

**“BANGAIZA NA MZUNGU”: A CRITICAL ANALYSIS OF LAWS AND  
POLICIES AND THEIR EFFECTIVENESS IN THE PREVENTION,  
SUPPRESSION AND PUNISHMENT OF SEX TOURISM INVOLVING  
THE YOUTH IN MOMBASA, KENYA**

**Abstract**

**This dissertation provides a detailed study of the sex-tourism industry in Mombasa, Kenya. It deals with all aspects of the industry from various perspectives using modern research methods and techniques (especially the Women’s Law, Grounded Theory and Human Rights based Approaches) to enhance the reliability of the findings. Of particular concern are the ‘lived realities’ of exploited and vulnerable communities and the manifest impunity of sex tourists from Europe and the rest of the world. The research is pro-active and offers solutions to the problem that are both legislative and social.**

**BY**

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**A dissertation submitted in partial fulfilment of the requirements of the  
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## **DECLARATION**

I, **ANNETTE MUDOLA MBOGOH**, do hereby declare that this is an original work presented towards the award of the Masters' in Women's Law, University of Zimbabwe, not previously presented for any degree or other award in any academic institution.

Signed..... Date.....

This work is approved for submission towards fulfillment of the degree of Masters in Women's Law by the Supervisor.

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1. Universal Declaration of Human Rights(1948)
2. United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)
3. International Covenant on Economic and Social Rights (1976)
4. African Charter on Human and People's Rights (1981)
5. African Charter on the Rights and Welfare of the Child (1990)
6. United Nations Convention on the Rights of the Child (1990)
7. Convention on the Elimination of All Forms of Discrimination Against Women (1981)
8. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)
9. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime (2005)
10. Optional Protocol to the Convention on the Rights of the Child on the Sale of children, Child Prostitution and Child Pornography (2000)

## **LIST OF STATUTES AND NATIONAL POLICIES**

1. Constitution of Kenya
2. Penal Code Chapter 63 of the Laws of Kenya
3. Sexual Offences Act No. 3 of 2006
4. Children Act Chapter 586 of the Laws of Kenya
5. The Municipal Council of Mombasa By-Laws 2003
6. Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (2006)
7. National Tourism Policy (2005)
8. Mombasa District Action Plan (2008-2010)
9. Economic Recovery and Strategy Plan (2003-2007)

## **LIST OF COURT CASES**

1. Criminal Case No. 3527 of 2007 Republic v. Gromer Albert
2. Criminal Case No.3526 of 2007 Republic v. Ludtke Eckhardt Hermann
3. Criminal Case No. 193 of 2007 Republic v. Alex Peer Herman
4. Children's Case No 57 of 2007 Republic v. Shallyne Achieng
5. Children's Case No. 58 of 2007 Republic v. Cynthia Anyango



## ACRONYMS

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ANPPCAN	African Network for Prevention and Protection of Children from Abuse and Neglect
CBS	Central Bureau of Statistics
CEDAW	Convention for the Elimination of all Forms of Discrimination against Women
CRADLE	Child Rights Advisory, Documentation and Legal Centre
CRC	Committee on the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
CSW	Commercial Sex Worker
ECPAT	End Child Prostitution in Asian Tourism
GoK	Government of Kenya
ICESCR	International Covenant on Economic and Social and Cultural Rights
INGO	International Non-Governmental Organization
KAHC	Kenya Association of Hotelkeepers and Caterers
KTB	Kenya Tourist Board
MCTA	Mombasa and Coast Tourist Association
MOHA	Ministry of Home Affairs
MoT&W	Ministry of Tourism and Wildlife
MOYA	Ministry of Youth Affairs
NGO	Non-governmental Organization
OPC	Optional Protocol to the Convention on the Rights of the Child on the Sale of children, Child Prostitution and Child Pornography

PERAK	Pubs, Entertainment and Restaurant Association of Kenya
SOA	Sexual Offences Act
SOLWODI	Solidarity with Women in Distress
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNWTO	United Nations World Tourism Organization
VCT	Voluntary Counselling and Testing

## **CHAPTER 1.0: INTRODUCTION**

### **1.1 Why “*Bangaiza na Mzungu*”**

The phrase “*Bangaiza na mzungu*” is a Swahili expression commonly used by Mombasa youth meaning “to make ends meet by means of a white person”. The decision to research on this topical study is threefold and mainly arose from empirical observations based on my home town, social group and profession.

Firstly, as a native of Mombasa I noted that there is high revenue generated by the tourism industry following aggressive marketing of its beautiful white beaches and historical sites. However, I observed that the revenue is not utilized in order to accelerate the economic growth of Mombasa and its inhabitants resulting in visibly high levels of poverty within the district. Only insignificant amounts of this revenue trickle down in the form of low paying casual jobs and a flourishing commercial sex tourism industry.

Secondly, as a young person I observed that there is a lack of self ambition, low education levels and limited opportunities available to Mombasa youth rendering them vulnerable to enter into sex tourism for sustenance. I chose to undertake this research to bring youth’s experiences to the attention of decision makers.

Lastly, as a lawyer I needed to understand how sex tourism continues despite its criminalization under comprehensive legislation. As a participant of the Masters in Women’s Law Programme, my mind and thought process were broadened to look beyond law books and delve deeper into the interplay between law and lived realities.

This chapter hence gives a concise background of the study and sets the stage for further discussions on sex tourism involving Mombasa youth.

### **1.2 Background to the Research**

The United Nations World Tourism Organization (UNWTO) predicted a 4.1 percent annual growth in international tourist arrivals over the next 15 years. Kenya has not been excluded and has experienced unprecedented growth in tourism in recent years. According to official statistics, international visitor arrivals in the country grew from 1.4 to 1.5 million in 2005

(Central Bureau of Statistics (CBS) 2006).<sup>1</sup> Most of these visitors preferred to stay in Coast region hotels which took a share of 52.3 percent in occupancy in 2005 followed by Nairobi hotels with 23.5 percent (CBS 2006:193). German visitors occupied the highest bed-nights at the Coast Province recording 606, 400 followed by Kenyan residents with 399, 300 and lastly visitors from United Kingdom who occupied 387, 800 (CBS 2006:193).<sup>2</sup>

In a further upward trend, tourism was rated Kenya's highest foreign exchange earner in 2007 due to a concerted marketing campaign by the Kenya Tourist Board (KTB). Earnings rose by 19% to KShs 17.5 billion in the first quarter of 2007.<sup>3</sup> An 8.5 percent rise in annual earnings is projected to KShs 61 billion in 2007 as compared to KShs 56.2 billion in 2006 in what is seen as a high achievement in the economic development of the nation (Fortunate 2007).<sup>4</sup>

Despite the tourism boom, there has been very little effect on the majority of host communities. With the Coast Province being the major tourist destination in the country, it becomes particularly surprising that human poverty is estimated at 42.5 percent second to North-Eastern Province (UNDP Report 2006:49). This is attributed to the fact that approximately two-thirds of tourist revenue goes to foreign tour companies and airlines (Sakulpitakphon, 2007).

**Table 1: Human Poverty for Kenya's Provinces**

<b>PROVINCE</b>	<b>HUMAN POVERTY (%)</b>
North Eastern	50.5
Coast	42.5
Rift Valley	40.5
Nyanza	37.4
Western	36.1
Central	32.3
Nairobi	29.9

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<sup>1</sup> US\$ 23, 076

<sup>2</sup> Other Western countries had following hotel bed-nights occupancy: Italy 353,100, Switzerland 164, 300, France 183, 500 and Scandinavia 88, 800 and USA 206, 800

<sup>3</sup> US\$258.5 million

<sup>4</sup> See annexures of newspaper article Fortunate, E (2007) "Tourism earnings set to hit Shs 61 billion target" *The Standard, Kenya* 4th May 2007 p.8

The growth of tourism in Kenya coupled with high poverty levels has resulted in negative effects, one of which has been the growth of the sex trade within the sector. In December 2006 as the country was in a festive mood, UNICEF and the GoK's Ministry of Home Affairs (MOHA) released alarming and disturbing findings of the magnitude of sex tourism and sexual exploitation of children at coastal tourist resorts of Mombasa, Malindi, Kilifi and Kwale. The UNICEF/GoK report indicates that 30 percent of girls aged between 12 to 18 years comprising ten to fifteen thousand are involved in casual, part-time sex work (UNICEF/GoK 2006:7). Another two to three thousand boys and girls are reportedly involved in full-time sex work all year round, with most having migrated to the coast from other parts of the country. 59 percent of their clientele comprise foreign tourists while the remaining 41 percent are Kenyans. The tourists exploiting children for sex commonly come from Germany (14%), Italy (18%) and Switzerland (12%).

