetrated at home, school, or within a state institution.⁶ Another reason is that naturally, children are easily impressionable, physically weak, and dependent on adults or older

¹Igi Nderi, 'Children in The World, The Global Children's Right Situation, By Country' (Humanium, 7 June 2020) <<https://www.humanium.org/en/children-world/#:~:text=Today%2C%20there%20are%20more%20than%202.2%20billion%20children%20on%20Earth>> accessed 23 December 2020.

²Alessandra Guedes and Ramya Subrahmanian, 'Violence Against Children' (UNICEF, 8th June 2020) <<https://www.unicef-irc.org/research/violence-against-children/>> accessed 23 December 2020.

³L Hoyano and C Keenan, 'Child abuse: Law and policy across boundaries' (2010) OUP 194.

⁴Sue Wise, 'Feminist ethics in practice' in Ethical issues in social work (eds), (Routledge, 2002) pp. 116-131.

⁵Nigel Parton, *The Politics of Child Abuse* (MacMillan, London 1985).

⁶United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children, 2006.

children for protection and provision.⁷ As a result of this vulnerability, children are more susceptible to violence and abuse.⁸

Violence against children takes three primary forms; physical, sexual, and emotional.⁹ Of all these forms, child sexual abuse (CSA) is considered one of the gravest violations. It encompasses all three types of abuse and typically occurs alongside other forms of child abuse. There is a physical component to CSA, which includes everything from inappropriate touching to sexual activity.¹⁰ There is also a psychological component because all sexual activity involves the mind.¹¹

The World Health Organization (WHO) defines child sexual abuse(CSA) as “the involvement of a child in sexual activity that they do not fully comprehend, cannot consent to, or is not developmentally prepared for.”¹² Its effects are as widespread as they are long-term and complex. The most apparent effects include the victim’s harm and trauma; they range from emotional and psychological trauma to severe and often irreversible medical complications, including pregnancy and life-threatening infections.¹³ According to Hanson et al., CSA includes

⁷UNGA Convention on the Rights of the Child (Adopted and opened for signature and ratification 20th November 1989, entered into force 2nd September 1990), 1577 UNTS 3(CRC) Preamble.

⁸Mercy Mwarah Deche, ‘Legal Responses to Intra-Familial Child Sexual Abuse in Kenya: A Case for Restorative Justice’ A thesis submitted in fulfilment of the University of Nairobi for the award of the Degree of Doctor of Philosophy (PHD) of the University of Nairobi, December 2019.

⁹ African Rights, ‘Crimes Without Punishment: Sexual Harassment and Violence Against Female Students in Schools and Universities in Africa’ (1994).

¹⁰ Mwanasha Ali Vihaka, Ruth Joyce Kaguta and Mathew Theuri, ‘Analysis of Practice of Investigating Child Sexual Abuse Cases by Police Officers in Kwale County, Kenya’ (2020) <http://repository.dkut.ac.ke:8080/xmlui/bitstream/handle/123456789/4699/ACFrOgAClw3g0PcNtnU-Aa2ALpkpw2TOWyf5b0Bfq4tRIJjzlo8SyhwWfuZ3AKjos1ij2m1PB6Va469bnnX4aVnxt77rs6on_ZRV_wqUZ6VM_HA4i1KSORXGGaZqk%3D.pdf?sequence=1&isAllowed=y> accessed 5 June 2023.

¹¹ Gerry Johnstone and Daniel Van Ness, *Handbook of Restorative Justice* (1st Ed, WP 2006)

¹²World Health Organization, ‘Report of the Consultation on Child Abuse Prevention’ (World Health Organization, 29 – 31 March 1999) <<https://apps.who.int/iris/handle/10665/65900>> accessed 3 January 2021.

¹³Ibid 8.

sexual intercourse, piping, flashing, child pornography, sodomy, and genital-to-mouth contact. It also includes indecent exposure (of the perpetrator towards the victim) and voyeurism.¹⁴

Despite being deplorable, child sexual abuse is rife worldwide and plagues every nation.¹⁵ Research shows that globally, nearly 1 in 4 girls and 1 in 10 boys have experienced sexual abuse¹⁶. It also shows that about 1 in every 20 girls under 18 years, around 120 million girls worldwide, have been victims of CSA and other unwanted sexual acts.¹⁷ However, prevalence varies significantly across regions, countries, and even communities within the same country. In low- and middle-income countries (LMIC), prevalence ranges from 4% to 38%. Prevalence also differs by gender, with girls more likely to experience violence. For instance, in Kenya, among young people aged 18–24, 32% of females and 18% of males report experiencing sexual violence as children.¹⁸ Statistics also show that globally, while boys also experience and report child sexual abuse, it is at lower levels than girls.¹⁹ It is for this reason that this research focuses on this particular form of child abuse.

Regionally, child sexual abuse is a nightmare in Africa. Gender, power, and patriarchy play a significant role in understanding CSA and how they intersect with personal, sociocultural, and familial contexts and other societal divisions. The patriarchal African society set up demands

¹⁴ Karl Hanson et al, 'Where Should We Intervene?: Dynamic Predictors of Sexual Offense Recidivism' (2000) 27(1) CJB < <https://journals.sagepub.com/doi/10.1177/0093854800027001002> > accessed 14 June 2023.

¹⁵A Browne and D Finkelhor, 'Impact of Child Sexual Abuse: A Review of the Research' (1986) 99(1) Psychological Bulletin <<http://psycnet.apa.org/journals/bul/99/1/66/>> accessed 6 February 2014.

¹⁶ J Barth, L Bermetez, E Heim, S Trelle and T Tonia, 'The current prevalence of child sexual abuse worldwide: a systematic review and meta-analysis' (2013) 58(3) IJPH < <https://pubmed.ncbi.nlm.nih.gov/23178922/> > accessed 23 May 2023.

¹⁷UNICEF, Hidden in Plain Sight: A statistical Analysis of Violence Against Children (2014).

¹⁸ Anne G, Manuela C, Janet S, Seyi S and Karen D, 'Supporting children and adolescents who have experienced sexual abuse to access services: Community health workers' experiences in Kenya'(2021) 116(1) CA&N < <https://www.sciencedirect.com/science/article/abs/pii/S0145213419304211?via%3Dihub> > accessed 23 May 2023.

¹⁹Stoltenborgh, Marije, et al, 'A global perspective on child sexual abuse: Meta-analysis of prevalence around the world' (2011) 16(2) Child Maltreatment 79 – 101, <<https://journals.sagepub.com/doi/abs/10.1177/1077559511403920>> accessed 23 January 2021.

silence from children. According to the well-known adage, children are to be heard and not seen. Cultural setup within African states creates an environment where adults hold various views on a child's place within the home, community, and beyond. This perception has increased children's vulnerability, making them more vulnerable to CSA at home, school, and community settings.

Additionally, harmful cultural norms have contributed to the perception that sexual abuse and sexual violence are acts of power. These "acts of power" are often enforced on women and children. The abuse of women and children results from the social construction of masculinity, which maintains male power over women and children.

A study conducted by the ACPF in Morocco revealed that nearly 25% of the children reported having experienced inappropriate sexual advances in the home. In comparison, 30% of CSA cases in Sierra Leone occur in school. In Zimbabwe, 20% of children experienced CSA while travelling to or from school, the same as in Tanzania. The study found that 25% of children in Africa experienced CSA in a field, bush, river, or roadway, while 10% of girls and 5% of boys experienced CSA in a business place or bar.²⁰

The statistics in Kenya are no different. Despite the department's efforts to protect children from CSA, its prevalence remains high. According to Kenya's 2010 national survey on VAC, 3 out of every 10 females and nearly 2 out of every 10 males aged 18 to 24 reported at least one experience of sexual violence before turning 18. In 2014 the police recorded 3,685 cases, compared to 3,286 cases in 2013.²¹ According to Kenya Child Protection Data, 591 CSA cases were reported in 2016/2017. 816 CSA cases were reported in 2017/2018. 1,525 CSA cases were

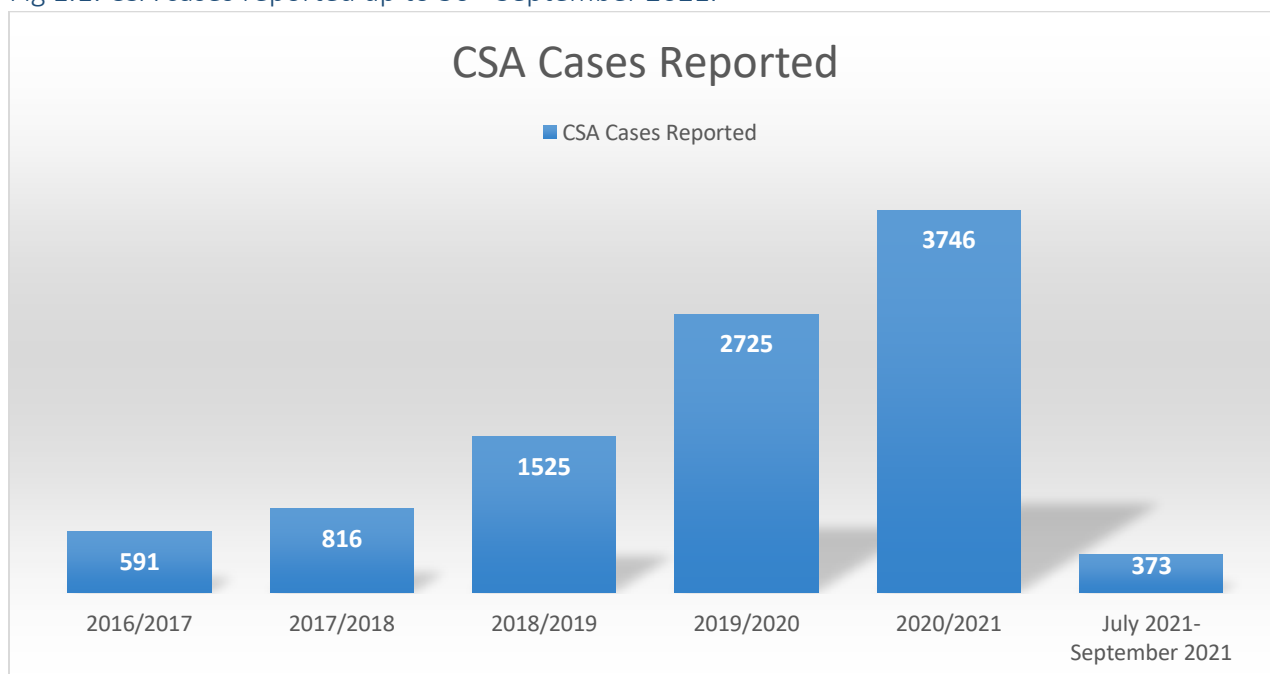
²⁰The African Child Policy Forum, *The African Report on Violence Against Children*, 2014.

²¹ Deirdre Davies and Jennifer Dodd, 'Qualitative Research and the Question of Rigor' (2012) 12(2) QHR < <https://www.researchgate.net/publication/11524270> *Qualitative Research and the Question of Rigor* > accessed 1 June 2023.

reported in 2018/2019. 2,725 CSA cases were reported in 2019/2020. 3,746 CSA cases were reported in 2020/2021, and 373 CSA cases have already been reported in 2021/2022 (from 1st July to 30th September 2021). This data shows a steady increase in CSA cases over time, which is cause for concern.²²

Figure 1.1 below illustrates the prevalence of CSA over the last five years.

Fig 1.1: CSA cases reported up to 30th September 2021.



Furthermore, according to research, 46% of CSA incidents occur within the community, with approximately half of the survivors who present to Kenyan hospitals for post-rape care being minors.²³ Research also shows that 43% of CSA reportedly occurs within the home and is perpetrated by family members.²⁴ According to the 2010 National Survey, less than 50% of

²²Kenya Child Protection Data, <<https://data.childprotection.go.ke/#000/CCDF/2016/ALL>> accessed 23 September 2021.

²³Cynthia Khamala Wangamati, 'Sexual violence against minors in Western Kenya: Community perceptions and institutional responses' A thesis submitted in fulfilment of the University of Oslo for the award of the Degree of PHD (Philosophiae Doctor) of the University of Oslo, May 9 2019.

²⁴UN Committee on the Rights of the Child, 'Replies by the Government of Kenya concerning the list of issues (CRC/C/KEN/Q/2) Received by the committee on the Rights of the Child relating to consideration of the second

children who experienced CSA reported the incident in Kenya, and less than 25% sought medical and legal services. Additionally, less than 4% of girls and 1% of boys received medical or legal services after reporting CSA.²⁵ Recent data also indicates that 15.6% of females and 6.4% of males experienced CSA as children.²⁶

There has been a lot of effort to combat CSA worldwide.²⁷ Internationally, the United Nations has been a notable front-runner in combating CSA and has commissioned vast literature.²⁸ To address the prevalence of violence against children globally, the United Nations established the UN Committee on the Rights of the Child. The committee serves as the treaty body for the UN Convention on the Rights of the Child and its optional protocols. It monitors state parties' implementation of the UNCRC and its two optional protocols.²⁹ Furthermore, the UN General Assembly in 2002 appointed an independent expert to report on violence against children.³⁰ The expert, in turn, compiled the World Report on Violence Against Children, which also presented findings on CSA.³¹

Nationally, to comply with the duty it owes children to protect them from CSA and other forms of VAC, Kenya has ratified critical international documents that provide for children's rights. These include the United Nations Convention on the Rights of the Child (ratified on 30 July

period Report of Kenya (28 December 2006) UN Doc CRC/C/KEN/2

<https://digitallibrary.un.org/record/589667/files/CRC_C_KEN_Q_2_Add.1-EN.pdf> accessed 9 April 2021.

²⁵United Nations Children's Fund Kenya County Office, U.S Centre for Disease Control and Prevention, and the Kenya National Bureau of Statistics, Violence Against Children in Kenya: Findings from a 2010 National Survey, 2012.

²⁶The Government of Kenya; Ministry of Labour and Social Protection and UNICEF, Violence Against Children Survey Report 2019.

²⁷ David Wolfe, *Preventing Physical and Emotional Abuse of Children* (Guilford Press 1991).

²⁸Ibid 8.

²⁹Child Rights International Network (CRIN), Committee on the Rights of the Child, <<https://archive.crin.org/en/guides/un-international-system/committee-rights-child.html>> accessed 7 April 2021.

³⁰United Nations Digital Library 'World Report on Violence Against Children / Paulo Sergio Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, 2006.

³¹Ibid 6.

1990) and the African Charter on the Rights and Welfare of the Child (ratified in 2001). It put these documents into effect with the passage of the Children Act in 2001.³² Kenya is also a signatory to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Child Prostitution and Child Pornography.³³

The government also enacted the Children Act, which has provisions requiring the protection of children from CSA.³⁴ However, the Children Act is currently being reviewed to align it with the Constitution and address emerging issues concerning children.³⁵ It was initially designed to harmonize the existing laws on children into a single tool comprehensive enough to handle all children's matters.³⁶ In addition to consolidating and repealing three previous pieces of legislation, it adds new rights provisions for children.³⁷ However, Part II of the Act (sections 3 - 22), which deals with children's rights and welfare, is considered the essential part of the Act. This section makes provisions for the four principles on which the UNCRC is founded, and the UN Committee has identified them as reflecting the CRC's soul.³⁸

³²Hanibal Goitom, 'Child Protection Law and Policy: Kenya' (Library of Congress, May 2019) <<https://www.loc.gov/law/help/child-protection-law/kenya.php>> accessed 7 April 2021.

³³Ratification Status for Kenya, United Nations Office of the High Commissioner for Human Rights, <https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN> accessed 8 April 2021.

³⁴ The Children Act CAP 141, Sec 15.

³⁵The Children Bill, 2017, <<http://www.childrenscouncil.go.ke/images/documents/Acts/The-Children-Bill-First-Draft--16th-June-2017.pdf>> accessed 3 March 2021.

³⁶Elijah Davis, 'Representing Children Worldwide: Kenya' (Yale, 4 January 2016) <<https://rcw.law.yale.edu/jurisdiction-research/kenya>> accessed 3 March 2021

³⁷Godfrey Odhiambo Odongo, 'The domestication of international standards on the rights of the child: A critical and comparative evaluation of the Kenyan example' (2004) 12(4) The International Journal of Children's Right, 420.

³⁸United Nations Committee on the Right of the Child, General Comment 5: 'General measures of implementation for the Convention on the Rights of the Child' CRC/GC/2003/5, 27 November 2003. General comments are authored by human rights treaty monitoring bodies (including the UN Committee on the rights of the child). By their nature (having been made by the treaty monitoring body after years of experience of examining state party reports and state practice), these comments constitute authoritative elaborations on legal obligations entailed in the provisions of the various treaties.

The Act defines “child abuse” as “physical, sexual, psychological and mental injury.”³⁹ Section 15 of the Act also requires that children be protected from sexual exploitation and prostitution, coercion to engage in any sexual activity, and exposure to obscene materials.⁴⁰

Additionally, the Kenyan government created the National Plan of Action Against Sexual Exploitation of Children in Kenya (2018-2022) to aid in the fight against CSA.⁴¹ After reviewing the first National Plan of Action, it was developed to provide a framework for dealing with CSA in Kenya. The document is very comprehensive on how it has planned its protection activities.⁴² The policy’s main aim is to protect children from CSA, thus providing Kenyan children with the opportunity to realize their full potential by growing up in a safe and stable environment.⁴³ It recognizes that girls are at a higher risk, although all children are vulnerable to CSA.⁴⁴ In advocating for protecting children from CSA, the policy also lists measures that can be taken to offer protection to children. Such efforts include establishing temporary shelters for children who have experienced CSA and enforcing legislation on child sexual abuse and exploitation.⁴⁵

Furthermore, section 37 of the Children Act establishes the offices of the Director of Children Services, Deputy Directors, and Children Officers, who all work under the DCS. The DCS is housed under the State Department for Social Protection under the Ministry of Labour and Social Protection. It has two mandates anchored under the Constitution of Kenya, Article 53 (1) and (2),

³⁹The Children Act CAP 141, Sec 2.

⁴⁰The Children Act CAP 141, Sec 15.

⁴¹National Plan of Action Against Sexual Exploitation of Children in Kenya 2018- 2022, <<http://www.anppcan.org/wp-content/uploads/2014/11/NPA-against-SEC-Kenya-2018-2022.pdf>> accessed 9 April 2021

⁴²Cynthia Khamala Wangamati, Gladys Yegon, Johanne Sundby and Ruth Jane Prince, ‘Sexualised violence against children: a review of laws and policies in Kenya’ (2019) 27(1) Sexual and Reproductive Health Matters, 16-28, <<https://www.tandfonline.com/doi/full/10.1080/26410397.2019.1586815>> accessed 9 April 2021.

⁴³The National Council for Children’s Services, The National Children Policy Kenya 2010, <http://www.childrenscouncil.go.ke/images/documents/Policy_Documents/National-Children-Policy.pdf> accessed 9 March 2021.

⁴⁴ Ibid.

⁴⁵ Ibid 43.

and the Children Act. Its first mandate is safeguarding and protecting children's rights and welfare for national prosperity as per the Children Act 2001. The second mandate is leading, overseeing, planning, and coordinating child protection programs and services in Kenya.⁴⁶

The Department of Children Services' key officials include the Director of Children Services, the Deputy Director of Children Services, and Children Officers, whose offices are created by the Children Act Section 37.⁴⁷ The department also operates 47 County Children Offices (CCOs) and 265 Sub-County Children Offices (SCCOs) with children officers and volunteer children officers up to the sub-county level.⁴⁸ These officers serve as government officers and are appointed by the cabinet minister.⁴⁹ Some of the critical roles of the DCS include: responding to cases of CSA and other forms of VAC, neglect, and exploitation. The Department is also responsible for securing the removal of a child needing protection or in danger of imminent injury or harm. The department also provides the required care and protection to children in need and establishes and manages statutory children's institutions in compliance with section 47 of the Children Act. The DCS also tracks, re-integrates, and provides aftercare services to children needing care and protection and emergency response and rescue services.⁵⁰

The DCS operates a 24-hour, toll-free emergency public helpline, Helpline 116, to ensure child protection. The line is used to report child abuse cases and cases of children in need of care and protection.⁵¹ The helpline also keeps a national database of calls, offers counseling and referral

⁴⁶Ministry of Labour and Social Protection: State Department for Social Protection, Department of Children Services (DCS), <<https://www.socialprotection.go.ke/children-services/>> accessed 8 April 2021.

⁴⁷The Children Act Section 37.

⁴⁸Ministry of Labour and Social Protection: State Department for Social Protection, 'Statutory Children Institutions (SCIs)' <<https://www.socialprotection.go.ke/cco-scco-and-statutory-children-institutions/>> accessed 9 April 2021.

⁴⁹Ibid 47.

⁵⁰Ibid 46.

