

Kenya

National Child Protection Legislation

National Legislation

- **Age of Consent: 18**
[Sexual Offenses Act of Kenya](#)
Art. 8 – Defilement
(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
(5) It is a defence to a charge under this section if –
 - (a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and
 - (b) the accused reasonably believed that the child was over the age of eighteen years.

[Children Act No. 8 of Kenya 2001](#)

Art. 2 – child means any human being under the age of eighteen years.

- **Age of Marriage: 18**
[Act No. 4 of 2014 Marriage Act](#)
Art. 4 – Minimum Age
A person shall not marry unless that person has attained the age of eighteen years.
- **Age of Criminal Responsibility:**
[Penal Code of Kenya](#)
Art. 14 – Immature Age
(1) A person under the age of 8 years is not criminally responsible for any act or omission.
(2) A person under the age of 12 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not do the act or make the omission.
(3) A male under the age of 12 years is presumed to be incapable of having carnal knowledge.

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- **Extraterritoriality**
[Penal Code of Kenya](#)

Chapter III – Territorial Application of Code

Art. 5 – Jurisdiction of local courts

The jurisdiction of the courts of Kenya for the purposes of this Code extends to every place within Kenya, including territorial waters.

Art. 6 – Offences committed partly within and partly beyond the jurisdiction

When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction

[Kenya Criminal Law and Procedure, Chap. 75](#)

Art. 3 – Application of Part

Where an agreement has been made with any country other than a designated Commonwealth country within the meaning of the Extradition (Commonwealth Countries) Act (Cap. 77), with respect to the surrender to that country of any fugitive criminal, the Minister may, by order published in the Gazette, declare that this Part of this Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Part shall apply accordingly.

Art. 4 – Liability of fugitive criminals to surrender

Subject to the provisions of section 16, where this Part of this Act applies in the case of any country, every fugitive criminal of that country who is in or suspected of being in Kenya shall be liable to be arrested, detained and surrendered in the manner provided by this Part of this Act— (a) whether the crime in respect of which the surrender is sought was committed before or after the commencement of this Act or the application of this Part of this Act to that country; and (b) whether there is or is not any concurrent jurisdiction in a court in Kenya over that crime.

[Sexual Offences Act of Kenya](#)

Art. 41 – Extraterritorial Jurisdiction

(1) A person who, while being a citizen of, or permanently residing in Kenya, commits an act outside Kenya which act would constitute a sexual offence had it been committed in Kenya, is guilty of such an offence and is liable to the same penalty prescribed for such offence under this Act.

(2) A person may not be convicted of an offence contemplated in subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.

- **Dual Criminality**

[Mutual Legal Assistance Act, 2011](#)

Art. 40 – Dual Criminality and reciprocity

Kenya shall adopt such measures as may be necessary to enable it to provide a wider scope of legal assistance to a requesting state in absence of dual criminality and reciprocity.

- **Mandatory reporting requirements**

[Children Act No. 8 of Kenya 2001](#)

Art. 120 – Proceedings in respect of children in need of care and protection

(1) Any person who has reasonable cause to believe that a child is in need of care and protection may report the matter to the nearest authorised officer.

119. When a child is in need of care and protection

(1) For the purposes of this Act, a child is in need of care and protection—

(h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; or

(n) who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography; or ...

- **Obligations of Educational Institutions**

[Teachers Service Commission of 2009](#)

Art. 7 – Establishment of register, power of Commission to refuse registration and appeals in respect of such refusal

(3) The Commission shall refuse to register a person as a teacher if –

(a) it is not satisfied that he is entitled to be registered under subsection (2) of this section; or

(b) it is satisfied that he is an unsuitable person to be a teacher on the grounds that he is not of good moral character, or has been convicted of a criminal offence which, in the opinion of the Commission, renders him unfit to be a teacher, or is guilty of infamous conduct in any professional respect, or has been engaged in any activities which, in the opinion of the Commission, are prejudicial to peace, good order or good government in Kenya; ...

Art. 9 – Disciplinary proceedings against registered teachers

(1) The Commission shall investigate, consider and determine any case where it is alleged that a registered teacher should have his name removed from the register on the ground that, if he were not registered, the Commission would refuse to register him.