The implementation of strategies towards tourism development without proper protective mechanisms for vulnerable groups in the host communities is a recipe for disaster in the form of sexual exploitation and illicit liaisons. In response, legislative and policy measures aimed at directly or indirectly dealing with sex tourism have been established. These measures have however not been effective as they fail to target directly youth over the age of 18 years who are active participants in the sex tourism industry. The efficacy of these laws and policies has further been weakened by their failure to adequately provide outreach and support-based activities to address the underlying causes of sex tourism involving youth.

The present study hence specifically targets the demand side of the sex tourism equation comprising youth of the age bracket of 15 to 30 years as defined by the GoK's Ministry of Youth Affairs (MOYA).

### **1.3 Statement of Problem**

There is an unprecedented growth of sex tourism inextricably linked to internal trafficking involving the youth in Mombasa despite the enactment of laws and policies directly or indirectly criminalizing the issue. The practice of sex tourism in Mombasa and its environs is accepted among the youth as a legitimate source of livelihood in the absence of alternatives. Sex tourism has further been exacerbated by lack of implementation of related laws and

policies which are geared towards prohibiting child sex tourism rather than all forms of sex tourism which may involve youthful persons over the age of majority. The government's legislative and punitive measures are not strengthened by support-based and outreach activities to address the underlying causes of sex tourism hence falling short of its international human rights obligations towards the youth.

#### **1.4 Overall Aim and Objectives of the Study**

The overall aim of the present study was:

- To unearth the efficacy of laws and policies in dealing with sex tourism in relation to the Government's obligations under international human rights instruments with the aim of proposing strategies and law reform to policy and decision makers to improve the standard of living of youth in Mombasa.

From this overarching aim are deduced the following specific objectives:

- To investigate the magnitude of the issue of sex tourism, its forms and linkage to internal trafficking of youth in Mombasa.
- To critically analyse the adequacy and limitations of existing laws and policies in Kenya in addressing lived realities of the youth in relation to the problem of sex tourism.
- To investigate the application and enforcement of existing laws and policies by stakeholders in the tourism industry to deal with commercial sex tourism among the youth.
- To monitor the level of compliance of national legislation, policies and intervention programmes to international human rights instruments and standards aimed at controlling and preventing sex tourism among the youth.
- To propose strategies and amendments to existing laws and policies that are informed by underlying causes of sex tourism.

## **1.5 Assumptions**

The study was carried out on the basis of initial assumptions I had on commercial sex tourism involving Mombasa youth which were influenced by my personal observations, views and literature review I had undertaken prior to fieldwork. These assumptions, which I also refer to as hypotheses, were not cast in stone but were in a continuous process of dialogue and interaction with empirical data collected from respondents. They were as follows:

1. The general laws against prostitution and child sex tourism are not effective in combating these vices.
2. Some youth in Mombasa engage in sex tourism despite its direct and indirect criminalisation under statutory law and municipal council by-laws.
3. Some youth in Mombasa are internally trafficked from rural areas to be exploited in the sex tourism industry.
4. Despite the criminalization of the publication of information to facilitate and promote sexual exploitation of the youth, law enforcement authorities in Mombasa are ill-equipped to detect and intercept it.
5. The law enforcement agencies fail to prosecute or extradite foreign tourists and intermediaries who facilitate the sexual exploitation of the youth in Mombasa under the Sexual Offences Act, Penal Code and the Children Act hence showing the lack of seriousness within government in dealing with the problem of sex tourism.
6. The lack of application of the Code of Conduct by signatory members of the tourism and hotel industry has limited its scope and effectiveness in combating sex tourism among the youth.
7. The refusal by some members of the tourism and hotel industry to sign the Code of Conduct has limited its scope and effectiveness in combating sex tourism involving the youth.
8. Commercial sex tourism is gaining increasing acceptance among the youth as a legitimate means of survival hence punitive measures alone are inappropriate to prevent

and control sex tourism.

9. Laws and policies aimed at preventing and combating sex tourism in Mombasa only provide legal and judicial measures without requiring outreach and support-based activities by government to address the underlying socio-economic causes of sex tourism, hence limiting their effectiveness in dealing with the problem.
10. The Kenyan legal and policy frameworks fall short of international human rights standards that require legislative measures to be accompanied by administrative, social and economic measures hence further perpetuating the sexual exploitation of the youth in the tourism industry.

For ease in discussion and analysis of the findings, the assumptions are later grouped in four thematic areas in Chapter Five namely the socio-economic underlying causes, efficacy of laws, efficacy of policy and international human rights standards.

## **1.6 Research Questions**

The research questions arising from the assumptions are enlisted as follows:

- 1) Are the general laws against prostitution and child sex tourism not effective in combating these vices?
- 2) Are some youth in Mombasa engaging in sex tourism despite its direct and indirect criminalization under statutory law and municipal council by-laws?
- 3) Are some youth in Mombasa internally trafficked from rural areas to be exploited in the sex tourism industry?
- 4) Are law enforcement authorities in Mombasa ill-equipped to detect and intercept publication of information that facilitates and promotes sexual exploitation of the youth by potential foreign sex tourists?
- 5) Do law enforcement agencies fail to prosecute or extradite foreign tourists and intermediaries who facilitate sexual exploitation of the youth in Mombasa under the Sexual Offences Act, Penal Code and Children Act?
- 6) Does the failure to prosecute and extradite foreign tourists and intermediaries who



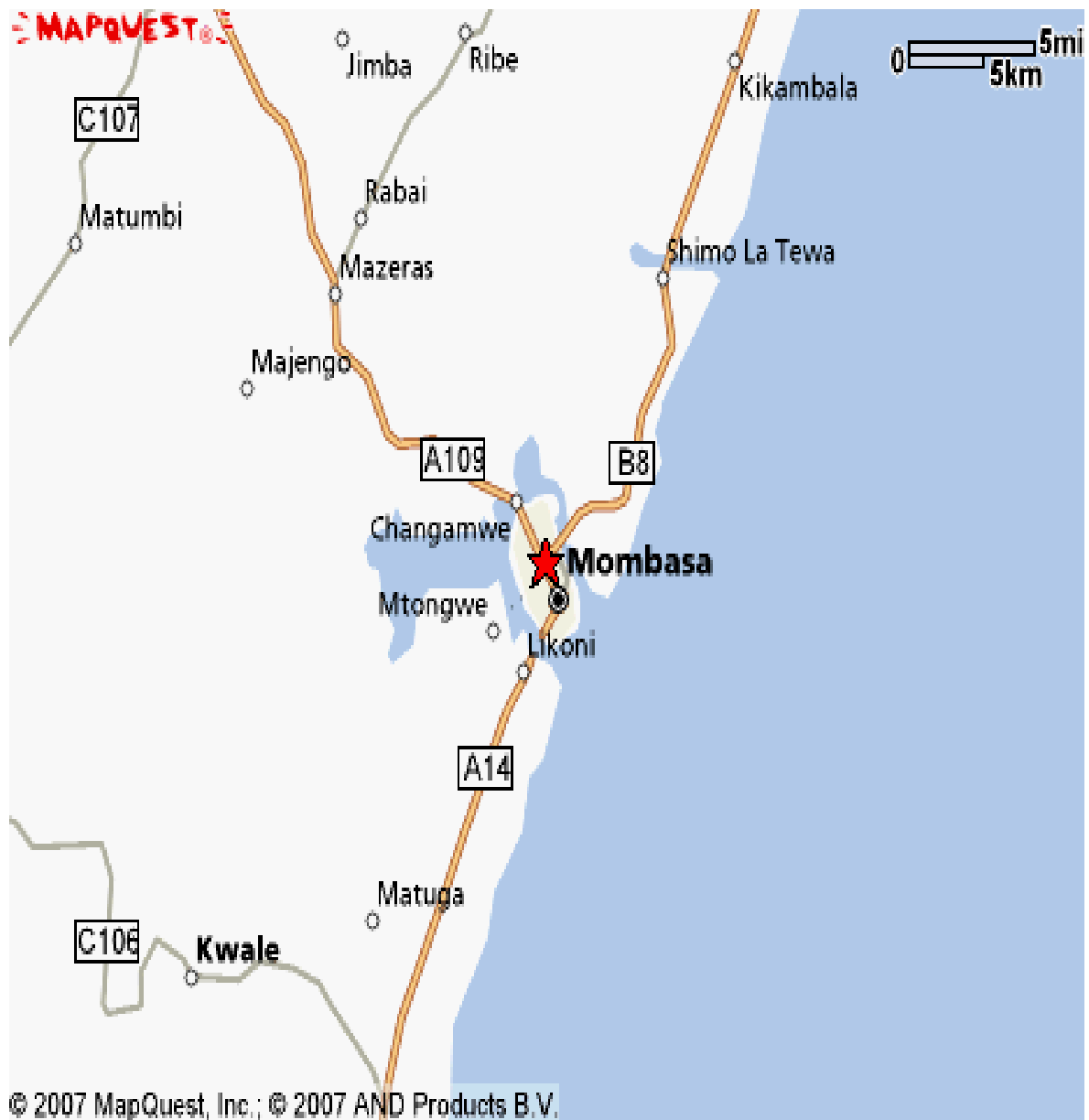
facilitate sexual exploitation of the youth show a lack of seriousness on the part of the government dealing with the problem of sex tourism?