⁵¹National Council for Children's Services, Child HelpLine 116, <<http://www.childrenscouncil.go.ke/child-help-line.html?showall=&start=1>> accessed 7 April 2021.

services to vulnerable and abused children, and assists parents experiencing difficulties in raising their children, among other things.⁵²

To address CSA in Kenya, the DCS has also set up Child Protection Centers, “one-stop-shops” where CSA and other forms of VAC or exploitation are reported, and essential services are offered in a child-friendly environment. Six CPCs are currently operational in the country: Nakuru, Malindi, Kilifi, Siaya, Kakamega, and Garissa.⁵³ The department has also set up Child Protection Units (CPUs) that protect children from CSA, violence, abuse, exploitation, and separation from family. Some of the country’s CPUs are in Kakamega, Mombasa, Busia, Nairobi, Bondo, and Usenge.⁵⁴

1.2. Problem Statement

Although the Kenyan government enacted the Children Act 2001 and established the Department of Children Services, which has offices at all county and most sub-county levels and has employed children officers throughout the country to protect children from child sexual abuse, worrying trends continue to show that the prevalence of child sexual abuse remains high.

1.3. Research Objectives

The overall objective of this study is to examine the role of the Department of Children Services in protecting children from child sexual abuse in Kenya.

The specific objectives are:

1. To determine the extent to which the Department of Children Services has implemented the Children Act to protect children from child sexual abuse.

⁵²Ibid 51.

⁵³CISP Approach To Child Protection, Models Promising Practices and Success Stories from Kenya, 2019, <http://developmentofpeoples.org/uploads/analysis/analysisCISP_ChildProtectionStrategy_2019.pdf> accessed 9 April 2021.

⁵⁴Ibid 48.

2. To identify the achievements of the Department of Children Services in implementing the Children Act to protect children from child sexual abuse.
3. To identify the challenges the Department of Children Services faces in protecting children from child sexual abuse.
4. To make recommendations to enhance the Department of Children Services' ability to protect children from child sexual abuse.

1.4. Research Questions

The following study questions inform this study:

1. To what extent has the Department of Children Services implemented the Children Act to protect children from child sexual abuse?
2. What are the achievements of the Department of Children Services in protecting children from child sexual abuse?
3. What challenges does the Department of Children Services face in protecting children from child sexual abuse?
4. What recommendations would enable the Department of Children Services to protect from child sexual abuse adequately?

1.5. Hypothesis

This study flows on the premise that due to its challenges, the Department of Children Services has not adequately fulfilled its mandate in protecting children from child sexual abuse as per the Children Act.

Theoretical Framework

A theoretical framework is vital in investigating concepts and analysis of research findings. This study uses an integrated approach that employs three theories: the social contract theory, the

vulnerability theory, and the African Feminist Theory. This study uses these theories to highlight the Department of Children Services' duty to protect children from CSA.

1.5.1. Social Contract Theory

The Social Contract Theory arose from the works of prominent philosophers, most notably Jean-Jacques Rousseau⁵⁵ and John Locke⁵⁶, who investigated the origins and characteristics of human society.⁵⁷ Rousseau reasoned that each man protects his person and property in a state of nature until his strength proves insufficient against the obstacles to self-preservation.⁵⁸ It follows that joining forces while retaining their liberties provides better human protection.⁵⁹ According to Rousseau, members of society would then enter into a social contract - a universal pact to maintain the balance between safety and liberty. Members of a social contract enjoy society's benefits and a higher level of protection in exchange for forfeiting certain privileges and complying with the government's general will.⁶⁰

According to Locke and Rousseau, people form societies and submit to governments for the "preservation of their property" and safety. Therefore, the government is created to protect individuals. The fiduciary relationship established by the social contract obligates the

⁵⁵ Jean-Jacques Rousseau, 'The Basic Political Writings' in Donald A. Cress (eds), (Hackett Publishing Company, 1987) p.64

⁵⁶ Locke J, Dunn J and Grant R.W, *Two Treatises of Government and A Letter Concerning Toleration* in Ian Shapiro (eds), Yale University Press, 2003)

⁵⁷L. Rubin, 'Public choice, phenomenology, and the meaning of the modern state: Keep the bathwater, but throw out that baby' (2002) 87 Cornell Law Review 309 - 356.

⁵⁸Liliya Abramcheyev, 'A social contract argument for the states duty to protect from private violence' (2004) 18(3) Journal of Civil Rights and Economic Development, 849-874.

⁵⁹Ibid.

⁶⁰Michel Rosenfeld, 'The rule of law and the legitimacy of constitutional democracy' (2001) 74 Southern California Law Review, 1307-1331.

government to protect the rights of the individuals who have delegated authority to the government.⁶¹

This theory outlines the relevant principle in this study: A government has the obligation created under the social contract theory to protect the natural rights of its individuals, such as children, within its society. That is its ultimate goal and function.⁶² This assertion is central to the social contract doctrine, which serves as the foundation for the Constitution of Kenya.⁶³ In this case, the Department of Children Services, as a government department, is mandated to protect children from CSA. By establishing the DCS, whose mandate includes investigating and protecting children from CSA, the government acknowledges its responsibility to its citizens, particularly the most vulnerable group: children. It must therefore fulfil its mandate of ensuring their protection from CSA.

Unfortunately, the social contract theory has been criticized for not being fair/ inclusive to all members of society. It has been argued that marginalized and minority groups such as the poor, women, persons living with disabilities, and children do not get the same benefit of the contract as other members of society. Therefore, this gap necessitates applying the vulnerability theory to showcase the need to protect children from CSA.

1.5.2. Vulnerability Theory

According to the vulnerability theory, vulnerability is the concept that we are born unable to protect ourselves. It argues that we become more vulnerable with age and that natural disasters

⁶¹Liliya Abramchyevev, 'A social contract argument for the states duty to protect from private violence' (2004) 18(3) Journal of Civil Rights and Economic Development, 849-874.

⁶²Gary C. Leedes, *The Meaning of the Constitution* (1986) (quoting John Locke, *Two Treatises of Government* (1690).

⁶³The Constitution of Kenya 2010, Chapter 4.

and social structures that may be working against us also heighten our vulnerability.⁶⁴ According to the theory, the human condition is one of “continuous and universal vulnerability,” the only aspect that differs from one person to the next is the magnitude.⁶⁵ An individual’s experiences determine the extent of vulnerability based on the quality and quantity of resources at their disposal.⁶⁶ The theory also provides that vulnerability results from the relationship between an individual and their environment rather than an inborn quality of a person.⁶⁷

Its leading proponent, Martha Albertson Fineman, opines that humans are embodied creatures inextricably embedded in social relationships and institutions. That embodied and embedded differences in people primarily cause varying individual vulnerability. Embodied differences are intrinsic differences among individuals, such as race and age. On the other hand, embedded differences are differences in positioning in relationships, whether socially, economically, or otherwise.⁶⁸ Both embedded and embodied differences are relevant to this study. A child, this study’s subject, is the primary victim of CSA due to their status as a subordinate player in society.⁶⁹ It is also imperative to note that sometimes bodily vulnerability is realized through dependency on others for care, cooperation, or assistance. Sometimes it is realized in our reliance on social arrangements, such as the family or the market and economy. As a result of their age and social status, children become more vulnerable, physically, emotionally, and financially dependent on their parents, guardians, and other adults. This dependency and the private nature of homes and institutions contribute to the paradox of CSA, in which persons within homes and

⁶⁴Martha Albertson Fineman, ‘Beyond Identities: The limits of an antidiscrimination approach to equality’ (2012)92 B.U. L. REV. 1713, 1718-19.

⁶⁵Martha A. Fineman, ‘Vulnerability and inevitable inequality’ (2017) 4 Oslo Law Review, 133,134.

⁶⁶Martha A. Fineman, ‘The vulnerable subject: Anchoring equality in the human condition’ (2008) 20 Yale Journal of Law and Feminism 1- 10.

⁶⁷Ibid 6.

⁶⁸Frank Rudy Cooper, ‘Always already suspect: Revising vulnerability theory’ (2015) 93 North Carolina Law Review 1340 - 1378.

⁶⁹Ibid 8.

institutions who have a duty to protect children in their care are the primary perpetrators of CSA.⁷⁰

This theory outlines the principle relevant to this study: children are vulnerable to CSA because of their societal position and require protection. The vulnerability approach facilitates the recognition of the distinctiveness in the social and economic position of children. It also recognizes that the victim and the perpetrator are positioned differently in terms of bargaining power, thus contributing to children's vulnerability. Therefore, the DCS must implement the Children Act fully and put up adequate measures to protect them from CSA.

1.5.3. African Feminism

Feminism is a shared contemplation and advocacy of equality between men and women.⁷¹ It sees women as oppressed by gender stereotypes and social norms.⁷² All strands of feminism contend that patriarchal institutions limit women's substantive participation⁷³ and that women's experiences have been of silencing, suspension, and exclusion.⁷⁴ The feminist theory sees its purpose in challenging this male bias in assessing women's positions, experiences, and social interaction.⁷⁵ Feminism advocates for women's rights and related issues.⁷⁶ It is concerned with women's empowerment through enhancing their capacity and removing barriers that affect the full enjoyment of their rights.

⁷⁰Omondi Scholastica Awino Ollando, 'Implications of the Adversarial Legal System's Procedure to the Special Needs of Child Victims of Sexual Abuse: Balancing the Rights of Accused Persons and Child Victims of Sexual Abuse in Kenya' A thesis submitted in fulfillment of the University of Nairobi for the award of the Degree of Doctor of Philosophy (PHD) of the University of Nairobi, September 2013.

⁷¹ Anna Ihle, *A Critical Discussion of African Feminism as an Exponent of Feminist Theory* (ebook 2008), < <https://www.grin.com/document/123938> > accessed 20 May 2023.

⁷² Chimamanda Ngozi Adichie, *We Should all be Feminists* (1st Ed, New York, NY: Anchor Books 2014).

⁷³Pascall Gillian, *Social Policy: A New Feminist Analysis*, (Psychology Press 1997).

⁷⁴Patricia Smith, 'Four Themes in Feminist Legal Theory: Dominance, Domesticity and Denial' (2005) In the Blackwell Guide to the Philosophy of Law and Legal Theory, 90-104.

⁷⁵ Stuhlhofer Eunice Wangui, 'Navigating African Feminisms: Wangari Maathai as a Potrait' (2020).

⁷⁶ Ibid 71.

Furthermore, feminism has long criticized the patriarchal family, advocating for change for both women and children. Indeed, one of feminism's primary concerns- patriarchy- boils down to male control over women and children. While several different feminist perspectives exist⁷⁷, including African feminism, they all share the same goal⁷⁸: to end women's subordination to men and achieve equality.⁷⁹

African feminism developed from the feminist theory.⁸⁰ Developed in the early 1980s by anthropologist Filomina Chioma Steady, it defined its own distinct goals as opposing the approach by white American middle-class women. It expressed the desire of African women to create manifestations of feminism that embrace their backgrounds and experiences. African feminism considers Africa's history and diversity, including colonialism, as Maathai exemplified.⁸¹ It focuses on the needs of black women in Africa and includes a variety of theories and movements that speak to the realities of African women in African countries.⁸² This is because African nations' social and economic differences are significant in discoursing African feminism. In Kenya, for example, it seeks to achieve the inclusion of women in nation-building and societal participation.⁸³

⁷⁷ Lewis, J, 'Feminist Perspectives' in P. Alcock, A. Erskine & M. May (eds), *The Student's Companion to Social Policy*, (Blackwell Publishers 1998) 85-90.

⁷⁸Fiona Williams, *Social Policy: A Critical Introduction* (Blackwell, Cambridge 1989).

⁷⁹Joan Orme, 'Feminist social work' in R. Adams, L. Dominelli & M. Payne (eds), *Social Work: Themes, Issues and Critical* (MacMillan, London 1998) 218-228.

⁸⁰Lilian Lem Atanga, 'African Feminism?' In Lilian Lem Atanga, Edith Ellece Sibonile, Lia Litosseliti, and Jane Sunderland (eds), *Gender and Language in Sub-Saharan Africa: Tradition, Struggle and Change* (ABPC 2013) 301–314.

⁸¹ Wangari Maathai, *Unbowed: A Memoir* (1st Ed, AAK, NY 2006).

⁸² Josephine Ahikire, 'African Feminism in Context: Reflections on the Legitimation Battles, Victories and Reversals' (2014) AGI 19.

⁸³ Nyokabi Kamau, 'Perceptions of Feminism and its Effect on Voter Conscientiousness –A Kenyan Woman's Perspectives' (Heinrich Boel Stiftung Foundation 2014)

<https://ke.boell.org/sites/default/files/uploads/2014/01/perceptions_of_feminism_and_its_effect_on_voter_psyhe_by_dr_nyokabi_kamau.pdf> accessed 20 May 2023.

The African Feminist Theory is essential to this study because African women and children are frequently clustered together. What women share with children in communities around the world is powerlessness.⁸⁴ Additionally, concerning gender-based violence (GBV), the rights of women and children, particularly the girl child, squarely coincide. Most of the challenges experienced by women are also shared by children simultaneously.⁸⁵ The dehumanization of children in patriarchal societies leaves them powerless and acutely vulnerable to abuse. The value of their opinion in an African society is directly proportionate to their age.⁸⁶ These societies actively deny, shame, silence, and stigmatize CSA victims and anyone who speaks out against CSA.

Thus the emphasis on the African feminist approach and how it could be used to advocate for the proper protection of children from CSA. Feminists have long relied on feminist arguments to advocate for children's rights, argue for changes in the law's approach to children, and improve children's lives.⁸⁷ In this case, the African feminist critique of societal patriarchal assumptions is significant and contributes to a more gender-sensitive approach to child sexual abuse.⁸⁸ It especially encourages the much-needed emphasis on including males in child protection practice and discourse on CSA to ensure accountability for their actions.⁸⁹

⁸⁴ Sherrie Russell-Brown, 'Bridging the "Divide" Between Feminism and Child Protection Using the Discourse of International Human Rights' (2003) 13 (163) *Southern California Review of Law and Women's Studies*, < https://www.researchgate.net/publication/259009503_Bridging_the_Divide_Between_Feminism_and_Child_Protection_Using_the_Discourse_of_International_Human_Rights > accessed 20 May 2023.

⁸⁵ Philip Mendez, 'Marxist and feminist critiques of child protection: To protect children or to change society?' (1999) 24(2) *CUP* < <https://www.cambridge.org/core/journals/children-australia/article/abs/marxist-and-feminist-critiques-of-child-protection-to-protect-children-or-to-change-society/36643F1C9312166E1FF79945430D08E5> > accessed 20 May 2023.

⁸⁶ J W Wafula 'African Values and the Rights of the Child: A View of the Dilemmas and Prospects for Change' in S Lagoutte & N Svaneberg (eds), *Women and Children's Rights, African Views* (Karthala, 2011).

⁸⁷ Laura A Rosenbury, 'A Feminist Perspective on Children and Law: From Objectification to Relational Subjectivities' (2015) *OA* < <https://academic.oup.com/book/2420/chapter/142643626> > accessed May 20 2023.

⁸⁸ David Cooper, *Child Abuse Revisited* (OUP 1993) 54.

⁸⁹ Brian Corby, *Child Abuse: Towards a Knowledge Base* (OUP 1993) 149 -150.

This theory outlines the principle relevant to this study: although CSA is a major public health issue in our society, most African countries, including Kenya, do not openly address it. Additionally, Kenyan society is still very patriarchal hence the need for feminist reasoning that acknowledges the vulnerability and unique experiences of the Kenyan child and calls for their protection from CSA.

1.6. Scope and Limitation of Study

Although there are numerous stakeholders in the child protection system, this study focuses solely on the DCS as one of the key players. The scope of the study is limited to looking at how far the Department of Children Services has implemented the Children Act in protecting children from CSA. This is because the department is the official body mandated to ensure child protection in Kenya.

The study is limited to children officers within the Department of Children Services. Although other officers within the department were considered, children officers were preferred because they have one-on-one access with CSA victims. As a result, the study is limited to the perspectives of selected respondents, who are children officers.

Furthermore, the study was conducted under the prevailing circumstances of the Corona Virus pandemic that has affected all countries globally. In curbing the spread of the disease, the government put several measures, some of which included the lockdown of counties, imposing a curfew, and limiting social interactions. As a result, the study did not conduct face-to-face interviews for data collection. Instead, an online survey was used.

1.7. Literature Review

Child sexual abuse is a major global health challenge that has gained increasing attention among researchers seeking to understand the problem and policymakers trying to find ways to protect

children from this vice in Kenya. Consequently, literature on CSA is available, and literature on challenges that hinder the adequate protection of children from CSA is also available. Research has also been conducted on the key players/ stakeholders in the child protection system. The gap that exists is the absence of literature on how exactly these challenges hinder the DCS -the focus of this study- from adequately implementing the Children Act in protecting children from CSA, thereby failing to fulfil its role.

This study, therefore, identifies and evaluates relevant literature on three thematic areas: the protection of children from CSA in Kenya, the challenges encountered in protecting children from CSA, and the protection of children from CSA in the USA and Singapore. All of these are reviewed in light of the study's concerns.⁹⁰

1.8.1 Protection of Children from Child Sexual Abuse (CSA) in Kenya

Child sexual abuse (CSA) remains a significant public health concern globally. Much research has been conducted on child sexual abuse on a global scale. Internationally, the UN has been a notable forerunner in the fight against CSA, commissioning substantial literature on the issue.⁹¹ While the United Nations has made a tremendous effort to ensure the eradication of CSA, many challenges still hinder the full realization of this goal globally and, in this case, in Kenya.⁹²

Nationally, CSA occurs within a social ecosystem that includes economic crisis,⁹³ a pandemic level of HIV/AIDS incidence, illiteracy, and unprecedented numbers of orphaned children.⁹⁴ Furthermore, several factors contribute to the prevalence of CSA in the country. Such factors

⁹⁰ Scholastica Omondi and Michael Sitawa, *Research Methodology Simplified* (1stEd, LawAfrica Publishing (K) Ltd 2019) prt 3, pg 54 – 57.

⁹¹Ibid 8.

⁹² UNICEF, 'Action to End Child Sexual Abuse and Exploitation' (2020).

⁹³ Alexander J, 'Do Fundamentalism and other Religious Variables Predict Domestic Violence?' (2009) IDEA 13 (1) Pp 24 - 31.

⁹⁴ Meinck F, Cluver L.D, Boyes M.E. & Mhlongo E.L, 'Risk and protective factors for physical and sexual abuse of children and adolescents in Africa: A review and implications for practice' (2015) 16(1), TV& A 81-107.

include the patriarchal cultural context and societal settings that allow and exacerbate physical and sexual violence against women and, in turn, their children.⁹⁵ Harmful norms and cultures that endorse FGM and child marriages and social disorganization due to residential instability also exacerbate CSA in the country.⁹⁶ Research also shows that CSA is perceived to be influenced by multiple factors such as age, sex, huge gender disparities exacerbated by harmful social norms, and social media platforms that circulate sexualized images.⁹⁷

To protect children from CSA, Kenya has ratified relevant international and regional conventions and treaties. It has also enacted laws and developed policies with safeguards to protect children from abuse, especially CSA. Kenya is a signatory to the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC),⁹⁸ indicating its commitment to the response and prevention of VAC.⁹⁹ Mwanasha et al.¹⁰⁰, in their study, note that health, legal, security, and community sectors have all been mobilized to address gender-based violence (GBV), including CSA in Kenya. They opine that this commitment has seen the enactment of national legislation and policies in tandem with international commitments to implement structural and institutional interventions to protect children.

⁹⁵ Bridgewater G, 'Physical and sexual violence against children in Kenya within a cultural context' (2016) 89(2), *Community Practitioner: The Journal of the Community Practitioners' & Health Visitors' Association* 30.

⁹⁶ Yahaya I, Soares J, De Leon A. P, & Macassa G, 'A comparative study of the socioeconomic factors associated with childhood sexual abuse in sub-Saharan Africa' (2012) 11 *The Pan African Medical Journal* 51.

⁹⁷ Cynthia Wangamati, 'Laws Against Child Sexual Abuse Exist in Kenya. But There Are Gaps' (The Conversation, 23 October 2019) <<https://theconversation.com/laws-against-child-sexual-abuse-exist-in-kenya-but-there-are-gaps-124649>> accessed 23 May 2023.

⁹⁸ Njeri Chege and Stephen Ucembe, 'Kenya's over-reliance on institutionalization as a child care and child protection model: a root-cause approach' (2020) 9(57) *Social Sciences*, <<file:///C:/Users/Admin/Downloads/socsci-09-00057-v5.pdf>> accessed 27 April 2021.

⁹⁹ Morrison, P, 'Sexual Crimes' in L.W. Kennedy and V.F. Sacco (eds), *Crime Counts: A Criminal Event Analysis* (SNC 2014).