(2) In any proceedings under this section the Commission –

(a) shall inform the person concerned of the nature of the allegations made against him, shall afford that person adequate time for the preparation and presentation of his defence, and shall afford him the opportunity of being heard in person;

(b) may act on general evidence or statements relating to the character or conduct of the person concerned, and shall not be bound to receive and consider only evidence admissible in a court of law;

(c) may administer oaths and may, for the purpose of dealing with any matter before it, summon any person to attend and give evidence and to produce any relevant documents.

(3) Subject to subsection (2) of this section, the Minister may make rules for regulating the practice and procedure of the Commission in proceedings under this section, and, subject as aforesaid, the Commission may regulate its own practice and procedure.

- **Abuse of Position of Authority**

[Sexual Offences Act of Kenya](#)

Art. 24 – Sexual offences relating to position of authority and persons in position of trust.

(1) Whoever being the superintendent or manager of a jail, remand home or children's or any institution or any other place of custody established by or under any law takes advantage of his or her official position and induces or seduces any inmate or inhabitant of such jail or institution, remand home, place or institution to have sexual intercourse with him or her, such sexual intercourse not amounting to the offence of rape or defilement shall be guilty of a sexual offence relating to a position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.

- (2) Any person who being a law enforcement officer takes advantage of his or her position and has sexual intercourse or commits any other sexual offence under this Act –
 - (a) within the limits of the station to which he or she is appointed; or
 - (b) in the premises of any station house whether or not situated in the station to which he or she is appointed; or
 - (c) on a person in his or her custody or in the custody of a law enforcement officer subordinate to him or her, commits an offence of abuse of position of authority and is liable upon conviction to imprisonment for a term of not less than ten years.
- (3) Any person who being the manager of any hospital or staff of a hospital takes advantage of his or her position and has sexual intercourse with or commits any other sexual offence under this Act with any patient in the hospital, such sexual intercourse not amounting to the offence of rape or defilement shall be guilty of an offence of abuse of position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.
- (4) Any person who being the head-teacher, teacher or employee in a primary or secondary school or special institution of learning whether formal or informal, takes advantage of his or her official position and induces or seduces a pupil or student to have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.
- (5) Any person who being in a position of trust takes advantage of his or her position and induces or seduces a person in their care to have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction to imprisonment for a term of not less than ten years.

Art. 30 – Non-disclosure of conviction of sexual offenses

A person who has been convicted of a sexual offence and who fails to disclose such conviction when applying for employment which places him or her in a position of authority or care of children or any other vulnerable person or when offering or agreeing to take care of or supervise children or any other vulnerable person is guilty of an offence and liable upon conviction to imprisonment for a term of not less than three years or to a fine of not less than fifty thousand shillings or to both.

Art. 39 – Supervision of dangerous sexual offenders

- (1) A court may declare a person who has been convicted of a sexual offence a dangerous sexual offender if such a person has –
 - (a) more than one conviction for a sexual offence;
 - (b) been convicted of a sexual offence which was accompanied by violence or threats of violence; or
 - (c) been convicted of a sexual offence against a child.
- (2) Whenever a dangerous sexual offender has been convicted of a sexual offence and sentenced by a court to imprisonment without an option of a fine, the court shall order, as part of the sentence, that when such offender is released after serving part of a term of imprisonment imposed by a court, the prisons department shall ensure that the offender is placed under long-term supervision by an appropriate person for the remainder of the sentence.

- **Criminal Law - Defamation**

[Sexual Offenses Act of Kenya](#)

Art. 38 – Offense to Make False Allegations

Any person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that for the offence complained of.

[Penal Code of Kenya](#)

Art. 67 – Defamation of foreign princes

Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Kenya and the country to which such prince, potentate, ambassador or dignitary belongs is guilty of a misdemeanour.

CHAPTER XVIII – DEFAMATION

Art. 194 – Definition of libel

Any person who, by print, writing, painting or effigy, or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed libel.

Art. 195 – Definition of defamatory matter

Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation; and it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom the matter is published is living or dead.

Art. 196 – Definition of publication

- (1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.
- (2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

Art. 197 – Definition of unlawful publication

Any publication of defamatory matter concerning a person is unlawful within the meaning of this Chapter, unless—

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter mentioned in this Chapter.