- 7) Does the lack of application of the Code of Conduct by signatory members of the tourism and hotel industry limit its scope and effectiveness in combating sex tourism among the youth in Mombasa?
- 8) Does the refusal by some members of the tourism and hotel industry to sign the Code of Conduct limit its scope and effectiveness in combating sex tourism among the youth?
- 9) Does the increasing gain of acceptance of commercial sex tourism as a legitimate means of survival among the youth render punitive measures alone inappropriate to prevent and control sex tourism?
- 10) Do laws and policies aimed at preventing and combating sex tourism in Mombasa provide only legal and judicial measures without requiring outreach and support-based activities to address the underlying socio-economic causes of sex tourism?
- 11) Does the failure to incorporate outreach and support based activities by the government limit the effectiveness of laws and policies aimed at dealing with the problem of sex tourism?
- 12) Does the Kenyan legal and policy framework fall short of international human rights standards requiring legislative measures to be accompanied by administrative, social and economic measures?

## **1.7 Demarcation of Research**

The research was conducted in Mombasa district, headquarters of the Coast Province, and its environs towards the North Coast. For purposes of this study, the area of Mtwapa which is administratively part of Kilifi district was sampled as Mombasa due to its close proximity and being well renowned as a hub for commercial sex tourism. The study targeted a specific social group i.e. the youth, both male and female, between the ages of 15 to 30 years and their interactions with the legal and policy process in place to prevent, suppress and punish sex tourism. Respondents were drawn from urban, peri-urban and rural areas.

Figure 1: Location of Mombasa and its environs



## **CHAPTER 2.0: RESEARCH METHODOLOGIES AND METHODS**

### **2.1 Introduction**

There is an inextricable link between theories, methods and methodologies in the research process (Bentzon et al 1998). Methodologies refer to the approaches undertaken in the field to prove or disprove the initial assumptions whereas the research methods are the techniques employed to gather desired data from the target group of the present study.

This chapter describes my research journey with an emphasis on the methodological approaches employed that were particularly helpful, the accompanying methods of data collection and challenges experienced during the study period.

#### **2.2.0 Methodological Approaches**

In the course of the research period a number of methodological approaches were employed to ensure that sufficient and relevant data is collected. The information received was channeled towards confirming, disproving or rebuilding theories developed during the research design period.

##### **2.2.1 Women's Law Approach**

The women's law approach is richly endowed with several aspects. In the present study the pertinent aspect of the women's law methodology that I employed related to the interplay between law, policy and life. The approach requires that empirical data about the lived realities of women be collected as a starting point in order to grasp the relationship between law, policy and practice and consequently achieve a more holistic picture. Although the present study did not target women alone but youth of both sexes, among the youth were also young women and as such the women's law approach became appropriate.

The lived experiences of Mombasa youth were used as a starting point for finding connections between law, policies and lived realities. In applying this approach, I directed my research towards acquiring views and lived realities of Mombasa youth in relation to laws and policies dealing with sex tourism. Consequently, I employed semi-structured interviews with room for divergence to explore emerging issues and interesting stand points so as to access as much knowledge as possible about youth's values, life experiences and observations on sex tourism. I was able to record and analyze youth's life-situations, values,

real issues and dynamics of sex tourism from their perspective (Bentzon et al 1998:93). The methodology directed my discussions with the youth towards moral and political questions, dealing with empirical material while analyzing current laws on sex tourism (Stang Dahl 1987).

This methodology was particularly helpful to test my assumptions on the existence of sex tourism, its forms and linkage to internal trafficking, its underlying causes and level of its acceptance among the youth. The lived experiences of Mombasa youth attested to poverty, lack of employment, high school drop-out rates and peer pressure which, when weighed against the current laws imposing punitive measures against sex tourism, tilted the scale heavily towards its continued practice. This helped me to understand the ineffectiveness of laws which are not informed by grounded issues.

The women's law approach enabled me to reveal interactions between the implementation of laws such as the Sexual Offences Act (SOA), Children Act, Penal Code and Municipal Council by-laws which criminalize forms of sex tourism and the lived realities of the under-resourced enforcement agencies in Mombasa, their lack of political will and a corrupt justice system that weakens their capacity to deal with sex tourism.

The efficacy and connection between policies seeking to address sex tourism such as the Code of Conduct and the Youth Fund and the realities of the youth was investigated in depth by employing this approach through semi-structured interviews of youth and key informants. Through this approach, it unfolded that policies in place were directed towards child protection excluding youth over eighteen years who actively participated in sex tourism. In addition, the Fund was inaccessible and hence unhelpful to majority of the youth as a result of bureaucracies.

Even if the women's law approach is geared towards understanding the complexity of law and life for women, it still recognizes the significance of understanding gender neutral laws from the perspective of both women and men in order to get a balanced perspective of laws' effect on both sexes. As such, it was within the ambit of this methodology to also focus on male youth so as to determine holistically the effect of the law on young women. Consequently, I analyzed the strengths and weaknesses of laws and policy and their application from a feminist perspective to law.

From a feminist perspective, it was unearthed that some laws, despite being neutral in construction, are enforced in a discriminating way against young women. Law enforcement officers effected arrests and pressed charges of loitering mainly against women, while still acknowledging that male sex workers existed in Mombasa. The operation of the law resulted in *de facto* inequality despite providing for *de jure* equality due to the gender-biased attitudes of the law enforcement agents. On policy, discrimination was depicted when these policies were found to target children while excluding the youth.

### **2.2.2 Grounded Theory**

Grounded theory is an iterative process in which data and theory, lived reality and perception about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. In grounded theory, the interaction between developing theories and methodology is constant as preliminary assumptions direct the data collection and then the collected data when analysed indicates new directions and new sources of data (Bentzon et al 1998:17).

In employing a grounded research process, the use of the dung beetle method is inevitable. In this method, the researcher collects data, sifts and analyses it, considers the implications of the findings, determines what to collect next to meet the needs and continues with the collection and analysis cycle. Through this process new methodologies, perspectives and theories are developed (Bentzon et al 1998:18).

In the present study, a grounded theory was employed throughout the data collection process. In the beginning, my assumption that sex tourism occurred solely in hotels and lodges was revisited when sources of data revealed that private villas, night clubs and residential homes are emerging as new establishments within which sex tourism occurs. Upon analysing and sifting through this data, I sought to confirm this new direction through semi-structured in-depth interviews and questionnaires targeting key respondents e.g. commercial sex workers, law enforcement agencies etc. The private and intricate nature of such establishments rendered them beyond my ambit for direct investigation as a student researcher.

In using the dung beetle method, some preliminary sources of data such as the Kenya Association of Hotelkeepers and Caterers (KAHC) that I had enlisted as a key informant during the design process led me to other associations and organisations that had programmes

and campaigns against sex tourism e.g. the Mombasa and Coast Tourist Association (MCTA), Pubs, Entertainment and Restaurant Association of Kenya (PERAK) which I pursued as new sources of data that had not been previously anticipated during the research design process.

In collecting data from key informants the risky sexual behaviour of the youth engaging in sex tourism and poverty were brought out as key issues. After sifting and analysing this data, I sought new directions and new sources of data seeking to answer newly hatched questions. This grounded process hence led me to interview three additional key informants namely Ministry of Youth Affairs (MOYA), the Youth Counselling Centre and Solidarity with Women in Distress (SOLWODI). MOYA provides loans to youth for income generating projects while the latter two NGOs carry out HIV/AIDS programmes. In addition, this new direction guided me to seek further information in group discussions and in-depth interviews with young people and key informants on the efficacy of the Youth Fund and HIV/AIDS knowledge among the youth.

### **2.2.3 Human Rights Based Approach**

Commercial sex work is a thorny issue in human rights discourse with some states propagating for freedom of choice and right to work to comprise the right to engage in commercial sex work. Nevertheless, a number of human rights instruments provide for the protection of young women and children from exploitation in prostitution and trafficking in persons. The issue of exploitation was investigated and came out as an issue in terms of police harassment and lower payment for the majority of commercial sex workers in comparison to the profits gained by organized criminal syndicates running the industry. Kenya, having ratified many of these instruments, has an obligation to bring life to their provisions.

The human rights approach was employed throughout the study. The related international human rights instruments were analysed as they depicted the ideal life scenario for every human being. The choice of international instruments was directed by the research topic, assumptions and target social group targeted.

In employing this methodology, the provisions of international instruments that had a bearing on the underlying causes of sex tourism are regarded as international obligations that Kenya

has to adhere to by incorporating them into national laws and adopting all appropriate measures to ensure that the youth achieve a meaningful standard of living. Hence, I identified gaps between existing national laws, lived experiences and human rights standards.