¹⁰⁰ Mwanasha Ali Vihaka, Ruth Joyce Kaguta and Mathew Theuri, 'Analysis of Practice of Investigating Child Sexual Abuse Cases by Police Officers in Kwale County, Kenya' (2020) <http://repository.dkut.ac.ke:8080/xmlui/bitstream/handle/123456789/4699/ACFrOgAClw3g0PcNtnU-Aa2ALpkpw2TOWyf5b0Bfq4tRIJjzlo8SyhwWfuZ3AKjos1ij2m1PB6Va469bnnX4aVnxt77rs6on_ZRV_wqUZ6VM_HA4i1KSORXGGaZqk%3D.pdf?sequence=1&isAllowed=y> accessed 5 June 2023.

Additionally, the government has spearheaded various studies on CSA and CSA prevention in the country.¹⁰¹ In 2008, Kenya's government was ranked number 6 on the most child-friendly African governments list.¹⁰² This ranking was done using the Child-friendliness Index, a tool designed to assess the extent to which African governments are committed to realizing child rights and well-being. Furthermore, the Kenyan child legislation has frequently been referred to as progressive. Consequently, The African Child Policy Forum (ACPF) ranked the country first for its efforts to protect children through the enactment of legislation and policies.¹⁰³

However, despite all these progressive legislation and adherence to all these international legal conventions, there hasn't been a significant reduction in child sexual abuse in Kenya. In her study, while exploring how child-centered systems can fail to protect children, Cooper opines that while Kenya is recognized as a leader in Africa for the care and protection of children, it has not ensured their protection from CSA. She argues that despite its adherence to a legislated framework and a series of protocols, the Kenyan government is unable and unwilling to protect children.¹⁰⁴ She points out that laws and protocols are unreliable indicators of the country's efforts to protect children from CSA.¹⁰⁵ The ACPF report supports Cooper's findings.¹⁰⁶ According to the report, despite having one of the best legal frameworks for protecting children in Africa, Kenya ranked 20 out of 52 in terms of how much money the government is willing to

¹⁰¹ National Plan of Action Against Sexual Exploitation of Children in Kenya 2018- 2022, <<http://www.anppcan.org/wp-content/uploads/2014/11/NPA-against-SEC-Kenya-2018-2022.pdf>> accessed 9 April 2021.

¹⁰² African Child Policy Forum (ACPF), The African Report on Child Wellbeing 2008: How Child-Friendly Are African Governments? (2008), <<https://africanchildforum.org/index.php/en/sobipro?sid=59>> accessed 23 May 2023;

¹⁰³ Ibid.

¹⁰⁴ Elizabeth Cooper, 'Following the law, but losing the spirit of child protection in Kenya' (2012) 22(4) Development in practice, 486 – 497, <<https://www.jstor.org/stable/23214518>> accessed 27 April 2021.

¹⁰⁵ Ibid.

¹⁰⁶ African Child Policy Forum (ACPF), The African Report on Child Wellbeing 2008: How Child-Friendly Are African Governments? (2008), <<https://resourcecentre.savethechildren.net/node/1250/pdf/1250.pdf>>, accessed 27 April 2021.

spend to meet children's basic needs and protect them from CSA.¹⁰⁷ Njeri and Stephen argue that this attitude concerning budgetary commitment has been characteristic of the post-independence governments' work on child protection in Kenya.¹⁰⁸ The point of departure between Njeri and Stephen's work and this study is that Njeri and Stephen focus on the over-reliance on the institutionalization of children as a child protection model. In contrast, this research is specific to the implementation of the Children Act by the DCS.

Wangamati addresses this gap in poor implementation of existing legislation in her study as she examines the vice of CSA in Kenya.¹⁰⁹ In her research, she argues that despite laws and policies protecting children's rights, there hasn't been a significant reduction in CSA in Kenya. She points out several gaps in Kenya's approach to protecting children from CSA. These include the lack of reparations for survivors and a lack of legislation on age-appropriate sexuality education that would contribute to cultivating positive gender norms. She posits that there's an urgent need for Kenya to review its laws and policies. The government needs to outline the roles of various stakeholders and put supervisory and accountability measures and referral networks in place. Wangamati's study, however, focuses on reviewing the existing laws and policies in Kenya related to sexualized violence against children. The study does not address the DCS or the Children Act's implementation, which this study will do.

¹⁰⁷Ibid African Child Policy Forum (ACPF), The African Report on Child Wellbeing 2008: How Child-Friendly Are African Governments? (2008), <<https://resourcecentre.savethechildren.net/node/1250/pdf/1250.pdf>>, accessed 27 April 2021..

¹⁰⁸Ucembe Stephen, Institutional care for children in Kenya. In Residential Child and Youth Care in a Developing World: Global Perspectives, 2016, <https://www.researchgate.net/profile/Kwabena-Frimpong-Manso/publication/317400935_Residential_Care_For_Children_in_Ghana_Strengths_and_Challenges/links/5e7750ef299bf1892cff70bc/Residential-Care-For-Children-in-Ghana-Strengths-and-Challenges.pdf#page=185> accessed 27 April 2021.

¹⁰⁹ Cynthia Wangamati, 'Laws Against Child Sexual Abuse Exist in Kenya. But There Are Gaps'(The Conversation, 23 October 2019) <<https://theconversation.com/laws-against-child-sexual-abuse-exist-in-kenya-but-there-are-gaps-124649>> accessed 23 May 2023.

This study will also build upon the findings by Wangamati by looking at the challenges faced from the department's perspective that inhibit its efficient protection of children from CSA.

While looking at the efforts made by the government to ensure the protection of children, Peter Jaffe et al.¹¹⁰, in their study, opine that awareness of VAC has not always translated into public action. Cooper et al.¹¹¹ share the same sentiment as Jaffe et al. in their research. They argue that the Kenyan government's neglect of children's perspectives and rights has increased the fundamental risks to children. While the study addresses the government's failure to protect children from violence, it does not discuss nor touch on CSA. This study will fill this gap as CSA is the focus of this research. This research will also build upon the analysis by Cooper to identify measures the Kenyan government can take to protect children from CSA.

1.8.2 Challenges encountered in protecting children from CSA in Kenya

Kenya has established laws and policies to protect children from sexual abuse and safeguard the rights of CSA survivors. These laws stipulate harsh penalties for CSA perpetrators and provide free clinical, medicolegal, and psychosocial support.¹¹² However, the implementation of these laws by the DCS to ensure the protection of children from CSA has faced many challenges. As a result, the prevalence of CSA in the country remains high.¹¹³ This study will delve deeper into these issues, addressing them individually while also seeking DCS' proposals on how to address them so the department can better protect children from CSA.

¹¹⁰Peter G. Jaffe, Linda Baker and Alison Cunningham, *Protecting Children from Domestic Violence: Strategies for Community Intervention* (1st Ed, The Guilford Press 2004).

¹¹¹Ibid 105.

¹¹² The Children Act 2001 and the Sexual Offenses Act 2006.

¹¹³Bowman Cynthia Grant and Brundige Elizabeth, 'Child-Sex Abuse Within the Family in Sub-Saharan Africa: Challenges and Change in Current Legal and Mental Responses' (2014) 47(2) CILJ, 233.

According to Kahuria,¹¹⁴ the prevalence of CSA remains high in Kenya because few studies have examined the relationship between a child and their environment. Additionally, she opines that few have examined the factors predisposing children to CSA. She argues that such research would be integral to ending CSA in Kenya. In her book, she also argues that the DCS has not been able to adequately protect children from CSA because of the lack of coordinated efforts and collaboration among key players.

According to Wangamati et al.,¹¹⁵ despite the existing laws and policies, there hasn't been much reduction in CSA in Kenya. In 2012, less than 10% of CSA victims received help from the DCS. Additionally, a study by Ranney M. L et al.,¹¹⁶ which reviewed 321 medical charts of survivors in a sexual assault center in Kenya, found that only 43% of sexual assaults were reported to the police. The study also revealed that none of the cases had proceeded to prosecution by the end of the chart review. According to the survey, 50% of survivors were less than 14 years old. These two studies provide a clear picture of the situation in Kenya and why CSA is still prevalent.

In their study on the prevalence of CSA and the use of social services, Sumner et al.¹¹⁷ state that while CSA is common, most child victims go unaided due to insufficient resources. In her research, Wangamati¹¹⁸ agrees with the findings of Sumner et al. She argues that CSA still prevails in Kenya for various reasons, such as poor legal, medical, and psycho-social services.

¹¹⁴ Grace Wangechi Kahuria, *Child Sexual Abuse: An Exploration of Nairobi West District: Knowledge, Perceptions and Practices of Child Sexual Abuse* (Lap Lambert Academic Publishing 2013).

¹¹⁵ Cynthia Wangamati, 'Laws Against Child Sexual Abuse Exist in Kenya. But There Are Gaps' (The Conversation, 23 October 2019) <<https://theconversation.com/laws-against-child-sexual-abuse-exist-in-kenya-but-there-are-gaps-124649>> accessed 23 May 2023.

¹¹⁶ Megan Ranney, Elissa Rennert-May, Rachel Spitzer, Mary Chitai, Sarah Mamlin, & Hillary Mabeya, 'A novel ED-based sexual assault centre in western Kenya: Description of patients and analysis of treatment patterns' (2010) 28 EMJ, 927-931.

¹¹⁷ Steven Sumner et al., 'Prevalence of Sexual Violence against Children and Use of Social Services – Seven Countries 2007 -2013' (2015) 64 Morbidity and Mortality Weekly Report 565.

¹¹⁸ Cynthia Wangamati, 'Laws Against Child Sexual Abuse Exist in Kenya. But There Are Gaps' (The Conversation, 23 October 2019) <<https://theconversation.com/laws-against-child-sexual-abuse-exist-in-kenya-but-there-are-gaps-124649>> accessed 23 May 2023.

She also argues that the availability of only a few shelters and rescue homes in the country and inadequate and poorly trained workers who handle CSA cases also contribute to the prevalence of CSA. She argues that while all these issues are supposed to be handled by the DCS, the department has not made adequate provisions in such vital areas. While Wangamati's study is essential in providing the foundation for this study's recommendations to address these challenges, it is more focused on reforming the existing legal framework. On the contrary, this study will examine the causes of these present gaps and challenges and how they can be addressed.

Wangamati et al.¹¹⁹, in their study, opine that the DCS cannot efficiently protect children from CSA because the national standard operating procedures for handling CSA do not include CSA screening procedures. They argue that it is critical to revise these laws and develop multi-sectoral protocols at the national and county levels that outline the responsibilities of each key player to ensure accountability.¹²⁰ Like in her previous study, Wangamati et al. focus on reviewing the existing laws, which is not the focus of this study. This study will instead build upon their findings on the challenges experienced by the DCS and make recommendations to promote their implementation.

While conducting a situational analysis of service providers' perceptions of post-sexual assault care in Kenya, Kilonzo et al. state that inadequate services and the lack of policies are significant challenges faced in addressing CSA.¹²¹ Wangamati et al., in their study, are of a similar opinion.

They problematize the services offered upon the occurrence of CSA by arguing that the high

¹¹⁹ Cynthia Wangamati, Gladys Yegon, Johanne and Ruth Jane Prince, 'Sexualized violence against children: a review of laws and policies in Kenya' (2019) 27(1) SRHM 16 – 28,

<<https://www.tandfonline.com/doi/full/10.1080/26410397.2019.1586815>> accessed 2 January 2021.

¹²⁰Ibid.

¹²¹ Kilonzo N, Taegtmeier M, Molyneux C, Kibaru J, Kimonji V, and Theobald S, 'Engendering health sector responses to sexual violence and HIV in Kenya: Results of a qualitative study' (2008) 20 AC 188-190.

prevalence of CSA in Kenya is due to a lack of child-friendly services. Additionally, they state that no legislation on age-appropriate comprehensive sexuality education exists in the country. The research by Wangamati et al. propagates the appreciation of creating awareness of CSA among children. This study will build on these findings to emphasize the importance of sex education in instilling positive gender norms and defining CSA and reporting procedures.¹²²

In reaching their conclusions, the NCCS, when developing the National Plan of Action Against Sexual Exploitation of Children in Kenya 2013-2017, opined that the inadequate implementation of the Children Act by key players in the sector had forced Kenyan children to continue facing endless CSA, as well as other untold sufferings.¹²³ However, the NCCS study does not examine or define the role of the key players in the child protection system to ensure accountability. It is silent on the DCS's role in protecting children from CSA. This study will fill this gap by highlighting the DCS's role as a key player in the child protection system and its efforts to protect children from CSA.

Ajema C et al.¹²⁴, in their study, argue that the challenges experienced by service providers in delivering medicolegal services to CSA survivors in Kenya inhibit the address of the vice. According to Ajema C et al., some challenges include the lack of uniformity in providers' definitions of sexual violence, flawed evidence collection, and a shortage of doctors. They opine that these challenges compromise the evidence chain and the ability of the criminal justice

¹²²Cynthia Wangamati, Gladys Yegon, Johanne and Ruth Jane Prince, 'Sexualized violence against children: a review of laws and policies in Kenya' (2019) 27(1) SRHM 16 – 28, <<https://www.tandfonline.com/doi/full/10.1080/26410397.2019.1586815>> accessed 2 January 2021.

¹²³National Council for Children's Services, The National Plan of Action Against Sexual Exploitation of Children in Kenya 2013.

¹²⁴ Ajema C, Mukoma W, Kilonzo N, Bwire B, & Otworld K, 'Challenges experienced by service providers in the delivery of medico-legal services to survivors of sexual violence in Kenya', (2011) 18(4) JFLM 162-166 <doi:10.1016/j.jflm.2011.02.004 > accessed 6 June 2023.

system to respond effectively.¹²⁵ However, Ajema C et al.'s study focuses on a medico-legal perspective, whereas this study focuses entirely on a legal perspective.

1.8.3 Protection of Children from Child Sexual Abuse (CSA) in the USA and Singapore
In looking at the child protection system implemented in other jurisdictions to ensure the protection of children from CSA, this study focuses on the USA and Singapore. While analyzing the child protection systems in the three countries, it is imperative to note that the United States of America, Singapore, and Kenya begin at different baselines with different welfare regimes.¹²⁶ The U.S.A¹²⁷ and Singapore¹²⁸ originate from residual welfare models where families manage social issues, and the state intervenes only in extreme cases of need. In their book, Greene and Shepard¹²⁹ observe that secondary and tertiary prevention and response initiatives available in the United States have aided in addressing CSA. Such initiatives include victim assistance services, working with perpetrators, awareness programs, education and training curricula, community participation, and national and international dialogue forums.

Kenya is still developing its social welfare model compared to the two countries.¹³⁰ According to Reddin,¹³¹ there are calls for more jurisdictions to consider social welfare models. Such models are said to have a family-centered approach to social problems, especially CSA, which is preventative and service-oriented. She contends that this is critical because, as Kenya's social policy evolves, the cultural value of the community being responsible for providing for and

¹²⁵ Ibid 124.

¹²⁶ Gosta Esping-Anderson, *Comparative Welfare Regimes Re-examined in Social Foundations of Post-Industrial Economies* (OUP 1999) 73-94.

¹²⁷ Institute of Medicine & National Research Council, *New Directions in Child Abuse* (ebook 2014).

¹²⁸ Parvathy P, Stefanie Y C, Say H O, Daniel F, 'Child Protection and Children's Rights in Singapore' (2014) 4(4) *Adolescent Psychiatry*, <

https://www.researchgate.net/publication/273403667_Child_Protection_and_Children's_Rights_in_Singapore#fullTextFileContent > accessed 27 May 2023.

¹²⁹ Robert W. Greene and Jon Shepard, *Sociology and You* (1st Ed, Glencoe/Mcgraw-Hill 2001) 22.

¹³⁰ Reddin Cassar Jennifer, 'Comparative review of child sexual abuse practices and policies in Kenya and the United States of America (USA)' (2020) 10(2) *African Journal of Social Work*, 1-15.

¹³¹ Ibid.

protecting its members appears to be fading. In her study, however, she fails to recognize these welfare models' downsides.

In her comparative review of existing legislation and policies on CSA in Kenya and the USA, Jennifer¹³² notes that while Kenya has made significant progress in addressing CSA, it has not enacted enough legislation. She notes that while the United States has implemented three¹³³ important legislation on CSA specifically, Kenya has only one statute exclusively for children. She also argues that the frequent review of these policies and programs is an indication of the dedication to protecting children from CSA in the US via law enforcement and prosecution.¹³⁴ Additionally, in their study, Parvathy et al.¹³⁵ note the progress that Singapore has made in terms of enactment of legislation in addressing CSA. They opine that the existence of seven key legislation on children has greatly encouraged the protection of children from CSA in Singapore. However, both studies by Parvathy et al. and Jennifer focus on legislative responses, precisely policies, whereas this study focuses on implementation. This research aims to fill the gap by addressing what stakeholders can do to ensure proper implementation of the existing legislation.

Furthermore, while comparing how countries have responded to CSA in their study, Mildred and Plummer¹³⁶ opine that Kenya should borrow from the formal child protection system adopted in the USA. They argue that Kenya has focused only on local efforts to empower children and communities to resist exploitation and abuse. However, their study does not recommend which parts of the USA's formal protection system Kenya could borrow from. This is because the US

¹³² Ibid 130.

¹³³ The Child Abuse Prevention and Treatment Act (CAPTA) of 1974, The Jacob Watterling Crimes Against Children and Sexually Violent Offender Act of 1994, and the Children's Justice Act of 2013.

¹³⁴ Ibid 130.

¹³⁵ Ibid 129.

¹³⁶ Mildred J and Plummer C, 'Responding to Child Sexual Abuse in the United States and Kenya' (2009) 31Child Protection and Children's Rights 601.

child protection system also has flaws and has been criticized for focusing more on legal remedies and thus delaying intervention responses.¹³⁷ This study will close this gap by identifying the US child protection system practices that the DCS can adopt to protect children from CSA efficiently.

Upon looking at the three primary legislation addressing CSA in the USA, Anderson,¹³⁸ in his work, notes that the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act (the Watterling Act) mandates sex offender registration programs for criminally convicted sex offenders in every state. States that do not comply risk losing 10% of federal funds for state/local law enforcement. On the other hand, Kenya has not enacted measures requiring counties to keep track of sex offenders, which this study will recommend building upon the study by Anderson.

While such mandates within the system are desirable, Jennifer¹³⁹ observes that the US child protection system primarily consists of post-abuse prosecutorial responses rather than preventative measures, which she believes is a system of bandaging existing wounds. She also attributes the high prevalence of CSA in Kenya to the absence of prevention programs. Jennifer's study, however, does not make recommendations on specific preventive measures that can be adopted/enacted in Kenya, which this study will do. In their study of CSA in Singapore, Yiming and Fung¹⁴⁰ agree with Jennifer. In their research, they opine that some of the measures implemented in Singapore are aimed at dealing with the aftermath of CSA rather than preventing

¹³⁷ Ibid 136.

¹³⁸ Anderson, G. D 'Child sexual abuse prevention policy: An analysis of Erin's law' (2014) 29(3) Social Work in Public Health, 196-206.

¹³⁹ Ibid 130.

¹⁴⁰ Cia Yiming and Daniel Fung, 'Child Sexual Abuse in Singapore with Special Reference to Medico-Legal Implications: A review of 38 cases' (2003) 43(3) SJ < <https://journals.sagepub.com/doi/10.1258/rsmmsl.43.3.260> > accessed 27 May 2023.

it. This study fills this gap by focusing on and discussing preventive measures that can be implemented by all levels of government and the community to protect children from CSA. The study by Yiming and Fung is conducted from a medico-legal standpoint, whereas this research is conducted from a legal perspective.

In their review of Singapore's efforts to develop and implement child protection policies, Parvathy et al. note that while significant progress has been made in child protection, there is a greater need for the government to create awareness of child abuse and children's rights. Furthermore, when comparing professional and public perceptions of child abuse and neglect in Singapore, they argue that there is a need to improve the competency of professionals who deal with CSA. This study builds upon the study by Parvathy et al. in both instances to make practical recommendations that can be enacted in Kenya.

Although extensive research on CSA has been commissioned, no specific work has focused explicitly on investigating the DCS' role in protecting children from CSA and the challenges it faces, which is the focus of this study. Furthermore, little is known about the challenges that service providers (including children officers) tasked with supporting CSA survivors face and the context in which they work. Such knowledge would help enhance the quality and continuity of care for CSA survivors in Kenya. It would also be beneficial in informing the development of multi-sectoral guidelines on the management of CSA.¹⁴¹

1.8. Justification of the Study

Child sexual abuse is a vice that continues to plague Kenya despite efforts by the government to prevent it. This study's findings will generate new knowledge to help enhance children's

¹⁴¹Wangamati CK, Johanne Sundby, Chimaraoke Izgubara, Nyambedha EO and Prince RJ, 'Challenges in Supporting Survivors of Child Sexual Abuse in Kenya: A Qualitative Study of Government and Non-Governmental Organizations' (2019) 1(27) JIV 4.

protection from child sexual abuse. This study's findings will also improve the Department of Children Services' role in protecting children from child sexual abuse. Additionally, this study aligns with Kenya's Vision 2030 policy under its child protection programs.