Art. 198 – Cases in which publication of defamatory matter is absolutely privileged

- (1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely—
- (a) if the matter is published by the President, or by the Cabinet of Ministers, or in Parliament, in any case in an official document or proceeding; or
 - (b) if the matter is published in the Cabinet of Ministers, or in Parliament, in any case by the President, or by a Minister, or by a Member of Parliament, as the case may be; or
 - (c) if the matter is published by order of the President or by order of the Cabinet of Ministers; or
 - (d) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct; or
 - (e) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge, magistrate, commissioner, advocate, assessor, witness or party thereto; or
 - (f) if the matter published is in fact a fair report of anything said, done or published in the Cabinet of Ministers or in Parliament; or
 - (g) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Chapter whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:

Provided that nothing in this section shall exempt any person from any liability to punishment under any other Chapter of this Code or under any other written law in force within Kenya.

Sexual Offenses Against Children

[Kenya Sexual Offenses Act No. 3 of 2006](#)

Art. 7 – Acts which cause penetration or indecent acts committed within the view of a family member, child or person with mental disabilities

A person who intentionally commits rape or an indecent act with another within the view of a family member, a child or a person with mental disabilities is guilty of an offence and is liable upon conviction to imprisonment for a term which shall not be less than ten years.

Art. 8 – Defilement

- (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
- (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
- (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
- (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
- (5) It is a defence to a charge under this section if—

(a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and

(b) the accused reasonably believed that the child was over the age of eighteen years.

(6) The belief referred to in subsection (5)(b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.

(7) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act (Cap. 92) and the Children's Act (Cap. 141).

(8) The provisions of subsection (5) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity.

Art 9 – Attempted defilement

(1) A person who attempts to commit an act which would cause penetration with a child is guilty of an offence termed attempted defilement.

(2) A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.

(3) The provisions of section 8(5), (6), (7) and (8) shall apply mutatis mutandis to this section.

Art. 11 – Indecent act with child or adult

(1) Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.

(2) It is a defence to a charge under subsection (1) if it is proved that such child deceived the accused person into believing that such child was over the age of eighteen years at the time of the alleged commission of the offence, and the accused person reasonably believed that the child was over the age of eighteen years.

(3) The belief referred to in subsection (2) is to be determined having regard to all the circumstances, including the steps the accused person took to ascertain the age of the complainant.

(4) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act (Cap. 92) and the Children's Act (Cap. 141).

(5) The provisions of subsection (2) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity.

Art. 12 – Promotion of sexual offences with a child

A person including a juristic person who—

(a) manufactures or distributes any article that promotes or is intended to promote a sexual offence with a child; or

(b) who supplies or displays to a child any article which is intended to be used in the performance of a sexual act with the intention of encouraging or enabling that child to perform such sexual act, is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than five years and where the accused person is a juristic person to a fine of not less than five hundred thousand shillings.

Art. 14 – Child sex tourism

A person including a juristic person who—

(a) makes or organizes any travel arrangements for or on behalf of any other person, whether that other person is resident within or outside the borders of Kenya, with the intention of

facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed; or

(b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child;

(c) introduces, organizes or facilitates contact with another person under the auspices of promoting tourism, in any manner, in order to promote conduct that would constitute a sexual offence against a child, is guilty of an offence of promoting child sex tourism and is liable upon conviction to imprisonment for a term of not less than ten years and where the accused person is a juristic person to a fine of not less than two million shillings.

Art. 15 – Child prostitution

Any person who—

(a) knowingly permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show;

(b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show;

(c) induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means;

(d) takes advantage of his influence over, or his relationship to a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;

(e) threatens or uses violence towards a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;

(f) intentionally or knowingly owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of any offence under this Act with a child by any person;

(g) gives monetary consideration, goods, other benefits or any other form of inducement to a child or his parents with intent to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show,

commits the offence of benefiting from child prostitution and is liable upon conviction to imprisonment for a term of not less than ten years.

Art. 16 – Child pornography

(1) Any person including a juristic person who—

(a) knowingly displays, shows, exposes or exhibits obscene images, words or sounds by means of print, audio-visual or any other media to a child with intention of encouraging or enabling a child to engage in sexual acts; (aa) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his or her possession any obscene book, pamphlet, paper, drawing, painting, art, representation or figure or any other obscene object whatsoever which depict the image of any child;

(b) imports, exports or conveys any obscene object for any of the purposes specified in subsection (1), or knowingly or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation;

(c) takes part in or receives profits from any business in the course of which he or she knows or has reason to believe that any such obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;

- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or
- (e) offers or attempts to do any act which is an offence under this section, is guilty of an offence of child pornography and upon conviction is liable to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, for imprisonment to a term of not less than seven years without the option of a fine.