During data collection, respondents alluded to the fact that lack of employment, illiteracy, poverty, poor legal enforcement etc., were issues perpetuating sex tourism involving Mombasa youth. The Government had hence failed to fulfil its international obligations to ensure youth's enjoyment of the rights to work, education, adequate standard of living and sustainable development which would in turn reduce their vulnerability to engage in sex tourism. Also, the Government has failed to provide adequate rehabilitative and preventive measures against sexual exploitation and trafficking as per human rights standards. NGOs, INGOs and religious organisations in Mombasa attempt to fill this vacuum but are limited in scope and resources.

The human rights approach was particularly helpful in investigating my assumption on the disparities between Kenyan legal and policy framework and international standards.

Through pursuing this approach it was shown that the Government had only fulfilled its international obligations by enacting legislative measures to address the issue of sex tourism. However, these were ineffective as they were not supplemented by support-based activities.

#### **2.2.4 Legal Centralism**

Legal centralism takes norms that are applied by state courts as a starting point. It begins from the standpoint that state law is the most important normative order and all other norms creating and enforcing social fields, institutions and mechanisms are either illegal, insignificant or irrelevant (Bentzon et al 1998:31). Despite the dangers of taking such a narrow perspective, it remained imperative to use legal centralism as an analytical framework because laws relating to sex tourism are criminal laws which are classified as state laws.

Offences related to sex tourism, such as living on the earnings of prostitution, defilement, child sex tourism, child trafficking, child pornography, loitering for the purposes of prostitution, unnatural offences, etc., were the starting point of my study. I analyzed their efficacy in preventing, suppressing and punishing sex tourism involving youth in Mombasa. Through this approach I was able to interrogate my assumption on the efficacy of laws

criminalising sex tourism.

In employing this approach, I selected, perused and analyzed court documents, statute books and subsidiary legislation for a critical investigation of the legal position of the youth in relation to sex tourism. I also interviewed law enforcement agents such as magistrates, police and municipal council officers.

### **2.2.5 Legal Pluralism**

Legal pluralism requires the researcher to recognise regulatory or normative systems other than formal law that affect and control people's lives (Bentzon 1998:41). In employing legal pluralism as a conceptual framework, it is imperative to identify situations which are characterised by the presence of more than one normative order in a social field.

The Kenyan legal system is in itself plural in nature hence being informed by this methodology was pertinent. I hence acknowledged and appreciated a broader meaning of the term "law" to embrace extra "legal" forces other than state courts such as the church, community elders and possible out of court settlements to achieve a holistic picture of the situation on the ground concerning mechanisms dealing with sex tourism.

This approach was particularly relevant when my visits to court registries showed the presence of few court cases on sex tourism indicating the probability of the presence of other informal structures that deal with sex tourism incidents involving the youth.

In employing this approach, I targeted new sources of data e.g. local chiefs and religious organisations which revealed their efforts in rehabilitating youth engaging in sex tourism. Nevertheless, these informal normative orders work closely with formal structures such as the Children's Department and the Police. The Children's Department could not be interviewed in the course of the study due to lengthy bureaucratic procedures involved in obtaining research permission.

Interestingly in applying a legal pluralist lens, formal structures in some instances dealt with sex tourism related cases through out of court settlements rather than instituting criminal proceedings especially where they implicated youth over the age of majority. The Tourist



Police Unit (TPU) sometimes ‘went round the law’ by mediating cases where female commercial sex workers reported exploitation by foreign tourists who failed to pay their dues. They also provided mediation and legal advice concerning domestic problems between female tourists and local male youth. In-depth interviews with the police also suggested the existence of corrupt mechanisms where some officers are offered hefty bribes by suspects to drop cases on sex tourism.

This methodology worked well with in-depth interviews and observations of interactions between community and religious leaders, the police and youth. It served to weigh assumptions I had on the efficacy of existing laws and policies on the ground, rate of prosecution of foreign tourists and intermediaries and the implementation of the Code of Conduct or in-house mechanisms within entertainment establishments.

#### **2.2.6 Sex and Gender Perspective**

Sex is based on physical distinctions between females and males whereas gender is a social and cultural construct (Bentzon et al 1998:82). Male and female roles and relations are socially and not biologically constructed. Gender thus entails on the one hand, men’s and women’s active roles in society and on the other hand, ingrained social ideas about femininity and masculinity. These concepts of masculinity and femininity have strong implications on sexuality in patriarchal societies (Zinanga: 1996). Male sexuality is defined by its aggressive nature and manifests itself through multiple partners. On the other hand, female sexuality is passive and restricted for the purposes of conventional mothering or reproductive role.

Employing this analytical framework was particularly important to uncover and understand the changing social constructs of masculinity and femininity of youth with the advent of sex tourism. Since the study targeted both young men and women, I recognized that the biological differences and consequently gender roles may have implications on the forms of sex tourism practised by either sex, interplay of both sexes with the law against sex tourism and actors charged with the responsibility of enforcing the law.

Generally, as in other patriarchal societies, a man’s active role is that of a provider and breadwinner. Due to the limited opportunities available to young males in Mombasa, sex tourism becomes an avenue to fulfill the role of provider either as a commercial sex worker or intermediary. In pursuit of their societal obligations, some young men are willing to be

provided for by aged, white women under the guise of work. These young men do not view financial support by a white woman as diminishing their masculinity. The aggressive male sexuality is illustrated by male sex workers who explored their sexuality with foreign male tourists beyond the confines of a heteronormative society by engaging in homosexuality.

On the other hand, women's role is that of child nurturers and as passive sexual beings. Young women engaging in sex tourism defied these societal expectations due to economic reasons and aggressively acquired multiple sexual partners in a competitive industry.

Through this methodology, it became clear that sexuality is socially constructed and hence is capable of considerable shifts in expression. This approach was useful in testing my assumptions on the forms of sex tourism. It required the utilization of in-depth interviews with key respondents to reveal the gendered expectations of the sexes.

This approach was also helpful in analyzing the discriminatory enforcement of sex tourism laws towards young women which was influenced by gendered attitudes of male law enforcement agencies.

#### **2.2.7 Intersections between Gender and Race**

The element of race was evident in the in-depth interviews conducted with all categories of respondents. Therefore, I thought it would be appropriate to analyze the dynamics of race which justified the abandonment of gendered roles of men and women and their personal interactions with their own sexuality. Some youth engaging in sex tourism had no qualms about homosexuality where the partner was Caucasian but condemned it vehemently among African males. Some male youth in Mombasa did not view economic dependency on white women as lessening their masculinity.

This methodological approach was appropriate to develop theories on the underlying causes perpetuating sex tourism among Mombasa youth such as the desire to travel abroad, acquire inter-racial children, closer association with the white race etc. The concept of white supremacy explained the economic dependence of some African youth on foreign white nationals for provision of their material needs. This economic angle appears to underlie the Government's reluctance to deal boldly with sex tourism in an attempt to protect diplomatic relations with implicated countries.

### **2.2.8 Multi-sectoral Approach**

The multi-sectoral approach emphasizes on incorporating lay people and other professionals such as social workers, administrators, church leaders, paralegals and psychologists (Tsanga 2003:18). In employing this approach, the study collected and analyzed data from sectors and areas traditionally covered by other disciplines rather than restricting it to legal professionals. As a result, I conducted in-depth interviews with young people, religious leaders, social workers, community leaders, government officers, etc., on their attitudes towards sex tourism and action they were taking to deal with the issue.

This methodological approach assisted in investigating my assumptions on the forms of sex tourism and its linkages to internal trafficking. In addition, it became useful in testing assumptions on the identifiable gaps between the national situation and international human rights instruments especially in the provision of support-based programmes to effectively deal with sex tourism.

## **2.3 Qualitative Research Methods**

Since the present study sought to ascertain why and how some youth in Mombasa continued to engage in sex tourism despite its criminalization rather than uncover its prevalence, I used qualitative research methods and sources that were not concerned with numbers but provided deeper insight and understanding of the issues. Qualitative methods are methods through which the investigator tries to study all elements present in a setting and people are the primary data gathering instruments (Tsanga 2003:41). Consequently, data was collected on the basis of detailed accounts on life experiences of the youth and in-depth interviews with key informants to reveal the interplay of law and policy with their lived realities.

### **2.3.1 In-depth interviews**

The main method of data collection employed in this research was in-depth interviews which were semi-structured in nature to ensure that only relevant issues are thoroughly explored. In some instances, I encouraged respondents to diverge into emerging themes that brought out additional insights and information. This left room to uncover personal and social context of beliefs and feelings on sex tourism and deeper interactions between the respondents and me. Scheduling interview appointments with key informants proved difficult as some were too busy. Holding a completely private interview was not always possible. Due to some key

informants' open door policy, there were several interruptions ruining the flow of the interview and lack of privacy e.g. an interview with a court prosecutor.