1.9. Research Methodology

This study involved both desktop research and field study. The desktop research entailed analyzing statutes, government reports, and reports by international organizations and state agencies such as the judiciary, police, journals, books, and internet sources. An online survey was conducted with the respondents for the field study due to the coronavirus pandemic. This was done through a qualitative research approach.

1.9.1. Sources of Data

Both primary and secondary data were used in this study. Primary data was obtained through an online survey. It was obtained through desktop research of reports on CSA by international and national organizations, state agencies, policy documents, conventions, treaties, government papers, and statutes. This research also used secondary data from books, journal articles, internet sources, and qualitative data from previous studies.

1.9.2. Data Analysis

The data collected during the study was qualitative. The researcher analyzed the data to draw an informed conclusion of the study. The information was then categorized according to the study objectives' themes and presented using tables, pie charts, and bar graphs.

1.9.3. Data Collection Techniques and Tools

Data was collected using questionnaires, according to Omondi and Sitawa.¹⁴² The questionnaires were issued to at least 20 selected children officers within the Department of Children Services

¹⁴² Scholastica Omondi and Michael Sitawa, *Research Methodology Simplified* (1st Ed, LawAfrica Publishing (K) Ltd 2019) prt 4, pg71 – 77.

in five counties: 8 in Nairobi, 5 in Nakuru, 3 in Machakos, 2 in Kajiado, and 2 in Kisumu. Purposive sampling was initially used to identify the respondents selected from the DCS Nairobi offices. Snowballing was later used to help identify more children officers in other counties due to the government's lockdown of counties to curb the spread of the Coronavirus disease. Snowballing entails identifying and speaking with key individuals who, in turn, introduce you to other individuals you can contact for more information resulting in each subsequent respondent being named by a preceding respondent.¹⁴³ In this case, the Nairobi office's children officers were asked to refer the researcher to other children officers in the other selected counties.

The questionnaires were issued through an online survey to mitigate COVID-19 pandemic risks and in line with government requirement protocols. The link to the questionnaire is:

https://docs.google.com/forms/d/1bTJr_mRwr5v3hFZzb4xZiEcPEylV1rm_irDhLWHe-F4/edit?no_redirect=true&pli=1

1.9.4. Ethical Considerations

All respondents were asked to provide informed consent, and all participants were free to respond to the questionnaire without coercion. Additionally, answers on the Google survey were anonymous to protect the identity of the respondents.

1.10. Chapter Breakdown

This study is divided into five chapters as follows:

Chapter One gives a road map to this study. It provides a general overview and outline by introducing the research and summarizing its structure. It provides a background view, highlights the problem statement, research objectives and questions, hypothesis, and the chapter

¹⁴³ Scholastica Omondi and Michael Sitawa, *Research Methodology Simplified* (1st Ed, LawAfrica Publishing (K) Ltd 2019) pg 106.

breakdown. It also discusses the research method and methodology and the study's theoretical framework.

Chapter Two discusses the role of the Department of Children Services and interrogates the extent to which it has implemented the Children Act to protect children from CSA.

Chapter Three highlights the Department of Children Services' achievements and analyzes its challenges in protecting children from CSA.

Chapter Four discusses best practices from two countries, America and Singapore, to learn about the measures they have implemented to protect children from CSA.

Chapter Five wraps up the study by summarizing the research and findings. The chapter also makes recommendations and conclusions.

CHAPTER TWO

THE ROLE OF THE DEPARTMENT OF CHILDREN SERVICES IN PROTECTING CHILDREN FROM CHILD SEXUAL ABUSE

2.1. Introduction

The study's first objective informs the discussion for this chapter of the study. The chapter addresses the first research question by examining the role of the DCS in protecting children. It also looks at the extent to which it has implemented the Children Act to protect children from CSA. It illustrates the department's division into various sub-departments and analyses their specific functions. Additionally, it looks at the DCS's efforts in working with other stakeholders, such as other government sectors, the private sector, and the community, to protect children from CSA.

Nationally, the Constitution of Kenya 2010 stands as a symbol of the social contract between the people of Kenya¹⁴⁴ and the government of Kenya.¹⁴⁵ It enshrines a comprehensive bill of rights under Chapter 4, including socio-economic rights, and binds the government in its application. Article 21 (1) of the Constitution of Kenya provides that it is the fundamental duty of the State and every State organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms enshrined in the Bill of Rights. Furthermore, Article 21 (2) of the Constitution requires the state to take legislative, policy, and other measures, including standard-setting, to achieve the progressive realization of the rights guaranteed by Article 43. Article 21 (3) of the Constitution also places the duty upon all state organs and all public officers to address the needs of vulnerable groups within society, including children.

¹⁴⁴ The Constitution of Kenya 2010, Preamble and Article 1.

¹⁴⁵ The Constitution of Kenya 2010, Preamble and Article 2(1).

The Constitution also acknowledges the vulnerability of children and includes them in the list of vulnerable groups.¹⁴⁶ Therefore, prioritizing human vulnerability and dependency within State responsibility is imperative.¹⁴⁷ For the state to actively assume responsibility in ensuring equality and protection of children to whom it owes the duty of protection.¹⁴⁸ Therefore, in this case, the state must be appropriately structured to respond to the vulnerability of the children in Kenya to CSA. This is achieved through institutions such as the DCS, which must respond so those with low resilience can achieve absolute equality.¹⁴⁹

2.2. The establishment of the Department of Children Services

To comply with its duty under the Constitution,¹⁵⁰ the government implements Article 53 and Section 37 of the Children Act through the Department of Children Services. The department has offices in 47 counties and 265 sub-counties. These offices provide child protection, rehabilitation, Alternative Family Care (AFC), and other services outlined in Section 38 of the Children Act.¹⁵¹

Section 37 of the Children Act establishes the offices of the Director, Deputy Directors, and Children Officers under the DCS. The DCS is housed under the Ministry of Labour and Social Protection under the State Department for Social Protection.¹⁵² The Director and DCS personnel are responsible for technical aspects of the Children Act, such as enforcing the Act's provisions

¹⁴⁶ The Constitution of Kenya 2010, Article 21(3).

¹⁴⁷ VB Strand and I Ik Dahl, 'Responding to Disadvantage and Inequality through Law' (2017) 4 Oslo L. Rev. 124, 128.

¹⁴⁸ Martha A Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 Yale J.L. & Feminism 1, 10.

¹⁴⁹ Mercy Mwarah Deche, 'Legal Responses to Intra-Familial Child Sexual Abuse in Kenya: A Case for Restorative Justice' A thesis submitted in fulfilment of the University of Nairobi for the award of the Degree of Doctor of Philosophy (PHD) of the University of Nairobi, December 2019.

¹⁵⁰ The Constitution of Kenya 2010, Article 21.

¹⁵¹ Ministry of Labour and Social Protection State Department for Social Protection, Kenya Country Report on the General Assembly Resolution A/RES/74/124 on "Follow-Up to the 20th Anniversary of the International Year of the Family and Beyond", <<https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2020/08/Kenya.pdf>> accessed 18 April 2021.

¹⁵² Ibid 46.

and implementing policy-level field initiatives.¹⁵³ Additionally, the Constitution recognizes the DCS' mandate provided for under Article 53 (1) of the Constitution, which guarantees the rights of every Kenyan child, and Article 53 (2), which states that a child's best interests are paramount.¹⁵⁴

In discharging its duties, the DCS refers to international instruments, regional instruments, the Kenyan Constitution, the Children Act, and other relevant statutes and policies. The department has two mandates as anchored under the Constitution of Kenya, Article 53 (1) and (2) and the Children Act. The first is safeguarding and protecting children's rights and welfare for national prosperity as per the Children Act 2001. The second mandate is leading, overseeing, planning, and coordinating child protection programs and services in Kenya.¹⁵⁵ The Children Act recognizes the vulnerability of children. It requires department personnel to act on behalf of the state and collaborate with other actors, such as the police and hospitals, to protect children from violence.¹⁵⁶

The Department of Children Services operates both at the county and sub-county levels by running seven departments at the national level, which includes its central child protection system thematic areas, namely:

¹⁵³National Council For Children's Services (NCCS), Summary of the Outcome of Mapping and Assessing Kenya's Child Protection System, Strengths, Weaknesses and Recommendations, 2010, <<https://resourcecentre.savethechildren.net/sites/default/files/documents/5122.pdf>> accessed 20 April 2021.

¹⁵⁴ Ministry of Labour and Social Protection: State Department for Social Protection, Department of Children Services (DCS), <<https://www.socialprotection.go.ke/children-services/>> accessed 8 April 2021.

¹⁵⁵Ibid.

¹⁵⁶National Council For Children's Services (NCCS), Summary of the Outcome of Mapping and Assessing Kenya's Child Protection System, Strengths, Weaknesses and Recommendations, 2010, <<https://resourcecentre.savethechildren.net/sites/default/files/documents/5122.pdf>> accessed 20 April 2021.

2.3. Departments under the Department of Children Services

2.3.1. Alternative Family Care (AFC)

As a division of the DCS, the Department of alternative family care is responsible for spearheading policy formulation and creating awareness of alternative family care. It is also mandated to develop structures and mechanisms for alternative family care, supervise and regulate adoption agencies, and maintain the national foster care register. The department also serves as the adoption committee's secretariat.¹⁵⁷ The adoption committee guides and oversees adoptions in Kenya as the central authority. The Cabinet Secretary appoints the committee per Section 155 of the Children Act through Gazettement.¹⁵⁸

2.3.2. Statutory Children Institutions (SCIs)

The statutory children institutions department is responsible for spearheading the establishment of halfway houses, dealing with child justice issues, and training officers in the juvenile justice system. It is also in charge of reviewing and monitoring the implementation of national standards in SCIs and raising awareness through care and aftercare services.

The department operates 47 County Children's Offices (CCOs) and 265 Sub-County Children's Offices (SCCOs).¹⁵⁹ Additionally, the DCS also manages 30 Statutory Institutions for Children as follows: - Fourteen (14) Children's Remand Homes; five (5) Children Rescue Centres; Nine

¹⁵⁷Ministry of Labour and Social Protection: State Department for Social Protection, Alternative Family Care (AFC), <<https://www.socialprotection.go.ke/afc-ctip-section/>>accessed 20 April 2021.

¹⁵⁸Composition of the Adoption Committee, <<https://www.socialprotection.go.ke/wp-content/uploads/2020/11/Membership-of-the-Adoption-Committee.pdf>> accessed 20 April 2021.

¹⁵⁹Ministry of Labour and Social Protection: State Department for Social Protection, Statutory Children Institutions (SCIs), <<https://www.socialprotection.go.ke/afc-ctip-section/>> accessed 9 April 2021.

(9) Rehabilitation Schools; and two (2) Placement and Assessment Centers. It also has Six (6) Child Protection Centers and (a) Child Helpline 116.¹⁶⁰

2.3.3. Child Protection

This department is responsible for managing the DCS's core mandate. Some of its duties include providing leadership on child protection issues and monitoring child protection technical working groups' activities. It is also responsible for creating awareness of child protection, CSA, VAC, child marriage, and FGM/C. The department is also mandated to liaise with county governments and ensure compliance with all protection guidelines.¹⁶¹

2.3.4. Community Child Support Services

The Community Child Support Services' mandate includes promoting community-based economic empowerment income-generating activities and coordinating volunteer child officers' programs. It is also responsible for coordinating the activities of the Kenya Children Assembly and establishing and directing the operations of Area Advisory Councils (AACs). The department also liaises with the Inua Jamii program and organizations that assist orphans and vulnerable children (OVC), such as the Wings to Fly scholarship.¹⁶²

2.3.5. Counter Trafficking in Persons (CTiP)

The mandate of this department is to spearhead policy formulation and awareness on trafficking in persons and implement the National Plan of Action for Combating Counter-Trafficking in Persons in Kenya. The department has also developed programmes for victims of trafficking in

¹⁶⁰Ministry of Labour and Social Protection, 'Kenya Country Report on the General Assembly Resolution A/RES/74/124 on "Follow-Up to the 20th Anniversary of the International Year of the Family and Beyond' <<https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2020/08/Kenya.pdf>> accessed 18 April 2021.

¹⁶¹Ministry of Labour and Social Protection: State Department for Social Protection, Child Protection, <<https://www.socialprotection.go.ke/child-protection-section/>> accessed 21 April 2021.

¹⁶²USAID, Wings To Fly, <<https://partnerships.usaid.gov/partnership/wings-fly#:~:text=The%20OVC%20Scholarship%20Program%20is,secondary%2C%20tertiary%20and%20university%20education>> accessed 21 April 2021.

persons and created a profile register for perpetrators of trafficking. The CTiP is also responsible for compiling and documenting data and information on cases of trafficking of persons.¹⁶³

2.3.6. Planning and Development

This department's mandate under the DCS includes, amongst other things: compiling, collating, and maintaining child protection data and evaluating the DCS's programs and projects. It is also responsible for liaising with stakeholders on child-related research and coordinating the overall management of the Children Protection Information Management System (CPIMS).¹⁶⁴ The CPIMS is a child-focused database that monitors and evaluates child protection interventions in Kenya to inform policy and evidence-based decision-making. It targets children affected by VANE (Violence, Abuse, Neglect, Exploitation). It also tracks intervention and support services like counselling and family support.¹⁶⁵

2.3.7. Strategic Interventions in Child Protection

As a department under the DCS, its mandate includes ensuring emergency preparedness and response for children, establishing child protection centers, and monitoring their operations. The department is also responsible for monitoring the operation of child protection units, providing legal aid to children, and maintaining the operation of child helpline 116, which the DCS operates in collaboration with Childline Kenya.¹⁶⁶ The helpline is toll-free and is accessible 24 hours, seven days a week. The Communication Authority of Kenya allocated the short toll-free

¹⁶³Ministry of Labour and Social Protection: State Department for Social Protection, Counter Trafficking in Persons (CTiP), <<https://www.socialprotection.go.ke/counter-trafficking-in-persons-sectionctip-section/>> accessed 21 April 2021.

¹⁶⁴Ministry of Labour and Social Protection: State Department for Social Protection, Planning & Development, <<https://www.socialprotection.go.ke/planning-development-section/>> accessed 21 April 2021.

¹⁶⁵Ministry of Labour and Social Protection: State Department for Social Protection, Children Protection Information Management System (CPIMS), <<https://www.socialprotection.go.ke/children-protection-information-management-system-cpims/>> accessed 21 April 2021.

¹⁶⁶Ministry of Labour and Social Protection: State Department for Social Protection, Strategic Interventions in Child Protection, <<https://www.socialprotection.go.ke/strategic-interventions-in-child-protection-section/>> accessed 21 April 2021.

number to the Department of Children Services. While the DCS is the custodian of the helpline number, Childline Kenya manages the helpline daily.¹⁶⁷

Four of the seven departments discussed are heavily involved in addressing CSA. They include the Statutory Children Institutions (SCIs) Department, the Child Protection Department, the Planning and Development Department, and the Strategic Interventions in Child Protection Department.

2.4. The extent to which the DCS has implemented the Children Act in protecting children from CSA

The fiduciary relationship established by the nature of the contract between the people and the government obligates it to ensure and protect children's rights within its society. Especially in a patriarchal society where the marginalization of women and children remains a topical concern even today. In fulfilling its purpose per the Children Act, the DCS has ensured that appropriate services are provided to children needing care and protection through its seven departments.

In recognizing the vulnerability of children, the department provides emergency response and rescue services to children in danger of CSA. It protects the welfare of any child placed under care by a court order. Furthermore, the department operates the Childhelp line 116, which can be accessed at any time of day or night, and establishes and monitors child protection centers. The department also monitors the operations of child protection units and provides legal aid to children.¹⁶⁸

¹⁶⁷Childline Kenya, Call 116, <https://www.childlinekenya.co.ke/?gclid=EAlaIqObChMlgN2YyvmP8AIVV-3tCh0FKw83EAAYASAAEgISfPD_BwE> accessed 21 April 2021.

¹⁶⁸Ministry of Labour and Social Protection: State Department for Social Protection, Department of Children Services (DCS), <<https://www.socialprotection.go.ke/children-services/>> accessed 8 April 2021.

To protect children from CSA, the DCS has established a framework that enables it to work with various state agencies, non-state actors, and the private sector. With every stakeholder having a mandate to fulfill.¹⁶⁹ Some of the stakeholders that the DCS works with include:

2.4.1. District Area Advisory Councils (AACs)

The DCS works with the AACs to supervise and develop new service capacity within each district. They also work together to recruit volunteer children officers and create awareness of children's rights, CSA, and other forms of VAC.¹⁷⁰

2.4.2. Ministry of Health

The DCS works with the Ministry of Health to ensure that authorities are notified of any CSA signs against children who visit health facilities.¹⁷¹ They also work together to ensure that children who experience physical and CSA receive immediate medical attention.

2.4.3. Director of Public Prosecution (DPP)

The DCS works with the office of the DPP to oversee the investigation of any allegations of CSA. They work together to institute criminal proceedings against perpetrators of CSA and violence against children. They also work together to ensure children's best interests are upheld during all criminal proceedings and CSA cases are thoroughly investigated.¹⁷²

2.4.4. The Judiciary

The DCS works with the judiciary to ensure the efficient running of children's courts. They collaborate to ensure that separate children's courts are available for CSA cases and that only

¹⁶⁹The National Council for Children's Services, The Framework for the National Child Protection System for Kenya, November 2011), <<https://resourcecentre.savethechildren.net/sites/default/files/documents/5429.pdf>> accessed 17 May 2021.

¹⁷⁰Ministry of Labour and Social Protection: State Department for Social Protection, Department of Children Services (DCS), <<https://www.socialprotection.go.ke/children-services/>> accessed 8 April 2021.

¹⁷¹Ibid.

¹⁷²Ibid.

authorized individuals attend CSA proceedings. The department also collaborates with the judiciary to prioritize children's best interests in such cases.¹⁷³

2.4.5. Civil Society Organizations and Non-Governmental Organizations

The department also collaborates with civil society organizations that advocate for protecting children from CSA. It has also partnered with international NGOs that advocate and lobby for child protection globally and mobilize resources to support NGO child protection efforts. The DCS also works with Inter-governmental organizations to provide technical and financial assistance to the country's child protection efforts. This partnership also aids with advocacy, policy formulation, and strategic partnerships with other stakeholders in the protection of children from CSA¹⁷⁴

2.4.6. Other Stakeholders

Additionally, the department collaborates with stakeholders who play complementary roles. Such as the community, which mobilizes resources to protect children. It also works with the private sector, contributing resources to child protection initiatives and initiating and implementing child protection programs. The department, for example, has partnered with SOS children's villages to ensure the capacity building of officers and stakeholders from seven counties. It has also partnered with Health IT to improve the efficiency of its service delivery by enhancing the Child Protection Information Management System (CPIMS).¹⁷⁵

2.5. Conclusion

This chapter has discussed the framework put in place by the DCS to fulfill its mandate of protecting children from CSA. The chapter has addressed the department's work with other

¹⁷³Ministry of Labour and Social Protection: State Department for Social Protection, Department of Children Services (DCS), <<https://www.socialprotection.go.ke/children-services/>> accessed 8 April 2021.

¹⁷⁴Ibid.

¹⁷⁵Deborah Bochere, 'Nyamira Children's Department Partners With Health IT' (Kenya News Agency, 17 December 2020) <<https://www.kenyanews.go.ke/nyamira-childrens-department-partners-with-health-it/>> accessed 22 June 2021.

stakeholders in the child protection system. The chapter also illustrates how the protection of children is ensured through the mandate and role of each DCS department. It has also enhanced our understanding of the organization of the DCS and how the system operates.

Having looked at the extent to which the department has implemented the Children Act in protecting children from CSA, the next chapter of the study looks at the department's achievements in protecting children from CSA. The chapter also assesses the data collected through an online survey by analyzing the challenges children officers encounter to protect children from CSA.

CHAPTER THREE

ANALYSIS OF THE ACHIEVEMENTS OF AND THE CHALLENGES FACED BY THE DCS IN PROTECTING CHILDREN FROM CSA

3.1. Introduction

The second and third objectives serve as the foundation for this study chapter. The chapter addresses the second and third research questions. It examines the Department's achievements in protecting children from CSA and the milestones it has reached in this regard. The chapter also discusses the experiences of the children officers and explores their perceived barriers or facilitators to providing optimal services. This is done by analyzing the findings/data from the field research on the department's work.