Sex Offender Registry

[Kenya Sexual Offences Act No. 3 of 2006](#)

Art. 39 – Supervision of dangerous sexual offenders

(13) A register for convicted sexual offenders shall be maintained by the Registrar of the High Court and any person who has reasonable cause to so examine it may examine the register.

[The Sexual Offences Regulations, 2008](#)

Art. 7

(1) The Registrar of the High Court shall maintain a register to be known as the Register of Convicted Sexual Offenders (hereinafter referred to as “the Register”) in accordance with section 39(13) of the Act, in which shall be entered the following information regarding a sexual offender –

- (a) the name(s) of the sexual offender and alias(es);
- (b) date of birth;
- (c) place of birth;
- (d) nationality;
- (e) physical description, in particular, sex, race, height, weight, eye color, hair color, scars, tattoos or other marks or characteristics;
- (f) passport photograph and a set of fingerprints;
- (g) physical address at the time of the offence and any other [Subsidiary] domiciles;
- (h) the offence with which charged;
- (i) the sentence entered by the trial court;
- (j) the date(s) of conviction and any sentence(s) imposed;
- (k) the sentence entered on reversal or enhancement;
- (l) the age of victim(s) in the sexual offence in question;
- (m) previous convictions entered against the convict under the Act or related penal laws; (n) the relationship between the convict and the victim, if any, including information as to whether there was a position of trust;
- (o) brief particulars of the offences as well as the circumstances under which the offence was committed;
- (p) whether the sexual offender has been declared dangerous by a court of law; or
- (q) any other information, which, in the Registrar’s opinion, requires to be kept.

(2) The Register, which may also be kept in electronic form, shall be kept in the form set out in the Schedule.

(3) The registration period for a sex offender shall lapse upon the sex offender’s death.

- (4) A sex offender shall notify the Registrar if he –
- (a) ceases to live or reside at the registered address or moves to a different address.
 - (b) leaves a job or obtains a new job, or leaves a school or enrolls in a new school;
 - (c) leaves the jurisdiction of the High Court.
- (5) Notice of the changes described in paragraph (4) above shall be in writing and shall be provided prior to the change, if feasible, and in any event within twenty one days of the occurrence of the change.
- (6) Notices of change in address or place of work or school attendance shall include the new address, location and phone information.
- (7) In the exercise of the powers provided for under section 39 (13) of the Act, regard shall be had to the need to protect the names and identity of the complainant, victims and other witnesses, especially where such persons have been declared vulnerable by a court of law during criminal proceedings.
- (8) The Registrar may, in writing, indicate to any person who demonstrates to the Registrar that he has a reasonable interest whether a person's name has been entered in the Register.
- (9) Notwithstanding any other provision in these Regulations, the Registrar shall at all times ensure access to the Register by the following person(s) –
- (a) judicial officers;
 - (b) advocates of the High Court involved in criminal proceedings to which information kept in the Register has a bearing;
 - (c) probation officers;
 - (d) children officers;
 - (e) state counsels and prosecutors;
 - (f) police investigators;
 - (g) the prisons department;
 - (h) other relevant agencies which, in the opinion of the Register, may require such information.
- (10) The Registrar shall not allow access to the Register where he has reason to believe that the information is intended to be used in a prejudicial manner.
- (11) Any person who uses or allows to be used in a prejudicial manner information kept in the Register commits an offence and shall be liable, on conviction, to a fine not exceeding six thousand shillings or imprisonment for a term not exceeding six months, or both.

Art. 8

- (1) A prosecutor or an interested party in criminal proceedings may apply to a court of law, within a reasonable time after conviction but before a sentence is entered, to declare a person convicted of a sexual offence, a dangerous offender: Provided that a trial court may on its own motion declare a convicted sexual offender dangerous.
- (2) An application under paragraph (1) shall be made in open court and the convicted person shall be given an opportunity to state his case either in person or through an advocate of his choice.
- (3) A court may order that either of, the following institutions supervise a dangerous offender–

- (a) the prisons department;
- (b) the probations department;
- (c) the children's department;
- (d) the police department; or
- (e) the criminal investigations department:

Provided that nothing in this regulation may be interpreted to take away the discretion of the court to decide the institution under which to place a person declared a dangerous offender for supervision.