The length of the interviews generally lasted between thirty minutes to one hour and a half due to the detailed nature of data I sought to investigate. Interestingly, most respondents divulged more significant and revealing information after we had officially concluded an in-depth interview during informal conversations. I was also keen to record those informal communications. For instance, a police officer intimated at the end of an interview to have been offered KShs 300,000 as bribe from suspects to drop an ongoing case.<sup>5</sup>

This research method was effective in that I received first hand information and clarifications from the respondents and a glimpse into their lived realities in the interactions between law, policy and people.

A total of 40 in-depth interviews were conducted in the course of the research period. These comprised 35 key informants and 5 general respondents. The individuals categorised as key informants were those who had technical expertise on the subject and provided immense information which was significant to the study e.g. commercial sex workers, police officers, magistrates etc.

**Table 2: Number of Key Informants interviewed in Mombasa District**

<b>Key Informant</b>	<b>Number</b>	<b>No. of females</b>	<b>No. of males</b>
Youth Commercial Sex Workers	10	9	1
Tourist Officer	1	-	1
Magistrate	3	1	2
NGO Officer	2	-	2
INGO Officer	1	1	-
Religious Leader	3	-	3
Community Leader	1	-	1
Police Officer	3	-	3
Hotel and Tourism Industry	7	1	6
Prosecutor	1	1	-
City Council Officer	2	-	2
Youth Officer	1	-	1
<b>TOTAL</b>	<b>35</b>	<b>13</b>	<b>22</b>

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<sup>5</sup> US\$4,615

### 2.3.2 Group Discussions

Group discussions provided an opportunity to engage the youth and members of the community on their own analysis of the issue and generate discussion. I held a total of four group discussions: two in secondary schools with children between the ages of 15-18 years, one with municipal council workers and another with commercial sex workers.

**Table 3: Schools visited and number of students addressed in Mombasa District**

<b>Name of School</b>	<b>Number of girls</b>	<b>Number of boys</b>
Junda Secondary School	8	12
Jolaurabi Private School	20	12
<b>TOTAL</b>	<b>28</b>	<b>24</b>

The two group discussions of school students and commercial sex workers were of mixed sex groups. In the former group discussion, the boys' views appeared to be drowning out the girls' views and most girls were inhibited probably due to the presence of their teachers. Due to a long school vacation coming up during the research period, time was inadequate to arrange separate group discussions for boys and girls. However, with some prompting, the girls were able to participate in the discussions.

The group discussions were intermeshed with gender and legal awareness discussions due to the sensitivity of the topic of sex tourism. I thought that if sex tourism was brought out in a direct manner, it may not elicit a positive response from the group. I used the questions, clarifications and comments from participants to locate the topic of sex tourism, their experiences and culture of the community. For instance, in the group discussion with commercial sex workers, one participant in his contribution clearly pointed to the police being a hindrance in reporting sex tourism as they sought money from the public before initiating investigations.

The use of this method was helpful in gathering data on collective attitudes and views on sex tourism as participants refined each other's input into the discussions by citing examples of incidents they had collectively heard involving sex tourism. For example, there was a general consensus within these discussions that poverty was an underpinning cause for youth's involvement in sex tourism.

The problem I faced in utilising this method is that a group discussion in average comprised 25 participants and, hence, it became difficult to ensure that all participants had an opportunity to speak. In some instances, the participants would remain silent and difficulties arose in trying to get discussions started. To overcome this hurdle, I further divided participants into smaller groups of five within which they could collect contributions within a non-intimidating setting and later report in plenary.

### **2.3.3 Observation**

I restricted myself to the role of an observer of social interactions between young people and foreign tourists in six selected nightclubs and demeanour of respondents in the course of interviews. The nightclubs were sampled from grounded information given by respondents on nightclubs that are commonly known as hot spots for sex tourism transactions. Four of the nightclubs I observed are members of PERAK and by extension signatories to the Code of Conduct and two nightclubs are not signatories to the Code. The existence of sex tourism in the selected establishments was confirmed through the high number of youths I observed soliciting or coupled with mainly older white clientele.

In the four signatory nightclubs, I looked for the implementation of visible and public requirements of the Code of Conduct such as production of identity cards by revellers, prohibition of entry to children and display of materials campaigning against child sex tourism. In the two non-signatory nightclubs I observed whether there were more incidences of sex tourism and the existence of any in-house mechanisms to address it.

When some of the in-depth interviews and group discussions were inordinately delayed, I took the opportunity to observe the general surroundings, such as police stations, government and NGO offices and was, on occasions, briefed by relevant personnel. Some briefings provided valuable insights into the situation. Prior to a group discussion in a rural secondary school, a briefing by the headmaster revealed that the school was losing some students to the sex tourism industry.

This method was particularly helpful to reveal relationships between the law, youth and tourists in their social context and understand the dynamics behind sex tourism. It was problematic, however, as there was a danger of drawing wrong inferences from observed events. Such data was thereafter combined and triangulated with follow-up interviews with

nightclub proprietors, NGO officers working on the Code of Conduct and commercial sex workers. In other words, this method was utilised to add value and give a background perspective to information acquired through other methods.

#### **2.3.4 Questionnaires**

Questionnaires are mainly used in quantitative research. In my case, questionnaires were utilised to specifically collect data from commercial sex workers whose schedule proved difficult for them to set aside time for in-depth interviews.<sup>6</sup> The commercial sex workers were identified by a contact person with whom they are acquainted. Since, the intention was not to conduct a survey on sex tourism but to acquire information on the preliminary assumptions on existence of sex tourism, its forms and interactions between commercial sex workers and law enforcement agencies only five questionnaires were issued. I received 100 percent return rate of the questionnaires. The key informants were forewarned about the personal nature of the questionnaires and they were at liberty to refrain from answering uncomfortable questions. Total anonymity was guaranteed.

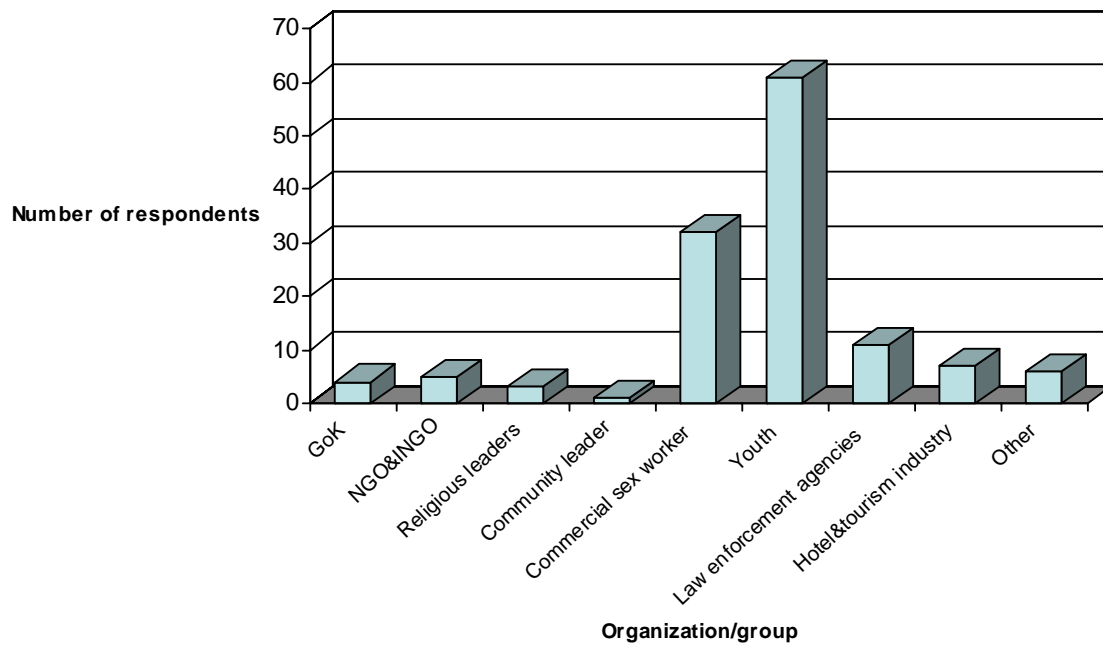
The limitation in this method is that the closed questions on the distributed questionnaire gave key informants little, if any, scope for personal input which may have given additional insights or information. Some of the key informants misunderstood the closed questions and due to lack of time they could not be pursued for an in-depth interview for clarification.

Nevertheless, the questionnaires were useful in gathering data on the manifestations of sex tourism, places in which it occurs, underlying causes of youth's engagement and interactions between commercial sex workers and the law enforcement agencies.