3.2. Achievements of the DCS in protecting children from CSA

3.2.1. Joint work with National and International stakeholders

The Department of Children Service has made efforts to protect children from CSA and sexual exploitation through its work with international stakeholders. Such as the United Nations, the United Nations International Children's Emergency Fund (UNICEF), the African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN), Plan International Kenya, World Vision, Childfund, and Save the Children. Furthermore, the UN has included children in its vulnerable groups in recognizing children's vulnerability to violence.¹⁷⁶

The department also works with national stakeholders such as CRADLE and Childline Kenya. It has also ensured that children can access the prevention, care, support, and justice services required to deal with CSA cases. The department also works with international organizations

¹⁷⁶ United Nations, 'UN Special Representative of the Secretary-General on Violence Against Children: Vulnerable Groups' < <https://violenceagainstchildren.un.org/content/vulnerable-groups> > accessed 12 June 2023.

such as UNICEF to train and equip frontline child protection officers and children officers with the skills to handle CSA.¹⁷⁷

3.2.2. National Surveys

In partnership with local and international Non-Governmental Organizations, the DCS has conducted several surveys and national studies in the country. These surveys have been undertaken to address CSA and document and measure the progress in combating the vice in Kenya. The Kenyan government has conducted two national surveys, one in 2010 and another in 2018/2019. This makes Kenya one of only two countries worldwide to complete the VACS process twice by conducting repeat national studies on violence against children.¹⁷⁸

Commendably, on July 16th, 2020, the Government, through the DCS, shared its groundbreaking second Violence Against Children and Youth Survey (VACS) Report.¹⁷⁹ The report offered the DCS an unprecedented opportunity to assess the progress in addressing CSA and highlight areas where additional efforts are required.¹⁸⁰ The report also highlighted that Kenya has significantly progressed in combating CSA since the first VACS report in 2010.¹⁸¹

The DCS used the key findings from the 2019 survey to develop the National Prevention and Response Plan on Violence Against Children. It emphasized including male adults in child protection practices and discourse on CSA to ensure accountability for their actions.

¹⁷⁷UNICEF, 'Child Protection: Protecting Children from Violence, Abuse, Exploitation and Neglect', 3rd September 2020, <<https://www.unicef.org/kenya/child-protection>> accessed 2 June 2021.

¹⁷⁸ UNICEF, 'Action Urged as National Survey Finds Half of Kenyan Children Suffer Violence' (UNICEF, 16 July 2020) <<https://www.unicef.org/kenya/press-releases/Action-urged-as-national-survey-finds-half-of-Kenyan-children-suffer-violence#:~:text=The%202019%20Violence%20Against%20Children,in%20the%20same%20age%20group.>> accessed 24 December 2020.

¹⁷⁹ The Government of Kenya; Ministry of Labour and Social Protection and UNICEF, 'Violence Against Children Survey Report' 2019.

¹⁸⁰<<https://www.togetherforgirls.org/the-government-of-kenya-launches-second-violence-against-children-and-youth-survey-vacs-report/>> accessed 3 January 2021.

¹⁸¹Together for Girls, 'The Government of Kenya Launches Second Violence Against Children and Youth Survey (VACS) Report, <<https://www.togetherforgirls.org/the-government-of-kenya-launches-second-violence-against-children-and-youth-survey-vacs-report/>> accessed 3 January 2021.

Consequently, the DCS has implemented the plan with children, parents, schools, communities, and service providers across Kenya.¹⁸² As a result of the survey, the department has set up mechanisms to bring down the vulnerability of children in the country. One of the mechanisms is developing a child-friendly booklet *Protecting Children Against Violence*, whereby the survey findings are presented in a child-friendly manner. Implementing the five-year national plan has also ensured capacity building and awareness creation.

The government recognizes its duty to children by developing a child-friendly booklet and national plan with the assistance of children and other community members. It also recognizes that child protection should involve all members of the community, not just women and mothers. In involving men in the process, the department takes a feminist perspective and shifts the focus from condemning the victims. It, instead, redirects it to restoring male agency by insisting that male offenders be accountable for their actions.

Additionally, in recognizing children's vulnerability, the public behaviour change campaign called Spot it, Stop it! was launched. The campaign was developed to create awareness about VAC and mobilize communities at the grass root level to prevent and respond to violence against children.¹⁸³

3.2.3. Launch of the Child Helpline 116

The DCS, working with Childline Kenya, launched the child helpline 116 on the 31st of May 2008. The helpline is a service of the DCS with Childline Kenya, providing technical support.

¹⁸²Ministry of Labour and Social Protection: State Department for Social Protection, 'Launch of The 2019 Kenya Violence Against Children Survey Report, The 2019-2023 National Prevention And Response Plan On Violence Against Children, And Violence Against Children Campaign Spot It, Stop It! On 16th July 2020' <<https://www.socialprotection.go.ke/launch-of-the-2019-kenya-violence-against-children-survey-report-the-2019-2023-national-prevention-and-response-plan-on-violence-against-children-and-violence-against-children-campaign-spot-it-stop/>> accessed 22 June 2021.

¹⁸³Ibid.

The service began with voice calls only but has been updated to include chats and SMS. The Child Helpline 116 was established to provide a 24-hour toll-free emergency public line for reporting all child protection issues. The line was also set up to serve as a referral source for therapy for children who had experienced CSA and to keep a database of calls on child protection issues. The line operates such that children call the line for free to report various problems and seek different interventions. The calls to the helpline are classified into abuse, education, and career. CSA is one of the frequently reported cases made to the helpline.¹⁸⁴

As the line's custodian, the DCS links various government departments and coordinates emergency responses for cases reported to the line. It also provides necessary personnel to the helpline, investigates CSA cases, and undertakes rescue missions for children at risk of CSA. The department is also responsible for assisting children in gaining access to justice or any other service they may require. As a result of the Child Helpline's establishment, the department has established safe houses for children rescued from abusive situations (CSA and physical abuse). In December 2012, the first safe house officially opened to children, catering to sexually and physically abused children. The DCS has also convicted some perpetrators and offered pilot parenting programmes to prevent child abuse.¹⁸⁵

3.2.4. Establishment of Child Protection Centers (CPCs)

The patriarchal nature of Kenyan society legitimizes the dehumanization of women and children because of structures that believe in hierarchies where men sit at the top of the ladder. It enables an environment where the desire to inflict pain and fear upon women and children is characteristic. It fosters a society where communities turn a blind eye to violence against children occurring next door because it is not their responsibility to intervene. It also promotes an

¹⁸⁴National Council for Children's Services, 'Child HelpLine 116' (3 June 2021), <<http://developmentofpeoples.org/projects/case/865/child-protection-centres-in-kenya> accessed 3 June 2021.

¹⁸⁵Ibid.

environment where perpetrators are emboldened to commit and continue committing CSA. To address this lack of response and to protect children from CSA, the DCS, in partnership with UNICEF and Plan International Kenya, established Child Protection Centers (CPCs). These are centers where CSA and sexual exploitation are reported, and essential services are provided in a child-friendly environment. Currently, the country operates six CPCs in Nakuru, Malindi, Kakamega, Siaya, Kilifi, and Garissa.¹⁸⁶ In recognition of the vulnerability of children, the CPC's placement in the community is intended to facilitate effective and efficient protection of children from CSA and VANE.

The partnership's primary goal is to address children's vulnerability by improving access to preventive and response services. This is achieved through establishing and strengthening more child protection centers within communities.¹⁸⁷ As a result of the establishment of the CPCs, duty bearers in the six counties have increased their capacity to prevent and respond to CSA.

Furthermore, at least 20,000 child survivors of CSA, VANE, and at-risk children in three of the six counties have received quality preventive and response services.¹⁸⁸ The department has also established Child Protection Units (CPUs) to protect children from CSA, VANE, and family separation. Some of the country's CPUs are in Kakamega, Mombasa, Busia, Nairobi, Bondo, and Usenge.¹⁸⁹

¹⁸⁶Brenda Kalya, State Opens Child Protection Centres to Protect Vulnerable Children, 3 February 2021, <<https://labour.go.ke/wp-content/uploads/2021/02/State-opens-Child-Protection-Centres-to-protect-vulnerable-children..pdf>> accessed 21 June 2021.

¹⁸⁷Cimatato Internazionale per lo Sviluppo dei Popoli (CISP), 'Child Protection Centers in Kenya' (2019) <<http://www.childrenscouncil.go.ke/child-help-line.html?showall=1&limitstart=>> accessed 3 June 2021.

¹⁸⁸Ibid.

¹⁸⁹Ministry of Labour and Social Protection: State Department for Social Protection, 'Statutory Children Institutions (SCIs)' <<https://www.socialprotection.go.ke/cco-scco-and-statutory-children-institutions/>> accessed 9 April 2021.

3.2.5. Launch of the Child Protection Information Management System (CPIMS)

In its fight against CSA and other forms of VAC, the DCS launched the Child Protection Information Management System (CPIMS) in 2017 to manage child protection information.¹⁹⁰

The CPIMS was established to provide timely and high-quality data on child protection that can be used for decision-making, monitoring, programming, and policy formulation. The system targets children affected by VANE.¹⁹¹ Since its inception, the DCS has implemented the CPIMS in all 47 counties and collaborated with various stakeholders to build end-user capacity.¹⁹² The system has simplified data analysis, and efforts are being made to incorporate additional modules. The data comes from government institutions, charities, and other sector stakeholders and is reported to the CPIMS.¹⁹³

3.2.6. Development of the costing tool

On being commissioned by the DCS and UNICEF Kenya, Maestral International created a costing tool for the Kenyan child protection system in 2017/2018. The tool was developed to assist planners within the DCS in developing an evidence-based per-child capitation budget for service delivery at County and Sub-county children's offices.¹⁹⁴ The costing tool is an Excel sheet that can calculate the resources required to establish and strengthen various child protection elements.¹⁹⁵ It was designed to: estimate budgetary costs; actual budget execution; funding gaps;

¹⁹⁰Kenya Child Protection Data, <<https://data.childprotection.go.ke/#000/AAAA/2016/ALL>> accessed 22 June 2021.

¹⁹¹Ministry of Labour and Social Protection: State Department for Social Protection, 'Child Protection Information Management System (CPIMS)' <<https://www.socialprotection.go.ke/children-protection-information-management-system-cpims/>> accessed 22 June 2021.

¹⁹²SOS Children's Villages, 'SOS Children's Villages Donates Laptops To The Department Of Children Services To Help In Tracking Children Data', <<https://www.soschildrensvillageskenya.org/news/sos-children-s-villages-donates-laptops-to-the-department-of-children-services-to-help-in-tracking-children-data.html>> accessed 22 June 2021.

¹⁹³Ibid.

¹⁹⁴Republic of Kenya, Financing the Child Protection System in Kenya, User Manual for Child Protection Costing Tool (July 2018), <<https://www.unicef.org/esa/sites/unicef.org.esa/files/2019-05/UNICEF-Kenya-2018-Child-Protection-Costing-Tool.pdf>> accessed 22 June 2021.

¹⁹⁵The Government of Kenya, Financing the Child Protection System in Kenya, User Manual for Child Protection Costing Tool (July 2018), <<https://www.unicef.org/esa/sites/unicef.org.esa/files/2019-05/UNICEF-Kenya-2018-Child-Protection-Costing-Tool.pdf>> accessed 22 June 2021.

and projected costs for five years (2018-2022) using data available at the national and county levels. The tool highlights the resources required to protect children adequately within the country. Furthermore, the DCS and UNICEF convened a workshop to ensure personnel training from the DCS, Treasury, and Ministry of Planning on using the tool. The personnel were also trained on using the information gathered to advocate for increased resources for the child protection system.¹⁹⁶

3.2.7. Partnership with other stakeholders

The DCS has partnered with other stakeholders, such as charitable institutions, to protect children from CSA. For example, the department has collaborated with SOS Children's Villages, the world's largest private child welfare organization. Through this partnership, the DCS has actively participated in the capacity building of 240 officers and stakeholders from seven counties: Meru, Kisumu, Uasin Gishu, Busia, Mombasa, Homabay, and Nairobi. As a result of the training, officers currently use the system (CPIMS) to upload data on children from the field.¹⁹⁷ The DCS has also partnered with Health IT to improve its service delivery efficiency by enhancing the Child Protection Information Management System (CPIMS). The partnership enables counties to store, secure, and easily share their data on the cases they handle at the county level.¹⁹⁸

¹⁹⁶ Republic of Kenya, Financing the Child Protection System in Kenya, User Manual for Child Protection Costing Tool (July 2018), <<https://www.unicef.org/esa/sites/unicef.org/esa/files/2019-05/UNICEF-Kenya-2018-Child-Protection-Costing-Tool.pdf>> accessed 22 June 2021.

¹⁹⁷SOS Children's Villages, 'SOS Children's Villages Donates Laptops To The Department Of Children Services To Help In Tracking Children Data', <<https://www.soschildrensvillageskenya.org/news/sos-children-s-villages-donates-laptops-to-the-department-of-children-services-to-help-in-tracking-children-data.html>> accessed 22 June 2021.

¹⁹⁸Deborah Bochere, 'Nyamira Children's Department Partners With Health IT' (Kenya News Agency, 17 December 2020) <<https://www.kenyanews.go.ke/nyamira-childrens-department-partners-with-health-it/>> accessed 22 June 2021.

3.3. Research Findings

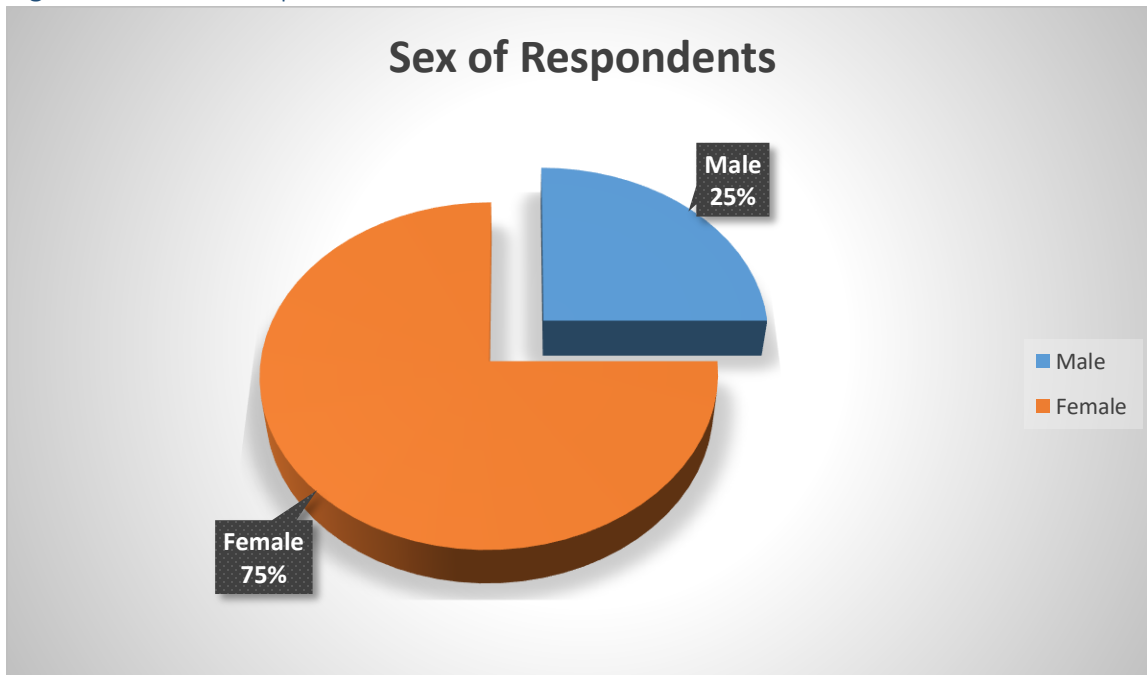
This section presents questionnaire returns rates. From the 20 questionnaires disseminated in 5 different counties, 16 responses were received, as illustrated in Table 3.1.

Table 3.1: Returns of Questionnaires Distributed

County	Actual No. distributed (100%)	Actual No. returned (%)	No. not returned (%)
Nairobi	8 (100%)	7 (87.5%)	1 (12.5%)
Nakuru	5 (100%)	3 (60%)	2 (40%)
Kisumu	3 (100%)	2 (66.7%)	1 (33.3%)
Machakos	2 (100%)	2 (100%)	0 (0%)
Kajiado	2(100%)	2 (100%)	0 (0%)
Total	20 (100%)	16 (80%)	4 (20%)

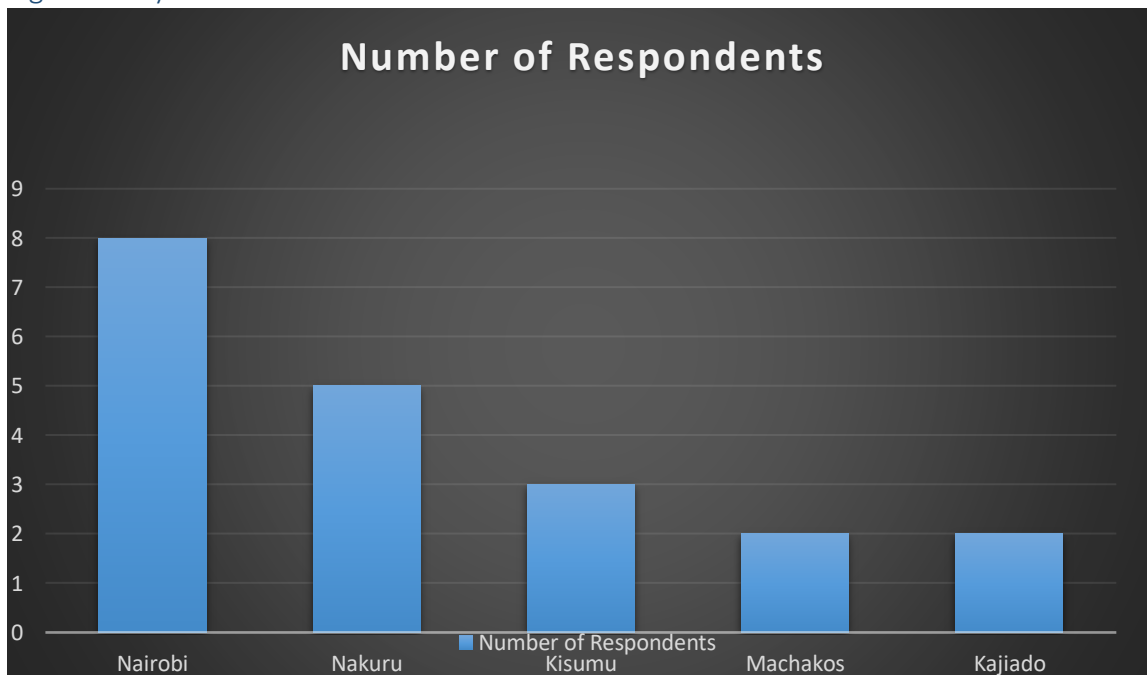
Of the 16 responses received, 12 (75%) of the respondents were female, and 4 (25%) were male, as per Figure 3.1 below.

Fig 3.1: Sex of the respondents



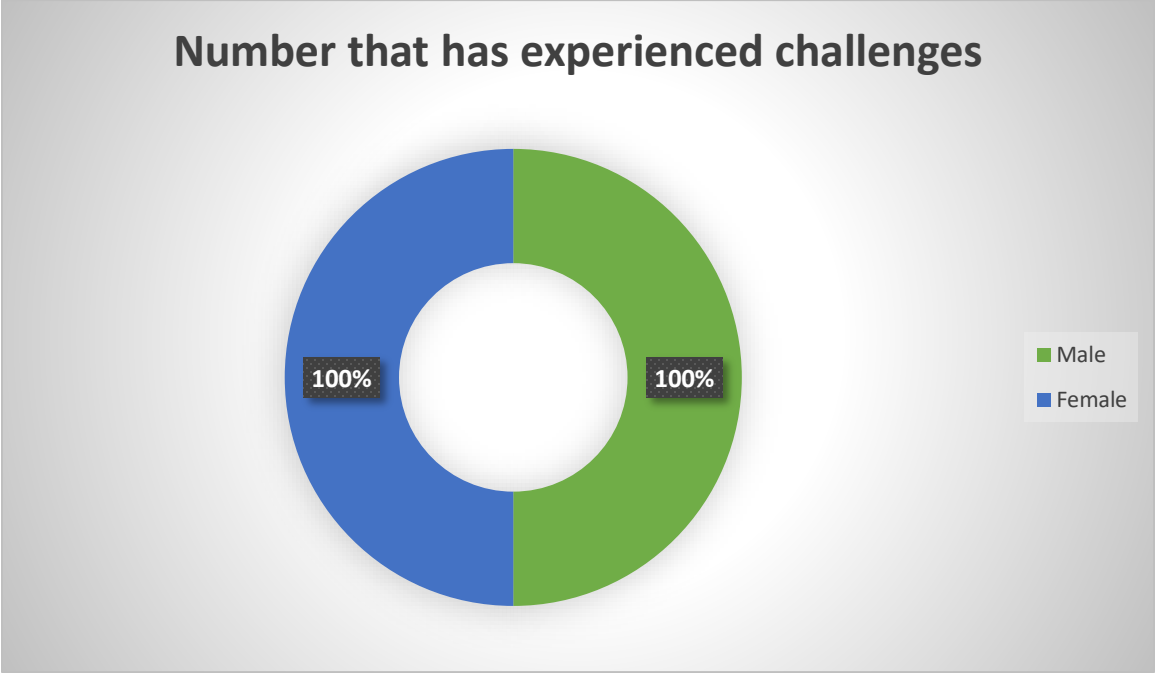
The questionnaires were issued to at least 20 selected children officers within the Department of Children Services in five counties, as illustrated in Figure 3.2 below.