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<sup>6</sup> See Annexure 12 for questionnaire template

**Figure 2: Respondents by Organisation/Group**



### **2.3.5 Secondary Data Sources**

Library and internet sources played an important role to provide background information on the initiatives made and connections of sex tourism with other areas such as education, employment, law enforcement among others prior to commencing field work. Since the area of sex tourism is a novel issue there are few library materials dealing directly with the issue. Hence, Internet sources became useful to fill in this gap.

Policy documents were sampled in relation to their relevance in dealing with underlying causes of sex tourism. The Code of Conduct and district action plans were analyzed as they stipulate action to be taken to deal with child sex tourism and organisations charged with various responsibilities in the campaigns.

On the other hand, the court records sampled involved sex tourism related offences involving foreign tourists e.g. defilement, living on the earnings of prostitution, loitering etc. They provided information on how courts and police dealt with the issue e.g. the charges instituted, particulars of crime, court procedure, witness testimonies etc.

The difficulty in using this research method is that some documents did not provide pertinent information which I required to answer issues in question. For instance, court records do not provide details on the background of the offender and complainant in order to understand



trends, forms and underlying causes of involvement. In addition, it was difficult to point out whether the offender was a first offender or a habitual offender, for example, in loitering cases. As a result, this information required triangulation through interviews with court officials such as prosecutors, magistrates and police officers who were handling the cases.

Since certain policy documents were labelled private and confidential, some institutions did not allow perusal of original documents and referred me to internet sources for general provisions e.g. the Code of Conduct which is only available in one version.

Relevant newspaper and government articles were perused and compiled to offer a glimpse into how sex tourism was reported in the media. Conferences and related ceremonies on the topical issue were a key source of secondary data. In the course of the research period, I attended an international conference on child sexual abuse in Nairobi organised by ANPPCAN Regional wherein child sex tourism was discussed extensively by international experts. I also attended the second signing ceremony of the Code of Conduct in Malindi. Ten Mombasa hotels committed themselves towards the protection of children within their establishments.

## **2.4 Methodological Challenges**

The road towards the completion of field work was bumpy and I experienced a number of challenges.

### **2.4.1 Sensitivity of the Research Topic**

There was a lot of suspicion from key informants who feared that the information may be exaggerated and affect diplomatic relations, tourism industry and even national security. This perception may partly be attributed to the fact that sex tourism industry is organized and interlinked with transnational drug trafficking syndicates. Key informants agreed to share information openly after being reassured that the research was purely academic and anonymity would be guaranteed.

Conversations on the topic inevitably led to discussions on sexuality which is shrouded in secrecy. Hence it was an uncomfortable topic for some respondents. To overcome this barrier, I broached the subject from a non-threatening angle of the research, e.g., societal attitudes on sex tourism.

#### **2.4.2 Research permission**

There is a lot of bureaucracy in obtaining research permissions, especially from government agencies which led to inordinate delays. For example, I received a response from the Judiciary to conduct the research three months later. One key official, the Police Commissioner, officially denied me permission without giving any reasons for his directive. Nevertheless, I circumvented this by using personal contacts and acquaintances.

#### **2.4.3 Key Informants**

It was difficult to reaching and identify commercial sex workers for interviews due to their late working hours and the stigma they face. I overcame this by contacting them through third parties/gatekeepers who were well known to them e.g. SOLWODI, nightclub acquaintances.

#### **2.4.4 Inability to interview some anticipated respondents**

In the research design, I had identified foreign tourists as a target group. Due, however, to the language barrier, lack of time and their mass exodus as a result of the holding of the general elections and post-electoral violence, I was unable to interview them. Consequently, the research explored the demand side of sex tourism rather than supply side.

#### **2.4.5 Accumulation of data**

Extensive field work for a period of five months generated a lot of data which reflected a myriad of issues. It became a challenge to streamline and sort out relevant data to the study.

## **CHAPTER 3.0: LITERATURE REVIEW**

### **3.1 Introduction**

This chapter contextualizes the present study within existing literature and studies on sex tourism. There is little literature available on sex tourism, hence, heavy reliance is made on Kenya country reports under international instruments and the UNICEF/GoK study address issues on sex tourism that are pertinent to this study. The contributions that the present study seeks to provide to scholarship in the field of sex tourism are also discussed.

### **3.2 Devising a Working Definition of the term “Sex Tourism”**

An international definition of “child sex tourism” was reached by the Subgroup against Sexual Exploitation of Children, NGO Group for the Convention on the Rights of the Child (NGO CRC Group).<sup>7</sup> It is defined as:

The commercial exploitation of children by men or women who travel from one place to another usually from a richer country to one less developed, and there engage in sexual acts with children, defined as anyone under the age of 18.<sup>8</sup>

The NGO CRC Group broadened this general definition to encompass tourism organized specifically around commercial sexual exploitation which stresses the prior intention of the tourist, situational exploiters and legal and illegal tourism businesses within which children are sexually exploited. A broader definition is important because child sex tourism often involves the use of many structures and actors e.g. accommodation, transportation and other tourism-related services that facilitate contact between children and the exploiters (Sakulpitakphon 2007:6).

Sex tourists are not exclusively holiday-makers but may include businesspersons, transport workers and military personnel. They may be foreign or domestic tourists who take advantage of being away from their homes to engage in commercial sex (UNICEF/GoK 2006:12).

The Sexual Offences Act (SOA) in section 14 defines child sex tourism as:

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<sup>7</sup> This definition was reached in January 2005

<sup>8</sup> A child is also defined under section 2 of Kenya’s Children Act as any human being under the age of eighteen years.

- (a) Making or organizing any travel arrangements for or on behalf of any other person, whether that person is resident within or outside the borders of Kenya, with the intention of facilitating the commission of a sexual offence against a child irrespective of whether the offence is committed; or
- (b) Printing or publishing, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child
- (c) Introducing, organizing or facilitating 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...

The SOA definition envisages organized child sex tourism with the use of intermediaries. It fails to capture situational exploiters who engage in commercial sex with children as an 'added value' to their visit as a form of sex tourism in contravention with the international definition. These acts are however covered under offences of child prostitution and defilement. Organized sex tourism with respect to other vulnerable groups such as youth is not criminalized under the SOA.

Since, youth over the age of eighteen years are not within the scope of the NGO CRC Group and SOA definitions, it became imperative that a working definition be formulated by adopting the international standard. Consequently, sex tourism is broadened in the present study to encompass both organized and casual commercial sexual acts involving youth between 15-30 years, which a foreign traveller engages in as an added value to or sole motivation for the visit.

### **3.3 Retracing the Steps: A Brief Historical Background of Tourism Sector in Kenya**

At independence in 1963, Kenya relied heavily on the agriculture and manufacturing sector as a means of economic growth. To diversify the economy and attract greater foreign investment in the tourism industry, the government created an enabling environment by establishing an open door economic policy for tourism development. This resulted in a steady increase in employment opportunities, tourist arrivals and earnings within the sector.

Chissim reaffirms that between 1965 and 1972, the number of people visiting Kenya rose by 132%, which increase led to further investment and employment opportunities in the industry (Chissim:1996).

The popularity of the Kenyan coast as a tourist destination began in the early 1920s when it attracted mainly white settlers and colonial government officials who travelled there in search of

holiday excitement. Much of the tourism activities were centred on the major beach towns including Mombasa, which is currently second largest cosmopolitan city in Kenya. Its total population in 2007 is projected to 871, 657 (CBS: 2007).<sup>9</sup> The high demand for the Coast region as a tourist attraction remains evident through the high numbers of occupied hotel spaces in the region as compared to parts of the country.<sup>10</sup>

However, the industry experienced a short relapse in the first half of 2003, due to the issuance of negative travel advisories against Kenya and the imposition of flight bans by some countries as a result of terrorist attacks in 1998 and 2003. Nevertheless, growth in the sector took an upward turn at the beginning of 2004. Combined tourism earnings from international and domestic sub-sectors were registered to have risen by 24.7 percent from KShs 39.2 billion in 2004 to KShs 48.9 billion in 2005 (CBS 2006:193). By the end of 2007, the KTB had projected tourism earnings even higher to KShs 61 billion (Fortunate: 2007).

In 2003, the sector was identified as one of the industries that would contribute significantly towards poverty alleviation and employment creation as set out in the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007. The industry employs about 1.3 million Kenyans, who comprise approximately 8% of the wage-earning labour force (Weaver: 1998).

This immense economic power and influence that the tourism sector wields in the country also exerts political influence. The UNICEF/GoK report explains that the global tourism industry affects local economies and shapes the behaviour of both tourists and the host populations which they visit. The tourism market is extremely dependent on social, political and economic change in countries of origin and destination of tourists. The contradiction for host governments, particularly those highly dependent on tourism and the foreign exchange that it brings e.g. Kenya, is that while recognizing that certain kinds of tourism and tourist behaviours are not necessarily acceptable, appropriate or even legal, any attempt to exert control on the sector and

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<sup>9</sup> The 1999 National Census placed the population of Mombasa District at 665, 018 comprising 363, 552 males and 301, 466 females.

<sup>10</sup> According to official statistics, Coast region hotels which took a share of 52.3 percent in occupancy in 2005 followed by Nairobi hotels with 23.5 percent (CBS 2006:193)

tourists, might jeopardize a lucrative market. This is the predicament that the Kenyan government currently faces in formulating and enforcing laws and policies, especially on sex tourism.

### **3.4 Sex Tourism and its Linkage to Tourism Development**

It is indicated in various literature that in recent years the number of men and women travelling to Third World foreign destinations seeking sex has increased tremendously as the tourism industry expands on an international scale. Apart from sun, sand and sea, sex represents an important tourist attraction in many countries, either very explicitly, as in the case of renowned destinations as Thailand and Amsterdam, or more covertly, as in a number of Asian and African countries, such as Kenya. For most people, travel and sex are frequently linked, even among those travelling in their own countries. O'Connell Davidson points out that while this is understood and research shows this to be universal, it goes largely unacknowledged, i.e. at the individual level, as well as at the level of tourist marketing: few admit that this is a key component of holiday making (O'Connell Davidson: 2006).

Omondi attests that increasingly, more tourists are travelling to Kenya in search of the four "S"s i.e. sun, sea, sand and sex to the extent that Kenya is now being listed as a sex tourism destination. The internet, which 40 percent of foreign tourists use for information on Kenya, has been identified as a possible tool in advertising Kenya abroad to potential sex tourists as pornographic pictures of children are posted in websites (Oyuke: 2007).<sup>11</sup>

In his article, Clarke maintains that although hard figures are hard to come by, local people on the Kenyan coast estimate that as many as one in five single women visiting from rich countries are in search of sex (Clarke: 2007).<sup>12</sup> The figures are estimated to be higher where male tourists are concerned.

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<sup>11</sup> See Annexure for full article Oyuke, J (2007) "Kenya Makes In-Roads in Tourism, says Survey" in *The Standard Kenya* p.10

<sup>12</sup> See Annexure for full article Clarke, J (2007) "Women Tourists Flock Kenya for Sex Adventures" in *The Standard Kenya* p.24

The increase in sex tourism has been attributed to the increase in the development of tourism which is traditionally accepted as being an increase in income generated by the arrival of international tourists. Unfortunately, this point of view overlooks the fact that this prosperity does not visibly improve the lot of host communities. Akama rightly reiterates that the success of tourism development in any country ought to be measured by how the industry benefits host communities.

In context of the present study, the failure of tourism development to bring about economic growth in Kenya is illustrated by the high human poverty levels at the Coast Province which caters for about 66 percent of all tourism activities.<sup>13</sup> The existence of a vulnerable host community and the tourists in search of sexual adventures becomes the meeting point for different needs.

### **3.5 Reviewing Current Government Interventions against Sex Tourism**

It was only until 2001 that the Government, while presenting its initial UNCRC report, acknowledged that the development of the tourism sector had brought with it the problem of sex tourism in coastal resorts and that a new breed of sex tourists targeting children were on the loose in the country (Save the Children Sweden: 2006).<sup>14</sup> The concluding comments of the UN Committee on the Rights of the Child made it a task of the Government to undertake a baseline survey to reveal the magnitude of the problem. This set the ball rolling for a number of legislative enactments, such as the Children Act, to deal with the problem specifically in relation to children.

In the written response by the government, it is indicated that Kenya's child population stands at 17,584,473, which is slightly more than a half of the population (CRC Report: 2007 a). The Government acknowledged that such a high proportion of children had socio-economic implications in terms of the provision of basic services, such as education, health, food, shelter and security. High poverty levels and the HIV/AIDS epidemic had led to an increase in the number of children living under difficult circumstances. The report, however, fails to indicate

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<sup>13</sup> See Chapter One on human poverty percentage levels

<sup>14</sup> The first periodic report covers the period between 1990-1997.

any budgetary allocation for the preventive programmes for the protection of children living in these circumstances from child labour, abuse and sexual exploitation.

In its second periodic report to the UNCRC, the Kenyan government acknowledged that available information pointed to an increase in commercial sexual exploitation of children as part of sex tourism and child pornography, particularly in the coastal region of Kenya (CRC Report: 2007b).<sup>15</sup> To curb the escalation of sex tourism, beginning April 2005, the Government in partnership with stakeholders in the tourism industry began to prepare a code of conduct and carry out training for tourism personnel on handling child sex tourism victims (Save the Children Sweden 2006: 13).

In October 2005, UNICEF was charged with the responsibility of conducting a survey, targeting children between 12 to 18 years, in the coastal resorts of Mombasa, Malindi, Kilifi and Kwale together with stakeholders such as the Ministry of Tourism and Wildlife (MoT&W), MOHA's Children's Department, hotel industry and NGOs (Save the Children Sweden 2006:14).

The study showed that the presence of sex tourism involving child sex workers in coastal resorts including Mombasa. 30 percent of these children were involved in casual, part-time sex tourism and two to three thousand were engaging in sex tourism on a full-time basis. Some children employed risky sexual behaviour where there was no condom use during 32% of all penetrative sex acts and 42% of all anal sex.

UNICEF findings confirmed that child sex workers are vulnerable children whose basic needs cannot be met by family for reasons of unemployment, under-employment and loss of one or both parents. More than half of these girls live away from family, parents and guardians and live in communities with high number of older sex workers.

The UNICEF study found that child sex tourism is highly lucrative as compared to the market rate payments for casual labour. As a result, it becomes a source of livelihood for families incapable of generating sufficient income. This aspect of sex tourism impacts upon a broad section of the local community.

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<sup>15</sup> The Second periodic report covers the period between 1998 and 2004. It was released in September 2005.



The UNICEF survey found that as many as 45% of children engaged in sex tourism are from outside Coast Province pointing to the existence of the problem of trafficking for purposes of sexual exploitation. This finding was previously unearthed by a study conducted by The CRADLE which found the existence of organized trafficking networks in the Coast for sexual exploitation in the tourism industry (The CRADLE 2005: 17).

The CEDAW Kenya country report mentions that the criminalization of prostitution inadvertently affected women as the majority of sex workers were female who resorted to sex trade due to high levels of poverty (CEDAW Report 2006).<sup>16</sup> It estimated that 56 percent of the population lives below the poverty line. 63% of the poor population in urban areas comprised women. The Government admits that it faces challenges in addressing the root causes of exploitation of commercial sex workers and trafficking and had inadequate resources in place to rehabilitate victims of sexual exploitation. It attributed poverty brought about by high unemployment and low incomes to the underpinning causes of sex tourism.<sup>17</sup>

Omondi reaffirms the challenges expressed in the CEDAW report by stating that criminalization only serves to punish sex workers, and does not prevent them from trading in sexual services, especially where there are no viable alternatives. Such a blanket ban only drives the sector underground and renders sex workers prone to harassment, exploitation and abuse by law enforcement agencies and clientele.

This piece of work seeks to contribute to further scholarship in the area of sex tourism and advance the studies already made. As has been discussed, most of the studies dealing with sex tourism in Kenya, targeted children due to societal perception of their asexuality and need for protection from sexual exploitation. To fill in this gap, the present study specifically looked into the aspect of sex tourism also in relation to young people over the age of eighteen, who despite having legal capacity to consent to sexual relations, require government preventive interventions. In fact, their legal consent to commercial sexual relations should be deemed negated due to their

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<sup>16</sup> See the Fifth and Sixth Combined Periodic Report which were presented before the CEDAW Committee in July 2007

<sup>17</sup> The Second Periodic CRC Report reaffirmed this CEDAW Report by placing blame on poverty to increased child sexual exploitation especially due to HIV/AIDS that has resulted in many child-headed families and broken families and lack of sensitization among community members including children on issues of sexual abuse.

prevailing circumstances arising out of the Government's failure to realize their basic human rights and needs and to establish preventive mechanisms.

In addition, there has been no previous research looking directly into the efficacy of laws and policies, since some of these are new initiatives recently undertaken by the Kenyan government, e.g., the SOA and the Code of Conduct.<sup>18</sup> Previous work mainly sought to uncover the social aspect of sex tourism, its forms and magnitude. The present study, hence, evaluated legal and policy initiatives to unearth their relevance and whether they are informed by the realities of Mombasa youth.

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<sup>18</sup> The SOA was enacted in 2006 and the Code of Conduct began being implemented in 2006

## **CHAPTER 4.0: LAW AND POLICY REVIEW**

### **4.1 Introduction**

This chapter discusses the international human rights instruments and national laws dealing with sex tourism. The international human rights standards are viewed as the yardstick against which national laws and policies are measured. The gaps arising from the laws are further highlighted and discussed.