Fig 3.2: Duty Stations



Of the 16 respondents that participated in this study, all (100%) indicated they had experienced challenges when handling CSA cases, as shown in Figure 3.3 below.

Fig 3.3: Number that has experienced challenges



3.3.1. How the DCS has ensured the protection of children from CSA

On how the department has ensured the protection of children from CSA, there was a consensus on the department’s measures. According to the responses, the government was making efforts to fulfil its role under the social contract to protect children from CSA. All the respondents indicated that children officers conduct home visits and fact-finding missions to determine the veracity of CSA cases, collect evidence, and conduct rescue missions.:

We conduct rescue missions to help children at risk of sexual abuse. We also do home visits, and where we establish a child has been abused, we report the matter to the police and ensure the child gets the necessary medical help.¹⁹⁹

We handle very many child sexual abuse cases. The department has ensured the protection of children by requiring that when a potential threat is reported to the office or through the 116 helpline, a children officer must conduct an immediate fact-finding mission and follow up with home visits to ensure the child's safety. If their safety is compromised, the officers must conduct a rescue mission and report the matter to the police.²⁰⁰

It is mandatory for children officers within the department to undertake home visits and follow-ups for every case they handle. Officers must also conduct fact-finding missions where matters are reported to the 116 helpline or the office.²⁰¹

All respondents indicated that the department reported CSA cases to Kenya police and collaborated with the Office of the Director of Public Prosecutions to ensure that CSA perpetrators were charged and convicted:

Cases are also reported to police stations and hospitals for check-ups and provision of essential medical care.²⁰²

Case reporting to the police and ensuring cases are instituted by the office of the director of public prosecution.²⁰³

¹⁹⁹ Children Officer Nairobi County (July 26, 2021).

²⁰⁰ Children Officer Nairobi County (July 29, 2021).

²⁰¹ Children Officer Nairobi County (July 27, 2021).

²⁰² Children Officer Nakuru County (July 26, 2021).

²⁰³ Children Officer Nakuru County (July 26, 2021).

Through working with the police in reporting cases and hospitals in ensuring victims get medical attention.²⁰⁴

All respondents indicated that the DCS had conducted much public education to create awareness of CSA within communities:

Through education and awareness creation (the DCS has done a lot, especially in the slums in Nairobi).²⁰⁵

Additionally, we have been training people, especially in the slums, on sexual abuse of children, and in doing so, we collect data and conduct surveys.²⁰⁶

Through public education and the creation of awareness, especially in the slum areas of the county.²⁰⁷

All respondents indicated that the DCS has worked with various other stakeholders, such as the Ministry of Health, NGOs, and the Office of Director of Public Prosecution, to ensure that CSA cases are adequately handled:

We work with other stakeholders such as the police, the office of the Director of Public Prosecution, and hospitals to ensure cases of child sexual abuse are reported and the children obtain the essential services needed.²⁰⁸

We also work with NGOs to coordinate rescue missions and carry out research relating to sexual abuse and violence against children.²⁰⁹

²⁰⁴ Children Officer Nakuru County (July 27, 2021).

²⁰⁵ Children Officer Nairobi County (July 26, 2021).

²⁰⁶ Children Officer Nairobi County (July 29, 2021).

²⁰⁷ Children Officer Nakuru County (July 27, 2021).

²⁰⁸ Children Officer Nakuru County (July 29, 2021).

²⁰⁹ Children Officer Nakuru County (July 29, 2021).

By reporting cases to the police and taking the victims and those at risk to the hospitals for checkups and refuge in rescue centers.²¹⁰

The department has provided facilitation for home visits to check on victims and ensure their safety and their medical check-up in government hospitals.²¹¹

All respondents also indicated that the DCS has conducted many CSA surveys and written reports on CSA, independently or with other stakeholders such as national and international NGOs.

Over the past 10 years, the department has also been doing research and educating Kenyans.²¹²

The DCS also does a lot of research on child sexual abuse, e.g., the VACS 2010 and 2019.²¹³

The department also undertakes years of research on child sexual abuse to measure its progress in addressing it.²¹⁴

The Government also reports to the UN committee on the rights of the child on the efforts it has taken to protect children from CSA. As a result, the department must write frequent reports and do surveys to monitor the protection of children from child sexual abuse.²¹⁵

3.3.2. Achievements of the DCS in protecting children from CSA

On the DCS's accomplishments, 93.7% of the respondents cited the reduction of CSA cases from 2010 to 2019 (before the Covid-19 pandemic) as a significant achievement for the department:

²¹⁰ Children Officer Nairobi County (July 26, 2021).

²¹¹ Children Officer Nakuru County (July 26, 2021).

²¹² Children Officer Nairobi County (July 27, 2021).

²¹³ Children Officer Nairobi County (July 26, 2021).

²¹⁴ Children Officer Nairobi County (July 28, 2021).

²¹⁵ Children Officer Kisumu County (July 29, 2021).

The survey also revealed a remarkable decline in CSA cases in Kenya compared to 2010.²¹⁶

One of the significant achievements and a success story for the department is the notable reduction of child sexual abuse cases over the last 10 years.²¹⁷

These cases have reduced very much since 2010 when we did our first survey. This is because of the rescue missions we have conducted to help these children over time.²¹⁸

There has also been a reduction in child sexual abuse cases up to 2019.²¹⁹

Child sexual abuse cases have also reduced in the country.²²⁰

The study findings confirm this is consistent with the Violence Against Children and Youth Survey (VACS) Report shared by the government in 2020.²²¹

75% of the respondents indicated the release of the child-friendly booklet *Protecting Children Against Violence*, which educates children on CSA and other forms of VAC and was developed with children's help, as a significant achievement of the DCS.

We also have a children's booklet on child sexual abuse.²²²

As a result of the VACS 2019, the department developed a child-friendly booklet on Violence against children statistics.²²³

²¹⁶ Children Officer Machakos County (July 27, 2021).

²¹⁷ Children Officer Nairobi County (July 29, 2021).

²¹⁸ Children Officer Nairobi County (July 26, 2021).

²¹⁹ Children Officer Nakuru County (July 29, 2021).

²²⁰ Children Officer Kisumu County (July 29, 2021).

²²¹ Ibid 17.

²²² Children Officer Nairobi County (July 29, 2021).

²²³ Children Officer Nairobi County (July 26, 2021).

There is also a booklet developed in 2019 to help children understand violence against children.²²⁴

After the 2019 survey, a child-friendly booklet to be distributed to schools was published.²²⁵

43.75% indicated that the department had conducted more fact-finding and rescue missions and has handled more cases since 2010:

The department has conducted more rescue missions in the past 10 years than ever before.²²⁶

Child sexual abuse has also reduced because of the increased rescue missions.²²⁷

We have also conducted rescue missions and sent girls to the rescue center available in the county.²²⁸

The department has also conducted more fact-finding missions.²²⁹

68.75% of the respondents indicated the development of the costing tools as a significant achievement of the DCS. However, 31.25% of the respondents expressed disappointment that the costing tool had not been adequately utilized:

The department also developed a costing tool to help with budgeting. Unfortunately, the department still faces budgeting gaps.²³⁰

²²⁴ Children Officer Kajiado County (July 28, 2021).

²²⁵ Children Officer Machakos County (July 27, 2021).

²²⁶ Children Officer Nairobi County (July 26, 2021).

²²⁷ Children Officer Nairobi County (July 26, 2021).

²²⁸ Children Officer Kajiado County (July 28, 2021).

²²⁹ Children Officer Nairobi County (July 29, 2021).

²³⁰ Children officer Nairobi County (July 28, 2021).

The creation of the costing tool. However, the tool is not used as often, leading to financial gaps.²³¹

The department also launched the costing tool, which was helpful initially, but I am not sure it's still being used.²³²

We also have the costing tool, which is very good, but we have not all been trained on how to use it.²³³

3.3.3. Challenges faced by the DCS in protecting children from CSA

Although the DCS has made progressive efforts to protect children from CSA in Kenya, many challenges have hindered its efforts. Such challenges include corruption; low funding by the government; inadequate infrastructure; resource limitation; shortage of personnel, and heavy caseloads. Additionally, hostility by the community, culture, and traditions that promote the subjugation of children and low reporting have also impeded the DCS from performing its role. These challenges have made working difficult and prevented the department from efficiently protecting children from CSA, as is seen from the qualitative data collected to inform this study. All the respondents (100%) indicated to have faced challenges while protecting children from CSA. This finding confirms the hypothesis that the DCS faces challenges in protecting children from CSA.

On the question of facing any challenges in protecting children from CSA, a majority (93.75%) of the respondents quoted corruption and influence as one of the significant challenges that impede the work of the DCS in protecting children from CSA:

²³¹ Children Officer Nairobi County (July 29, 2021).

²³² Children Officer Nairobi County (July 26, 2021).

²³³ Children Officer Nairobi County (July 28, 2021).

Influence and power, especially by well-known people who, as a result, interfere with cases resulting in no help from the police especially.²³⁴

Influence in society and high corruption in the country.²³⁵

Corruption has played a significant role in causing interference with child sexual abuse cases at the department level.²³⁶

Influence and corruption.²³⁷

According to the respondents, police officers receive bribes to interfere with the cases:

Corruption in this country also affects us when we handle these cases. Most accused persons walk free and do not pay for their actions because of corruption. And the police do not even help. In fact, they make an already bad situation worse.²³⁸

Corruption and police sabotage have been the major challenges.²³⁹

Corruption, especially the police.²⁴⁰

Corruption at the police stations and even when the cases are ongoing has also derailed the department's efforts.²⁴¹

Additionally, the respondents indicated that witnesses who can attest to CSA are most often threatened to remain silent.

²³⁴ Children Officer Nairobi County (July 28, 2021).

²³⁵ Children Officer Kisumu County (July 29, 2021).

²³⁶ Children Officer Nairobi County (July 27, 2021).

²³⁷ Children Officer Nairobi County (July 28, 2021).

²³⁸ Children Officer Nairobi County (July 28, 2021).

²³⁹ Children Officer Nakuru County (July 29, 2021).

²⁴⁰ Children Officer Nairobi County (July 28, 2021).

²⁴¹ Children Officer Nairobi County (July 28, 2021).

Most of them are threatened not to report cases, especially where the perpetrator is a family member.²⁴²

People are scared of reporting such cases, and those who do are attacked.²⁴³

Culture of silence and attack on the victims who chose to report matters.²⁴⁴

Hostility and fear of victimization.²⁴⁵

A considerable number of respondents (75%) indicated the shortage of trained personnel as a challenge. This challenge has had ripple effects in impeding the role of the DCS in protecting children from CSA:

There is also a lack of enough trained children officers in the county offices.²⁴⁶

Lack of enough children officers which has led to overworking.²⁴⁷

The main challenge is the shortage of trained children officers, as some that are available are not professionally trained in handling child sexual abuse cases.²⁴⁸

There is also a shortage of trained personnel. For example, here in our office, we are quite a few compared to the number of CSA cases reported daily. This has left us to handle more work.²⁴⁹

According to the respondents, the shortage of trained personnel results in overworking the available personnel. As a result, overworked personnel spend less time on a case or work

²⁴² Children Officer Nakuru County (July 28, 2021).

²⁴³ Children Officer Nairobi County (July 29, 2021).

²⁴⁴ Children Officer Nakuru County (July 29, 2021).

²⁴⁵ Children Officer Nairobi County (July 28, 2021).

²⁴⁶ Children Officer Nairobi County (July 28, 2021).

²⁴⁷ Children Officer Kajiado County (July 28, 2021).

²⁴⁸ Children Officer Nairobi County (July 26, 2021).

²⁴⁹ Children Officer Nakuru County (July 28, 2021).

inefficiently on a case. This study found that compared to the many children at risk of CSA, human resource issues exacerbate an already dreadful situation. This study's findings corroborate Cynthia Wangamati's research, which identified the shortage of trained personnel as one of the DCS's challenges.²⁵⁰

Furthermore, the lack of training creates a knowledge gap, limiting an officer's ability to properly investigate and determine grave danger to a child and provide the necessary services. This study's findings are consistent with the research by Cynthia Wangamati, which highlights the issue of poorly trained workers who handle CSA cases as a challenge faced by the DCS.²⁵¹

75% of the respondents indicated heavy caseloads as one of the challenges that affect the operations of the DCS. According to the respondents, the shortage of trained children officers has resulted in a heavy caseload on the officers available:

Heavy workload on the already few children officers at the county offices.²⁵²

A lot of work is handled by one person because we are few, and some of us do not have proper training.²⁵³

We are very few compared to the children that need help, which has forced us to work on many cases at the same time.²⁵⁴

The heavy caseload strains the available officers and limits the amount of time an officer spends on a case. This mainly affects cases that require a lot of time to determine.

²⁵⁰Ibid 72.

²⁵¹Cynthia Wangamati, 'Laws Against Child Sexual Abuse Exist in Kenya. But There Are Gaps'(The Conversation, 23 October 2019) <<https://theconversation.com/laws-against-child-sexual-abuse-exist-in-kenya-but-there-are-gaps-124649>> accessed 23 May 2023..

²⁵² Children Officer Nakuru County (July 28, 2021).

²⁵³ Children Officer Nairobi County (July 26, 2021).

²⁵⁴ Children Officer Nairobi County (July 29, 2021).

A majority (87.5%) of the respondents identified poor infrastructure and resource limitation as a challenge affecting their duty stations. Respondents cited accessibility issues and the lack of adequate logistical support required for investigations, home visits, and follow-ups as significant impediments to the DCS's work. This was especially true in cases where officers are required to travel to rural or remote areas with poor terrain and bad roads:

The department also has a shortage of vehicles necessary to do field work and missions to rescue children.²⁵⁵

No vehicles to conduct fact-finding missions and rescue missions.²⁵⁶

Poor infrastructure has also made it impossible to conduct missions in remote areas of the county.²⁵⁷

Lack of enough equipment and vehicles.²⁵⁸

Lack of enough resources in and out of the office.²⁵⁹

In terms of resource limitation, the respondents identified the lack of computers and office stationery as another challenge faced by the DCS:

The department lacks proper electronic filing systems in some offices.²⁶⁰

There is also a shortage of resources such as computers and filing cabinets in the office.²⁶¹

²⁵⁵ Children Officer Nairobi County (July 28, 2021).

²⁵⁶ Children Officer Kisumu County (July 29, 2021).

²⁵⁷ Children Officer Kajiado County (July 29, 2021).

²⁵⁸ Children Officer Nairobi County (July 26, 2021).

²⁵⁹ Children Officer Nairobi County (July 28, 2021).

²⁶⁰ Children Officer Nairobi County (July 26, 2021).

²⁶¹ Children Officer Nakuru County (July 29, 2021).

Lack of enough resources, especially in the offices.²⁶²

Few resources in the county offices.²⁶³

The department lacks enough resources and children officers, especially in rural areas.²⁶⁴

56.25% of the respondents also considered hostility by the communities as a challenge to the work of the DCS. According to the respondents, children officers face harsh or hostile communities when investigating CSA. Consequently, such communities provide little assistance and offer little to no cooperation in case preparation or child rescue:

Hostility by families and relatives of the victims. The victims refuse to report cases of CSA or even divulge the details of such cases.²⁶⁵

Hostility by people due to the fact that many of them refuse to talk about child sexual abuse.²⁶⁶

People can be quite harsh when you talk about CSA, especially when you accuse one of them as a perpetrator.²⁶⁷

Hostility and fear of victimization.²⁶⁸

Culture and traditions and hostile communities.²⁶⁹

Hostility and threats from the community.²⁷⁰

²⁶² Children Officer Machakos County (July 27, 2021).

²⁶³ Children Officer Kisumu County (July 28, 2021).

²⁶⁴ Children Officer Nairobi County (July 27, 2021).

²⁶⁵ Children Officer Nairobi County (July 28, 2021).

²⁶⁶ Children Officer Nairobi County (July 28, 2021).

²⁶⁷ Children Officer Nakuru County (July 29, 2021).

²⁶⁸ Children Officer Nairobi County (July 28, 2021).

²⁶⁹ Children Officer Nairobi County (July 27, 2021).

²⁷⁰ Children Officer Kajiado County (July 29, 2021).

All the respondents (100%) indicated the lack of adequate shelters and rescue centres as a challenge to protecting children from CSA. This study established that the country's few shelters and rescue centers are usually full and not in most counties. As a result, children in need of CSA protection are forced to spend their days and nights in police stations until a shelter or a rescue center can accommodate them:

There are very few rescue shelters, so victims sometimes spend days at the police station, which is wrong.²⁷¹

The lack of shelters in most counties has posed a major challenge leading to children, in some cases, being abused further in police states where they seek refuge.²⁷²

Lack of enough rescue centers and the available ones are almost always full, leading to victims returning to places that pose a risk or sometimes sleeping in cells where some get abused further.²⁷³

We have very few shelters for children to seek refuge in.²⁷⁴

The available shelters are fewer and are always full, which has led to victims staying in police stations where sometimes they get abused again.²⁷⁵

This study's findings affirm the research by Cynthia Wangamati, which indicates the lack of enough shelters is one of the reasons children still experience CSA in Kenya. According to 25% of the respondents, the lack of enough shelters has resulted in some children being sexually abused further in police stations.

²⁷¹ Children Officer Nairobi County (July 28, 2021).

²⁷² Children Officer Nairobi County (July 26, 2021).

²⁷³ Children Officer Nairobi County (July 27, 2021).

²⁷⁴ Children Officer Nairobi County (July 28, 2021).

²⁷⁵ Children Officer Nakuru County (July 27, 2021).

The majority of the respondents (93.75%) cited the lack of proper coordination and linkage with other stakeholders within the child protection system, especially the police, as a challenge:

Lack of good working relationships in the child protection system, e.g., the police.²⁷⁶

The police have also made our work difficult as they do not do their work in investigating such cases or arresting the suspects.²⁷⁷

Lack of good working relationships in the child protection system, e.g., the police.²⁷⁸

There is no proper working relationship between the department and other stakeholders, such as the police.²⁷⁹

Poor work relationship with the police.²⁸⁰

Lack of help from other stakeholders.²⁸¹

Challenges working with the police have caused the DCS only to handle a subset of CSA cases, limiting the DCS's ability to protect children from CSA.

According to the respondents, it is challenging to create awareness of CSA and children's rights when nearly half of the rural and remote areas population has little to no access to education or educational materials. 68.75 % of the respondents added that many people are unaware of rescue centers and the Child Helpline 116. For the few who do, the majority do not understand how the helpline works:

²⁷⁶ Children Officer Machakos County (July 27, 2021).

²⁷⁷ Children Officer Nairobi County (July 26, 2021).

²⁷⁸ Children Officer Machakos County (July 27, 2021).

²⁷⁹ Children Officer Nairobi County (July 28, 2021).

²⁸⁰ Children Officer Nairobi County (July 26, 2021).

²⁸¹ Children Officer Kajiado County (July 29, 2021).

The majority of people are not even aware of rescue centers and the line 116, where they can report child sexual abuse and get help.²⁸²

Lack of awareness of the child helpline 116, which is free.²⁸³

The lack of awareness of the child helpline 116 has also been a challenge because even the few aware of its existence do not understand how it works.²⁸⁴

Most of the victims and their families who report to the county children offices are not aware of the existence of the Child Helpline 116.²⁸⁵

Very few know about the HelpLine and how it works, and very few Kenyans know about the few rescues shelter available in the country.²⁸⁶

75% of the respondents stated that harmful norms and culture hinder reporting attempted CSA and CSA. This has resulted in a low reporting rate of CSA cases. The subjugation and dehumanization of children within African homes prevent the disclosure of any incident of CSA because victims fear victimization and witnesses are threatened. Additionally, attempted CSA and incidents of CSA are covered up to avoid “embarrassment” to the family where the perpetrator is a family member:

Most of them are threatened not to report cases, especially where the perpetrator is a family member.²⁸⁷

Culture and traditions and hostile communities.²⁸⁸

²⁸² Children Officer Nairobi County (July 28, 2021).

²⁸³ Children Officer Nairobi County (July 29, 2021).

²⁸⁴ Children Officer Nairobi County (July 28, 2021).

²⁸⁵ Children Officer Nakuru County (July 27, 2021).

²⁸⁶ Children Officer Kisumu County (July 28, 2021).

²⁸⁷ Children Officer Nairobi County (July 28, 2021).

Societal norms of harassing the victim and witnesses have made it difficult to investigate CSA cases adequately.²⁸⁹

Culture and traditions.²⁹⁰

Culture and traditional practices.²⁹¹

This finding showcases the argument of this study that the patriarchal nature of most Kenyan homes and communities fosters harmful norms and culture, thus creating an environment conducive to CSA. Attempts to scare and threaten victims, thereby preventing them from reporting abuse, reflect a vast disparity of power within Kenya between men and women and, by extension, their children.

3.3.4. The Department of Children Services' response to these challenges

25% of the respondents stated that the DCS had done commendable work in responding to these challenges, mainly because the rate of CSA had reduced in the country.

The department has tried to seek more money from the government and has also tried to hire more officers at the county offices.²⁹²

It has tried to address some of these challenges but can still do more.²⁹³

It has requested more funding from the national government, and it has also collaborated with NGOs to help reach children at risk of sexual abuse faster.²⁹⁴

²⁸⁸ Children Officer Nairobi County (July 27, 2021).

²⁸⁹ Children Officer Nairobi County (July 29, 2021).

²⁹⁰ Children Officer Kaijiado County (July 29, 2021).

²⁹¹ Children Officer Kaijiado County (July 29, 2021).

²⁹² Children Officer Nairobi County (July 26, 2021).

²⁹³ Children Officer Nakuru County (July 27, 2021).

²⁹⁴ Children Officer Machakos County (July 28, 2021).

It has tried to address some of these challenges, e.g., by organizing workshops, training, and legal aid to help children in the slum areas.²⁹⁵

It has organized legal aid in collaboration with NGOs in the area to help protect children from CSA by rescuing them from potentially dangerous environments.²⁹⁶

75% of the respondents, on the other hand, expressed concern that the DCS has not addressed the challenges it faces, despite the various complaints raised by the children officers:

Unfortunately, the department has not and is not addressing these issues.²⁹⁷

It has not done much, considering these problems have existed for quite some time.²⁹⁸

We have not seen any change despite raising these concerns at the county and national levels.²⁹⁹

While it made some efforts a while back, the department has not addressed most of the issues raised recently.³⁰⁰

The DCS has put little effort into addressing the pleas of the officers.³⁰¹

Respondents also stated that the DCS had not done much to protect children from CSA and address rising cases of CSA during this pandemic period (2020-2021). By failing to address these issues, the DCS, as a government agency, violates its social contract with its citizens, particularly children, to ensure their safety and protection.

²⁹⁵ Children Officer Nairobi County (July 26, 2021).

²⁹⁶ Children Officer Kajiado County (July 29, 2021).

²⁹⁷ Children Officer Kisumu County (July 29, 2021).

²⁹⁸ Children Officer Nairobi County (July 28, 2021).

²⁹⁹ Children Officer Kajiado County (July 28, 2021).

³⁰⁰ Children Officer Nairobi County (July 28, 2021).

³⁰¹ Children Officer Nairobi County (July 28, 2021).

3.3.5. Addressing these challenges

Concerning how these challenges can be addressed, all (100%) respondents agreed that more funding from the national government would assist the DCS in resolving the majority of its challenges. According to the respondents, more funding would enable the DCS to hire more professionally trained children officers and get office stationery and equipment that will ease the work of the children officers. More funding would also enable the DCS to get better transport and logistical resources for in-home visits, follow-ups, and rescue of children at risk of CSA. It will also enable the DCS to conduct more fieldwork and collect more data to equip it better to protect children from CSA:

The department is also in dire need of more funding to enable it to run its initiatives.³⁰²

Financial support from the national government will help solve most of these challenges, such as human resources, creating awareness, and purchasing better vehicles, which are vital for missions.³⁰³

It needs to ask for more funding to enable it to hire more professionally trained children officers and pay them adequate salaries.³⁰⁴

There is a need for the government to provide funds.³⁰⁵

There is also a need for money to pay the children officers and hire even more.³⁰⁶

75% of the respondents suggested training children officers, personnel, and staff dealing with CSA cases. Respondents emphasized the importance of the DCS organizing frequent and

³⁰² Children Officer Nairobi County (July 26, 2021).

³⁰³ Children Officer Nairobi County (July 28, 2021).

³⁰⁴ Children Officer Nairobi County (July 29, 2021).

³⁰⁵ Children Officer Kisumu County (July 28, 2021).

³⁰⁶ Children Officer Kajiado County (July 29, 2021).

rigorous training and workshops to equip children officers handling CSA cases with the necessary skills:

Children officers must also be very well trained through constant workshops and training on handling CSA.³⁰⁷

Firstly, training children officers on how to handle CSA cases is important.³⁰⁸

There is a need for the government to provide funds, rigorous training, and workshops.³⁰⁹

The department also should train its officers on handling child sexual abuse cases and the public on the same.³¹⁰

Hiring more children officers and training and workshops to equip them better.³¹¹

Most respondents (87.5%) highlighted the need to educate the general public and create awareness of CSA, children's rights, and child protection. This can be achieved by integrating and involving the community, teachers, families, parents, and children in matters of child protection:

Public education and awareness, especially concerning children and their families, will help a long way in empowering the public regarding the protection of children from sexual abuse.³¹²

Hire more professionally trained children officers, which will make it easy to create awareness and offer legal aid to society at large.³¹³

³⁰⁷ Children Officer Machakos County (July 29, 2021).

³⁰⁸ Children Officer Nakuru County (July 27, 2021).

³⁰⁹ Children Officer Kisumu County (July 28, 2021).

³¹⁰ Children Officer Nairobi County (July 26, 2021).

³¹¹ Children Officer Nakuru County (July 27, 2021).

³¹² Children Officer Kisumu County (July 28, 2021).

The creation of awareness is very important in influencing society regarding child sexual abuse.³¹⁴

The department also needs to create awareness in many parts of the country.³¹⁵

There is an urgent need to educate the public.³¹⁶

By working with people on the grassroots level, the DCS can protect children from CSA better and receive support and cooperation.

3.3.6. Adequacy of the measures put in place by the DCS

On whether they thought the measures put in place by the DCS to protect children from CSA were adequate (37.5%) of the respondents indicated that the efforts were adequate. In comparison, just over half (62.5%) of the respondents indicated that the measures were insufficient, as per Figure 3.4 below.

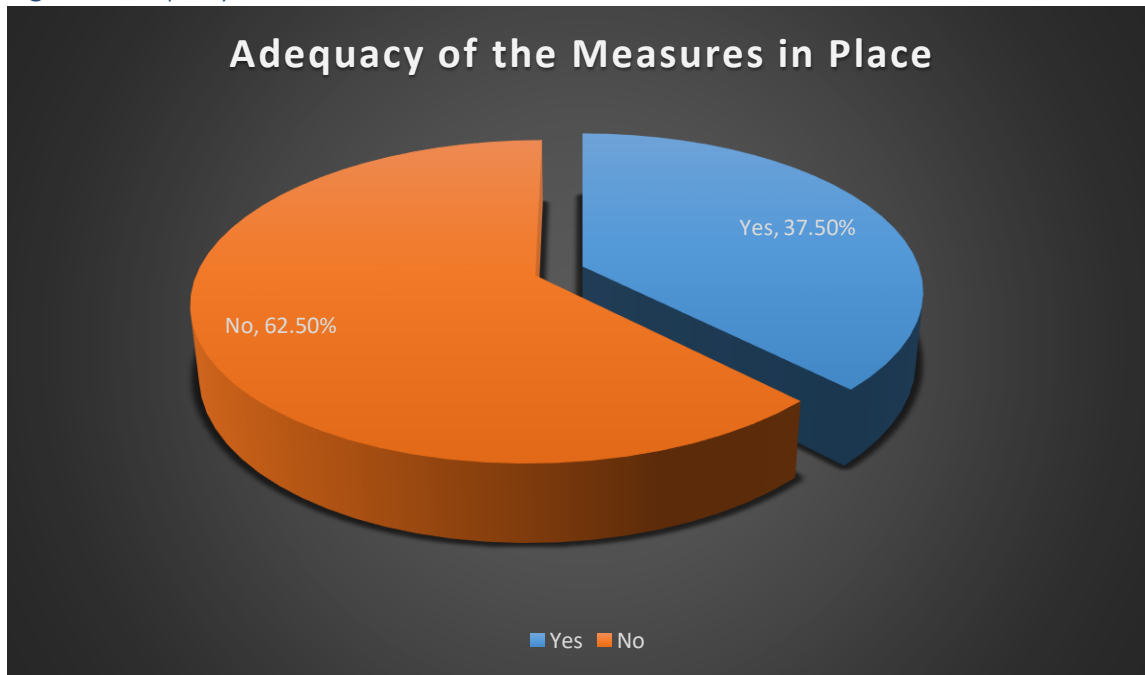
³¹³ Children Officer Nakuru County (July 27, 2021).

³¹⁴ Children Officer Kajiado County (July 29, 2021).

³¹⁵ Children Officer Kajiado County (July 29, 2021).

³¹⁶ Children Officer Nairobi County (July 27, 2021).

Fig 3.4: Adequacy of the Measures in Place



3.3.7. The Department of Children Services fulfilling its role

Whether the DCS has fulfilled its role in protecting children from violence, most respondents (81.25%) indicated yes. However, 30.76% of those who answered yes indicated that much more needs to be done to improve the DCS's role in protecting children from violence:

While the measures are inadequate, the department has done a lot with what it has and has tried to fulfill its role. However, there is a need for more to be done.³¹⁷

Yes, it has, although More can be done if the government prioritizes the department.³¹⁸

Yes, with a lot of effort from the government, children will be better protected.³¹⁹

Yes. A lot of change is needed to protect children from CSA adequately.³²⁰

Yes, it has tried, but it can do even more.³²¹

³¹⁷ Children Officer Nakuru County (July 27, 2021).

³¹⁸ Children Officer Kajiado County (July 29, 2021).

³¹⁹ Children Officer Nakuru County (July 27, 2021).

³²⁰ Children Officer Kajiado County (July 28, 2021).

On the other hand, 18.75% of the respondents indicated that the DCS has not yet fulfilled its role in protecting children from CSA due to the high number of CSA cases, especially during the pandemic:

No. More still needs to be done to ensure that we get there.³²²

No, not yet.³²³

Not really.³²⁴

3.4. Conclusion

The findings of this chapter are critical to making the necessary improvements to ensure children's safety from CSA in Kenya. While highlighting the department's accomplishments, this chapter demonstrates that addressing its challenges, some of which have persisted for many years, is vital for ensuring that the DCS fulfils its role.

Having examined the DCS's achievements and the challenges that have hampered its optimum efforts, the next chapter broadens the study. It examines two other jurisdictions, namely the United States of America and Singapore, to analyze the measures they have enacted to protect children from CSA.

³²¹ Children Officer Nairobi County (July 27, 2021).

³²² Children Officer Nairobi County (July 26, 2021).

³²³ Children Officer Nairobi County (July 28, 2021).

³²⁴ Children Officer Nairobi County (July 26, 2021).

CHAPTER FOUR

AN ANALYSIS OF BEST PRACTICES FROM OTHER JURISDICTIONS

4.1. Introduction

Building upon the study conducted in Chapter Three, this chapter looks at the best practices in protecting children from CSA in two nations that is the United States of America and Singapore.

This chapter examines the measures enacted by both jurisdictions to protect children from CSA.

Globally jurisdictions have adopted various ways of combating and protecting children from CSA. This study analyzed the best practices in both the United States of America and Singapore.

The two countries were selected from the End of Childhood Index Ranking 2020 provided for in the Global Childhood Report 2020 by Save the Children.³²⁵ The End of Childhood Index compared data from 180 countries to determine which countries had the most and fewest children missing out on childhood. Furthermore, the Index scores reflect the average level of performance across eight indicators on child health, education, labour, marriage, childbirth, and violence. Singapore was ranked 1st with a score of 989, while the United States of America was ranked 43rd with a score of 941. The scores were calculated on a scale of 1 to 1000, with higher scores indicating that countries better protect children.³²⁶

This study selected the USA because -of its liberal welfare system - a residual welfare model in which families are responsible for social issues and the state intervenes only in exceptional cases of need. This is not to say that the system has wholly eradicated CSA in the United States; on the contrary, CSA is still a widespread and severe problem in the country. This system, which emphasizes a child protection model, has also been chastised for focusing too much on legal

³²⁵ Save the Children, 'The Hardest Places to be a Child: Global Childhood Report 2020' (2020) < <https://www.savethechildren.org/content/dam/usa/reports/advocacy/global-childhood-report-2020.pdf> > accesses 31 May 2023.

³²⁶ Ibid.

remedies and causing delayed intervention responses.³²⁷ However, the efforts made by the country to address this vice are considered exemplary by this study. Such measures include the prevention policies passed to protect children from perpetrators, usually through sexual offender registries and community notification programs.

Additionally, most states have passed legislation requiring schools to adopt sexual abuse prevention programs. Through these programs, schools must partner with community agencies and find additional resources to implement the CSA education programs.³²⁸ Furthermore, public opinion and policymakers have identified CSA as a massive problem with serious negative societal and child consequences. As a result, there has been increased awareness and media coverage, with CSA now being discussed more openly.³²⁹

This study selected Singapore because of its significant achievements in child protection and children's rights.³³⁰ The country has developed a multidisciplinary, multi-agency, and multi-pronged approach to address child abuse. This approach includes child-centric policies and practices in all child-related matters and focuses on training and development for all professionals working with children. The approach also focuses on interagency collaboration, providing a comprehensive tier of well-coordinated preventive and rehabilitative services and a strong partnership with parents, the community, and the public. Furthermore, the country has

³²⁷ Mildred J and Plummer C, 'Responding to Child Sexual Abuse in the United States and Kenya' (2009) 31Child Protection and Children's Rights 601.

³²⁸ Gwendolyn D. Anderson, 'Child Sexual Abuse Prevention Policy: An Analysis of Erin's Law' (2014) 29(3) SWPH <<https://doi.org/10.1080/19371918.2013.776321>> accessed 1 June 2023.

³²⁹ Ibid.

³³⁰ Ibid 325.

enacted several key pieces of legislation to protect children from abuse.³³¹ The Child Protection Services uses a systems approach to ensure the care and protection of children in danger of abuse or neglect. It works with professional stakeholders, the child, the family, and the community to address problems within the family that contribute to abuse.³³²

The eight key pillars of child protection work in Singapore include child-centric practices, partnership with parents, community support, interagency information sharing and collaboration, professional knowledge and skills, training and supervision, legislation, and Multidisciplinary decision-making platforms.

In both cases, this chapter will examine the measures enacted in each country to ensure better protection of children from CSA.

4.2. The United States of America (USA)

4.2.1. The Child Protective Services

In the United States, Child Protective Services (CPS) is mandated to ensure and provide for child protection, investigation, and prosecution of child abuse cases. Every state's social services department assesses, investigates, and intervenes in CSA cases. In states that prefer a family-centered approach over a child-centred approach, the CPS is also known as the Department of Children and Family Services (DCFS). In some states, it is also called the Department of Social Services.³³³

³³¹ Parvathy P, Stefanie Y C, Say H O, Daniel F, 'Child Protection and Children's Rights in Singapore' (2014) 4(4) Adolescent Psychiatry, <https://www.researchgate.net/publication/273403667_Child_Protection_and_Children's_Rights_in_Singapore#fullTextFileContent> accessed 27 May 2023.

³³² Singapore Children's Society, 'Protection of Children in Singapore: An Overview' (2005).

³³³ Stop It NOW!, What is Child Protective Services? (2020), <<https://www.stopitnow.org/ohc-content/what-is-child-protective-services>> accessed 9 June 2021.

With the enactment of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, the US government was required to provide federal funding for wide-ranging child maltreatment research services.³³⁴ As a result of the passage of CAPTA, which required all states to establish procedures to investigate suspected cases of child abuse, including CSA,³³⁵ Child Protective Services (CPS) was established.³³⁶

According to Section 1(2) of CAPTA, the child protection system should be: comprehensive; child-centered; family-focused; and community-based. The system should incorporate all appropriate measures to prevent the occurrence or recurrence of child abuse and neglect. It should promote physical and psychological recovery and social re-integration in an environment that fosters the child's health, safety, self-respect, and dignity.³³⁷ Consequently, public child welfare agencies have been set up to provide four main services: child protection investigation; family-centred services and support; foster care; and adoption.³³⁸

4.2.2. Joint work with other stakeholders

CPS's top priority in ensuring child protection from CSA is finding a child's safety within the home. When a child's home is determined to be unsafe for the child, the priority becomes removing the abuser from the premises. CPS will remove children from their homes as a last resort when all other options have been exhausted. Section 103(c) of CAPTA, which calls for coordination with available resources, requires the Secretary to consult and coordinate with other federal agencies when establishing a national clearinghouse for child abuse information. Like Kenya, the USA's CPS works with stakeholders such as the Federal Bureau of Investigation

³³⁴ The Child Abuse Prevention and Treatment Act (CAPTA) of 1974, Sec 106.

³³⁵ The Child Abuse Prevention and Treatment Act (CAPTA) of 1974, Sec 107.

³³⁶ Peter J. Pecora et al, *The Child Welfare Challenge: Policy, Practice, and Research* (4th Ed Routledge 2018).

³³⁷ The Child Abuse Prevention and Treatment Act (CAPTA) of 1974, Sec 1(2).

³³⁸ McCroskey J and Meezan W, 'Family-Centered Services: Approaches and Effectiveness' (1998) 8(1) TFC <<https://www.jstor.org/stable/1602628> > accessed 27 May 2023.

(FBI), the Department of Homeland Security, and the U.S. Marshal's Services. The CPS also works with the Department of Justice's Child Exploitation and Obscenity Section (CEOS), the US Attorney's Office, and the Bureau of Prisons.

The CPS also works with the Department of Health and Human Services (HHS), the community, and many others to protect children from CSA.³³⁹ For example, the department has partnered with the FBI on the FBI's Operation Rescue Me, run through the Endangered Child Alert Program (ECAP). The partnership seeks to investigate all possible avenues for locating a child victim of CSA and rescuing them from further abuse and exploitation. The ECAP also seeks to expose unknown adults whose faces or distinguishing characteristics are visible in child sexual abuse images.³⁴⁰

4.2.3. Employment of professionals

In the US, social workers play a vital role in helping sexually abused children and protecting children from CSA. Therefore, to be employed as a children officer, a child protection officer, or a child welfare caseworker, one must be a key professional in investigating allegations of CSA and other forms of child abuse.³⁴¹

4.2.4. Establishment of Child Advocacy Centers

The Department of Child Protective Services (CPS) has ensured that Child Advocacy Centers are set up within every state. Established under Section 213 of the Victims of Child Abuse Act,³⁴²

³³⁹ Stop It NOW!, What is Child Protective Services? (2020), <<https://www.stopitnow.org/ohc-content/what-is-child-protective-services>> accessed 9 June 2021.

³⁴⁰ FBI, Rescuing Victims of Child Sexual Abuse (1 July 2020), <<https://www.fbi.gov/news/stories/fbi-programs-work-to-rescue-victims-of-child-sexual-abuse-070120>> accessed 9 June 2021.

³⁴¹ Kathleen Coulborn Faller, 'Interventions for Physically and Sexually Abuse Children' (2017) Encyclopedia of Social Work, <<https://oxfordre.com/socialwork/socialwork/view/10.1093/acrefore/9780199975839.001.0001/acrefore-9780199975839-e-1224>> accessed 19 June 2021.

³⁴² The Victims of Child Abuse Act, Sec 213.

these centers use forensic interviews, therapeutic interventions, victim support and advocacy, and case management to investigate child abuse cases.³⁴³

The centers are legally required to include a multidisciplinary team (MDT) consisting of representatives from CPS, law enforcement, mental health, medical communities, and victim advocacy groups.³⁴⁴ The centers hire professional social workers as forensic interviewers. They also provide a child-friendly environment where a skilled social worker interviews a child while other professionals observe or review the interview video.³⁴⁵ The main idea behind the Child Advocacy Centers is to minimize victimization by interviewing the child only once to gather accurate information to protect and seek justice for the child.

Additionally, the National Children's Advocacy Center mandates that all CACs include the following components: (1) a child-friendly facility; (2) an organizational infrastructure that oversees the legal, fiscal, and administrative operations of the center; (3) cultural and diversity awareness; (4) forensic interviews; (5) medical examination and treatment; (6) mental health resources and intervention; (7) victim advocacy services; (8) case reviews; and (9) case tracking.³⁴⁶

There are seven hundred and ninety-five (795) Child Advocacy Centers in the United States.³⁴⁷

4.2.5. School-based Prevention Programs

The Department of Child Protective Services (CPS) has also implemented prevention programs for some age groups in all states and almost all school districts.³⁴⁸ These school-based programs

³⁴³Lisa Santos Kresnicka, 'Child Protective Services' (Science Direct, 2007) <<https://www.sciencedirect.com/topics/medicine-and-dentistry/child-protective-services>> accessed 21 June 2021.

³⁴⁴ JoAnna Elmquist et al, 'A Review of Children's Advocacy Centers (CAC) Response to Cases of Child Maltreatment in the United States' (2015) 24(A) *Aggression and Violent Behaviours* 26-34.

³⁴⁵National Children's Alliance, CAC model: How The CAC Model Works (2016), <<http://www.nationalchildrensalliance.org/cac-model>> accessed 19 June 2021.

³⁴⁶ Ibid.

³⁴⁷ Ibid 345.

are the most widely used prevention strategy employed in the USA. The programs result from the implementation of Erin's Law in most of the states in the USA. The Public Act 096-1524, otherwise known as Erin's Law, mandates all public elementary schools to teach child sexual abuse and exploitation prevention classes to students in pre-kindergarten through 12th grade. Erin's law has currently been implemented in 38 states under different statutes in the respective states.³⁴⁹

The School-based CSA prevention programs are designed to reduce sexual abuse in children and adolescents. These prevention programs seek to; 1) improve students' prevention-related knowledge; 2) increase students' protective skills to help them avoid unsafe situations; 3) increase students' willingness to disclose incidences of sexual abuse; and 4) decrease child self-reports of anxiety or fear.

The programs target school-aged children and teach them about CSA and how to protect themselves from it.³⁵⁰ They teach children what's okay and where to go for help when they are in danger. The prevention programs aim to help children, teachers, and parents in schools identify CSA. It also aims to provide awareness, assistance, referral, or resource information for children and families who are victims of CSA.³⁵¹ The program also teaches children about CSA and encourages them to refuse overtures and report such incidents to adults.³⁵²

³⁴⁸Bolen Rebecca, 'Child sexual abuse:Prevention or promotion?' (2003) 48(2) Social Work, 174-185, <<http://www.jstor.org/stable/23720842>> accessed 19 June 2021.

³⁴⁹ Erin's Law, 'What is Erin's Law?' < <https://www.erinslaw.org/erins-law/> > accessed 20 May 2023.

³⁵⁰ National Institute of Justice, 'Practice Profile: School - Based Child Sexual Abuse Prevention Programs' < <https://crimesolutions.ojp.gov/ratedpractices/28#pd> > accessed 20 May 2023.

³⁵¹ New York State Education Department, 'Erin's Law' < <https://www.nysed.gov/curriculum-instruction/erins-law> > accessed 20 May 2023.

³⁵²Finkelhor D and Strapko N, Sexual Abuse Prevention Education: A Review of Evaluation Studies (1990) (p105-167).

These programs are deemed to have had positive outcomes because they have assisted children in learning behaviours that will help them avoid sexual abuse encounters.³⁵³ Studies show that children who participate in these programs are more likely to report abuse to adults than those who do not participate.³⁵⁴ Unfortunately, these programs often focus on alerting children of the possibility of sexual abuse by a stranger. In reality, most cases of CSA involve perpetrators familiar to the child, such as family members.³⁵⁵

4.3. Singapore

4.3.1. The Ministry of Social and Family Development

Child protection in Singapore is a multi-disciplinary and multi-agency effort, with the Ministry of Social and Family Development's Child Protection Services (CPS) taking the lead. Through the department, the ministry collaborates with other agencies and stakeholders in the child protection system to ensure the prevention and protection of children from CSA. These stakeholders include healthcare institutions; community-based voluntary social work agencies; schools; police; the Courts; and the Attorney-General Chambers.³⁵⁶

The Child Protection Services (CPS) is the official body mandated to act when child abuse or neglect is suspected. It takes the lead role in child protection and prevention of child abuse. The

³⁵³The Bronfenbrenner Center for Translational Research, 'How to More Effectively Prevent Child Sexual Abuse' (Psychology Today, 26 September 2018) <<https://www.psychologytoday.com/us/blog/evidence-based-living/201809/how-more-effectively-prevent-child-sexual-abuse>> accessed 19 June 2021.

³⁵⁴Ibid.

³⁵⁵Finkelhor D and Strapko N, Sexual Abuse Prevention Education: A Review of Evaluation Studies (1990) (p105-167).

³⁵⁶Ministry of Social and Family Development, Protecting The Safety and Well-Being of Children, <<https://www.msf.gov.sg/policies/Strong-and-Stable-Families/Nurturing-and-Protecting-the-Young/Child-Protection-Welfare/Pages/Protecting-Children.aspx>> accessed 9 June 2021.

department is well-staffed by committed and well-trained professionals and consists of the Intake and Assessment Unit, the Investigation Unit, and the Intervention Unit.³⁵⁷

4.3.2. Community Intervention

In Singapore, the obligation to protect children from violence falls upon every member of society. Concerns about child protection operate on a scale, with intervention coming from the community, more specialized partners, or the state. The system ensures that the CPS only intervenes in serious cases requiring higher levels and more intrusive interventions.³⁵⁸ Child protection and abuse prevention involves working closely and collaboratively with the child's parents, wherever possible. The child's immediate communities, such as the school, extended family, and social work agencies, are also mobilized to support the child.³⁵⁹

The Ministry of Social and Family Development handles high-risk cases of child abuse and neglect through The Family and Child Protection Branch. On the other hand, children with moderate or low needs and risk of abuse are served by trained counsellors and social workers from community-based Family Service Centres (FSCs).³⁶⁰ The MSF ensures that everyone protects children from CSA through partnerships with community partners such as Family Service Centers (FSCs) and Child Protection Specialist Centers (CPSCs).

The FSCs are community-based social service providers that help needy families dealing with emotional, personal, and social challenges. Various voluntary welfare organizations in the country run 41 Family Service Centres (FSCs) in various neighbourhoods throughout the island.

³⁵⁷ Parvathy P, Stefanie Y C, Say H O, Daniel F, 'Child Protection and Children's Rights in Singapore' (2014) 4(4) Adolescent Psychiatry, <
https://www.researchgate.net/publication/273403667_Child_Protection_and_Children's_Rights_in_Singapore#fullTextFileContent > accessed 27 May 2023.

³⁵⁸ Office of the Director General of Social Welfare, 'Our Responsibility in Child Abuse Cases' <
<https://www.msf.gov.sg/what-we-do/odgsw/social-insights/2020-Our-Responsibility-in-Child-Abuse-Cases> >
accessed 29 May 2023.

³⁵⁹ Ibid 272.

³⁶⁰ Singapore Children's Society, 'Protection of Children in Singapore: An Overview' (2005).

The FSC's main goal is to help low-income individuals and families gain access to remedial and developmental social programs in their communities.³⁶¹ These centers provide assessment and intervention services for abused and neglected children. They also assist children experiencing social, personal, and emotional difficulties and other difficult life challenges. Furthermore, the Family Service Centres also offer community support and public education programmes to meet the community's needs.³⁶²

4.3.3. Community-based Child Protection Specialist Centers (CPSCs)

Additionally, the Ministry has developed two community-based Child Protection Specialist Centres (CPSCs) which handle child abuse cases referred by MSF and the community.³⁶³ These centers are staffed by senior social workers who provide intensive and specialized assessment and treatment programs for children with a moderate risk of abuse. They also cater to children who no longer need statutory supervision by the Child Protection Services.³⁶⁴ The MFS has trained these agencies' professionals / social workers to provide specialized assessment and community-based intervention through casework and home-based services. These agencies also assist families with moderate child protection concerns. They work with families, hospitals, police, and schools to ensure children's safety.³⁶⁵

³⁶¹Hannah Grey, 'A Complete Guide to Family Service Centres in Singapore' (Homage,2021) <<https://www.homage.sg/resources/family-service-centre-singapore/>> accessed 9 June 2021.

³⁶² Parvathy P, Stefanie Y C, Say H O, Daniel F, 'Child Protection and Children's Rights in Singapore' (2014) 4(4) Adolescent Psychiatry, <https://www.researchgate.net/publication/273403667_Child_Protection_and_Children's_Rights_in_Singapore#fullTextFileContent> accessed 27 May 2023.

³⁶³ Pave: Safe Space, Child Protection Specialist Centre (CPSC), <https://www.pave.org.sg/our-services-cpsc.php>> accessed 21 June 2021.

³⁶⁴ Ibid.

³⁶⁵ Ministry of Social and Family Development, Protecting The Safety and Well-Being of Children, <<https://www.msf.gov.sg/policies/Strong-and-Stable-Families/Nurturing-and-Protecting-the-Young/Child-Protection-Welfare/Pages/Protecting-Children.aspx>> accessed 9 June 2021.

4.3.4. Public Education and Awareness

The MSF has also ensured awareness of CSA by increasing public education efforts on VAC, CSA, and child protection matters. The creation of awareness has aided in discovering additional CSA cases within the community.³⁶⁶

4.3.5. Training of community professionals

The MSF ensures community professionals detect and report child abuse cases. It has done this by training community professionals such as teachers and social workers to use evidence-based screening tools to detect signs of CSA. Such tools include the Sector-Specific Screening Guide (SSSG) and the Child Abuse Reporting Guide (CARG).³⁶⁷ Various professionals involved in child protection are encouraged and expected to receive appropriate and up-to-date training and regular supervision from senior staff.³⁶⁸

The MFS implemented more stringent screening tools and training for these professionals in 2015 to sharpen their ability to identify child safety concerns and seek appropriate intervention. The SSSG and CARG screening tools guide professionals in handling suspected CSA cases and follow-up to ensure children's safety.³⁶⁹

4.4. Conclusion

This chapter demonstrated the importance of examining child protection practices in the United States and Singapore and how they have responded to CSA. Some of the measures implemented by the two countries are mandated by Kenyan legislation. The study found that much emphasis ought to be placed on implementing the Children Act, as this is the lacking factor. This chapter's

³⁶⁶Ministry of Social and Family Development, Child Abuse Investigations, <<https://www.msf.gov.sg/research-and-data/Research-and-Statistics/Pages/Child-Abuse-Investigations.aspx>> accessed 9 June 2021.

³⁶⁷ Ibid.

³⁶⁸ Ibid 362.

³⁶⁹Ministry of Social and Family Development, Protecting The Safety and Well-Being of Children, <<https://www.msf.gov.sg/policies/Strong-and-Stable-Families/Nurturing-and-Protecting-the-Young/Child-Protection-Welfare/Pages/Protecting-Children.aspx>> accessed 9 June 2021.

findings also highlight the need for the DCS to implement prevention and intervention measures that target home and school settings to ensure child protection. These measures have been implemented in the two countries.

The study concludes in the next chapter after looking at: the extent to which the DCS has implemented the Children Act and the efforts it has put in place to ensure the protection of children from CSA; the department's achievements and the challenges it faces, and the best practices in two jurisdictions in the preceding chapters. The next chapter also makes recommendations to the government and the DCS on measures to ensure the adequate protection of children from CSA.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The study was premised on the understanding that as a result of its challenges, the DCS has not adequately fulfilled its mandate in protecting children from CSA as per the Children Act. The social contract theory has enabled this research to highlight that the DCS's obligation as a government department is to protect the children within its borders from CSA. This is its ultimate goal and function as a government elected by the people. The African feminist theory highlights the patriarchal nature of African societies, which fosters harmful norms and practices that dehumanize and subjugate children, increasing their vulnerability to CSA. Additionally, the African Feminist theory also outlines the perspective of this study: CSA is an expression of male supremacy inherent in patriarchy. It explains how patriarchy provides males with the social opportunity to commit child sexual abuse. Furthermore, the vulnerability theory illustrates that because of their position in society, children depend on adults, thus leaving them vulnerable and more susceptible to child sexual abuse.

Chapter Two has analyzed the extent to which the DCS has implemented the Children Act to protect children from CSA. It has examined the efforts made by the DCS through its seven departments to address children's issues effectively. The chapter has also identified the department's collaboration with other key players and stakeholders in the child protection system.

Chapter Three examined the accomplishments of DCS and its efforts to address CSA. The chapter also discussed the challenges/barriers that the department faces in its efforts to protect children from CSA. According to the chapter, while some of the existing challenges are external,

the majority are internal and must be addressed within the DCS and with the assistance of other stakeholders for the department to protect children from CSA effectively.

Chapter Four analyzed some of the best practices in two jurisdictions: The United States and Singapore. The chapter noted that some of the measures enacted by these jurisdictions are similar to those provided in Kenya. However, the two jurisdictions' commitment to implementing these provisions has resulted in better protection of children from CSA.

This project has confirmed the study's hypothesis that as a result of the challenges it faces; the Department of Children Services has not adequately fulfilled its mandate in protecting children from CSA as per the Children Act. It has also confirmed a vast disconnect between law and actual implementation. If the government and the DCS are serious about protecting children from CSA and promoting child protection, immediate action is required.

In light of the above, this study makes the following recommendations:

5.3. Recommendations

5.3.1. To the Government of Kenya

According to Article 21 (1) of the Constitution of Kenya, it is the fundamental duty of the State and every State organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms enshrined in the Bill of Rights. Furthermore, Article 21 (2) of the Constitution requires the state to take legislative, policy, and other measures, including standard-setting, to achieve the progressive realization of the rights guaranteed by Article 43.

In light of the aforementioned constitutional provisions, this study makes the following recommendations to the state:

a) In light of the study's resource challenges, the government must prioritize child protection by increasing its legal aid budget and channelling more funds and resources to support the DCS. Based on available financial data, these funds can be obtained using the costing tool to generate the projected costs of implementing various levels and types of child protection measures. The government can also raise funds by increasing collaboration with international organizations.

The government should also ensure accountability by developing a transparent and open method or mechanism for adequately managing the funds and resources provided to the DCS. Furthermore, the government can mandate the DCS to publish accounts of all funds received and used openly.

b) Kenya's child population in 2019 was estimated to be 39%, about 18.6 million,³⁷⁰ with half of the survivors who present to Kenyan hospitals for post-rape care being minors. Given the large number of children at risk of CSA, the government must urgently fund the construction and establishment of more fully equipped shelters and rescue centres. This study recommends at least three in every county. In the USA, the availability of 795 child advocacy centres has aided in providing shelter for children at risk of CSA. As a result, the number of CSA cases in the country has decreased. The presence of shelters and rescue centres in each county will provide secure and safe locations for children at risk of CSA in the counties to seek assistance and refuge.

c) Despite the launch of a national sex offender register by the judiciary in 2012, which was expected to reduce the country's rising cases of CSA and sexual offences, little progress

³⁷⁰The Government of Kenya, The National Council For Population And Development (NCPD), and The United Nations Population Fund (UNFPA), 'The State of Kenya Population 2020: Zero Harmful Practices – Accelerating the Promise of ICPD 25 (June 2020)' <https://kenya.unfpa.org/sites/default/files/pub-pdf/state_of_kenya_population_report_2020.pdf> accessed 22 June 2021.

has been made in reducing CSA cases. The government must ensure the enactment of a sex offender register at the county level, with each county maintaining its database while still working collectively. This will enable the identification and registration of sex offenders from the county to the national level and prompt response by DCS and police when necessary.

- d) To ensure the competence of professionals, the government should introduce specialized training on handling CSA for courses at undergraduate and postgraduate levels. This training should be implemented for courses focusing on child protection and social work or working with children.
- e) To ensure service delivery by the DCS to all children, including those in remote areas, the government must fund the construction of good roads. It should also acquire vehicles for the DCS to cope with all-terrain, including those in remote and rural areas, and ensure all other logistical support services are met.
- f) The Kenyan government must raise public awareness of CSA and its effects on children through public education and campaigns. It is critical to educate Kenyans about the impacts of CSA on a child's mental, physical, and emotional development. The government should implement a combination of interventions that provide special life skills training focusing on CSA as an effective way to protect children.

5.3.2. To the Department of Children Services (DCS)

Article 21 (3) of the Constitution of Kenya places the duty upon all state organs and all public officers to address the needs of vulnerable groups within society, including children.

In light of the aforementioned constitutional provision, this study makes the following recommendations to the Department of Children Services:

- 1) Due to the grave and sensitive nature of CSA, the DCS must employ only trained professionals for the position of children officers. An analysis of best practices in child protection systems in the US and Singapore demonstrates the importance of employing only trained professionals as children officers, especially those that handle CSA. This calls for the DCS to employ only trained personnel as children officers to handle CSA cases.
- 2) The DCS should organize frequent and consistent rigorous training and workshops to train children officers on evidence-based screening tools that sharpen their ability to identify CSA. They should additionally be trained on new models of protecting children from CSA. In Singapore, the MFS has ensured that children officers and other personnel who work with children receive training to sharpen their ability to identify signs of CSA. The DCS must implement such incentives. Personnel and community members who deal with children should be trained in the new models for detecting the risk or threat of CSA on a child.
- 3) The DCS cannot protect children from CSA on its own. The department should intentionally collaborate with other stakeholders, such as the police and the community. It is imperative for the DCS to establish and foster an active working relationship with other stakeholders in the child welfare system. In both the United States and Singapore, the CPS and the MFS actively collaborate with other stakeholders, resulting in a multi-stakeholder approach to CSA due to easy cooperation and information sharing.
- 4) Given that 43% of CSA cases in Kenya occur within the home and are perpetrated by family members, the DCS must implement a community-based child protection system. In Singapore, the MFS has trained communities to protect children from CSA as it is deemed

a community responsibility. Collaborating with community partners such as Family Service Centres (FSCs) has established community intervention as the first line of support in CSA cases. The DCS should work with communities, families, and civil societies to combat CSA by providing constant civic education and raising awareness about CSA, child rights, and child protection.

- 5) It is critical to recognize that CSA is institutionalized within the systems of patriarchy, and it is time to find ways to challenge these systems. The DCS must engage men in the fight to end CSA. Given that the patriarchal nature of Kenyan society has created an environment conducive to CSA, men must be involved. The change will not occur unless men are involved in challenging gender inequality, deeply rooted in societal attitudes, beliefs, and behaviours, including the stigmatization of CSA victims. The DCS can accomplish this by involving men in examining harmful notions of masculinity, gender, and power. As more men promote and practise gender equality daily, society's perception of CSA will shift.
- 6) The DCS should implement school-based programs for children of specific ages in all schools across all counties. The success of the school-based system in the USA demonstrates the difference it can make in protecting children from CSA and providing them with the knowledge and initiative to keep themselves safe. Unlike the school-based system in the US, which focuses on "stranger danger" alerts, the DCS should implement a system that educates and alerts children that CSA can be perpetrated by people they know. The system should educate them on places to seek help should there be a potential danger of CSA. The system should also teach children about CSA and how to avoid such

situations by refusing overtures and reporting such incidents to adults. This will also instill confidence in them to report such incidents.

- 7) To help deal with the heavy caseloads experienced by children officers, the DCS should organize frequent legal aid programs in collaboration with other stakeholders in the child protection system. The department should also encourage regular calls for trained volunteers and professionals from CSOs, NGOs, LSK, and the public to help handle CSA cases.

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The Victims of Child Abuse Act

APPENDICES

APPENDIX A: QUESTIONNAIRE FOR CHILDREN OFFICERS

Research Title: An Analysis of the Role of the Department of Children’s Services in Protecting Children from Child Sexual Abuse Under the Children Act in Kenya.

Researcher: Valarie M Udalang’, University of Nairobi

If you consent to take part in the research, kindly proceed to fill in the questions below.

1. Please select your gender:

{ } Male

{ } Female

2. What is your duty station?

.....

3. Have you ever handled child sexual abuse (CSA) cases?

{ } Yes

{ } No

4. How has the Department of Children Services (DCS) ensured the protection of children from child sexual abuse (CSA)?

.....

.....

.....

.....

5. What are some of the achievements of the Department of Children Services in protecting children from child sexual abuse (CSA)?

.....
.....
.....

6. Have you faced any challenges handling child sexual abuse (CSA) cases?

{ } Yes

{ } No

7. If yes, what challenges have you encountered while handling child sexual abuse (CSA) cases?

.....
.....
.....

8. How do these challenges prevent the Department of Children Services from protecting children from child sexual abuse (CSA)?

.....
.....

9. What has the Department of Children Services done to mitigate these challenges?

.....
.....
.....
.....

10. How can these challenges be addressed to enhance the role of the DCS in protecting children from child sexual abuse (CSA)?

.....
.....

11. How effective is the Department of Children Services in handling child sexual abuse (CSA) cases in your observation?

.....
.....

12. Are the measures the Department of Children Services put in place to protect children from child sexual abuse(CSA) adequate?

{ } Yes

{ } No

13. In your observation, has the Department of Children Services fulfilled its role under the Children Act to protect children from child sexual abuse?

.....
.....