### **4.2 Background to International Human Rights Discourse on Sex Tourism**

Prostitution and, in turn, sex tourism are deeply contentious issues in the international human rights arena. For almost 100 years, an abolitionist viewpoint has defined the international discourse on prostitution. This approach was founded by instruments such as the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others which viewed women in prostitution as victims of exploitation. In the mid-1980s, this discourse began being challenged by a new wave of feminist-backed activism on trafficking in women, child prostitution and sex tourism which sought to distinguish between forced and voluntary sex work. The protagonists of this school advocate for sex workers' human rights in the context of voluntary engagement in the sex industry. They advocate the recognition of sex work as a legitimate occupation on the grounds of right to self-determination (Doezema 1998: 38).

In writing this piece, it was important to recognize opinions that refuse to regard all sex work involving young people in developing countries as exploitative. However, the findings of the present study pointed out that youth engaging in sex tourism were indeed involuntary participants.<sup>19</sup> Given the chance, they preferred to have alternative sources of livelihood. Due to under-development and poverty resulting from unemployment, unequal opportunities, gender inequalities, inadequate educational qualifications and training, they, in a sense, gave false consent to engage in sex tourism for survival. The following instruments were identified as holistically dealing with the symptomatic manifestations and underlying factors of sex tourism:

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<sup>19</sup> See Chapter Five of the Dissertation

1. Universal Declaration of Human Rights (UDHR)
2. International Covenant on Economic, Social and Cultural Rights (ICESCR) which Kenya ratified in 1972
3. African Charter on Human and People's Rights (ACHPR) which Kenya ratified on 23<sup>rd</sup> January 1992
4. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which Kenya ratified in 1984
5. The Protocol to the African Charter on Human and People's Rights on the Rights of Women (Women's Protocol) which Kenya is yet to ratify.
6. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol) which Kenya ratified and acceded to on 5<sup>th</sup> January 2005.
7. United Nations Convention on the Rights of the Child (UNCRC) which Kenya signed on 26<sup>th</sup> January 1990 and ratified on 30<sup>th</sup> July 1990.
8. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPC) which Kenya signed on 8<sup>th</sup> September 2000 and ratified on 28<sup>th</sup> January 2002.
9. African Charter on the Rights and Welfare of the Child (ACRWC) which Kenya ratified on 25<sup>th</sup> July 2000.

#### **4.3 The Human Rights Regime dealing with Sex Tourism**

Poverty is the major underpinning cause of sex tourism. In addressing poverty, international instruments place an obligation on states parties to provide for every person an adequate standard of living through enjoyment of basic needs such as health, food, clothing, housing and medical care and other necessary social services.<sup>20</sup> To achieve this standard, international cooperation among states parties is encouraged so as to assist developing countries to make these services a reality for their citizenry. In relation to children, the primary responsibility is on parents or guardians of a child to provide these basic needs. The Government has an obligation to provide

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<sup>20</sup> Article 25 of the UDHR, article 11 of the ICESCR and articles 15 and 16 of the Women's Protocol provide for the right to food security and housing.

material assistance and support programmes particularly with regard to nutrition, clothing and housing in needy cases.<sup>21</sup>

In its progressive spirit, the Women's Protocol guarantees young women the enjoyment of their right to sustainable development and requires states parties to ensure access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among them.<sup>22</sup>

Lack of employment is identified as another factor leading young people to enter the sex tourism trade and is also a human rights issue. International instruments place an obligation on states parties to provide the right to work to everyone, protect them against unemployment and establish technical and vocational guidance and training programmes to achieve steady economic, social and cultural development.<sup>23</sup> Since young women are more disadvantaged, CEDAW and the Women's Protocol specifically stipulate that states parties are to take all appropriate measures, legislative and otherwise, to eliminate discrimination against them in the field of employment and to ensure their right to work, equal employment opportunities, career advancement and other economic opportunities.<sup>24</sup> They further confer on women the right to receive vocational and recurrent training.

With regard to children, states parties are to protect them from economic exploitation and performing any work that is likely to be hazardous or to interfere with their education, or to be harmful to their development. Such action requires taking legislative, administrative, social and educational measures.<sup>25</sup> Sex tourism which generally interferes with a child's development necessitates these interventions.

Education is the main means through which better employment opportunities can be achieved and a way of keeping children from engaging in sex tourism. International human rights

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<sup>21</sup> See Article 27 of the UNCRC

<sup>22</sup> Article 19(d)

<sup>23</sup> Article 23(1) of the UDHR, article 15 of the ACHPR and article 6(2) of ICESCR

<sup>24</sup> Article 11 of CEDAW and article 13 of Women's Protocol

<sup>25</sup> See article 32 of UNCRC and article 15 of ACRWC

instruments impose a legal obligation on states parties to ensure the right to free education in at least elementary and fundamental stages.<sup>26</sup> Technical, professional and higher education are to be made generally available and on the basis of merit. Due to gender disparities, the unique position of young women and girls is taken care of in CEDAW and the Women's Protocol which require states parties to reduce female student drop-out rates by organizing specific programmes that promote literacy among women and integrate gender sensitization and human rights education in all curricula.<sup>27</sup>

In dealing directly with sex tourism, the international instruments require states parties to undertake both legislative and support-based programmes. To begin with, article 6 of CEDAW takes an abolitionist standpoint and views all forms of prostitution and trafficking as exploitative. It requires states parties to take all appropriate measures including legislation to suppress exploitation of prostitution and trafficking in women. In strengthening this viewpoint the Women's Protocol obliges states to take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography which are common forms of sex tourism.<sup>28</sup>

Children are also protected under international law which places an obligation on states parties to take all appropriate national, bilateral and multilateral measures against all forms of sexual exploitation, sexual abuse and trafficking by any person e.g. sex tourism.<sup>29</sup>

In specifically dealing with trafficking which is intricately related to sex tourism, the Palermo Protocol in article 3 provides an international definition of "trafficking in persons" and renders the consent of a victim of trafficking in persons to the intended exploitation as irrelevant.<sup>30</sup> It

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<sup>26</sup> Article 26 of UDHR, article 17 of ACHPR and article 13 of ICESCR

<sup>27</sup> Article 10 and 12 of CEDAW and Women's Protocol respectively

<sup>28</sup> Article 4(2)(i) and 13 of Women's Protocol

<sup>29</sup> Articles 34, 35 and 19 of UNCRC and articles 27, 29 and 16 of ACRWC

<sup>30</sup> Trafficking in persons is defined as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

again reinforces the abolitionist standpoint of CEDAW and Women's Protocol. Kenya as a state party is obliged to make the provisions of the Palermo Protocol part of national legislation by criminalizing trafficking and protecting victims by implementing measures to provide for their physical, psychological and social recovery in co-operation with NGOs. A Counter-Trafficking in Persons Bill is in the pipeline to domesticate the Palermo Protocol.

The Palermo Protocol provides a comprehensive framework of preventive programmes and policies that states parties should enforce to deal with sex trafficking on bilateral and multilateral levels.<sup>31</sup> The provision of services such as housing, counselling, legal rights information, material assistance, educational and employment opportunities are legally binding on every state party.

The OPC provides states parties with detailed requirements to end the sexual exploitation and abuse of children. It defines the offences of 'sale of children', 'child prostitution' and 'child pornography' but omits to define child sex tourism.<sup>32</sup>

It also creates obligations on governments to criminalize and punish the activities related to these offences whether such offences are committed domestically or transnationally on an individual or organized basis.<sup>33</sup> It requires punishment not only for those offering or delivering children for the purposes of sexual exploitation, but also for anyone accepting the child for these activities.

In article 8 the OPC protects the rights and interests of child victims. Governments must provide legal and support services to child victims. This obligation includes considering the best interests of the child in the criminal justice system including compensation for damages from those legally responsible.<sup>34</sup> Children must also be supported with necessary medical, psychological, logistical and financial support to aid their rehabilitation and reintegration. The value of public

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<sup>31</sup> Article 9 of the Palermo Protocol

<sup>32</sup> See article 2 of the OPC which provides Child prostitution is defined as "the use of a child in sexual activities for remuneration or any other form of consideration." While child pornography is defined as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

<sup>33</sup> See article 3 of the OPC

<sup>34</sup> Article 8 of the OPC

education and dissemination of information are also stressed in the OPC in order to encourage community participation. It also places an obligation on states parties to take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences.<sup>35</sup>

International cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving child prostitution, child pornography and child sex tourism is identified as important in combating these mostly transnational activities.

#### **4.4 The Existing Kenyan Legal and Policy Framework on Sex Tourism**

Kenya has a very comprehensive legislative framework that seeks to deal with the issue of sex tourism both directly and indirectly particularly where children are concerned. Kenyan laws and policies take an abolitionist standpoint by refusing to recognize sex work as a legitimate occupation.

The laws concerning sex tourism find expression in the Constitution of Kenya, the Penal Code, the Children Act, the Sexual Offences Act and the Municipal Council of Mombasa by-laws. On the other hand, the relevant policies find their place in the government ministries of Tourism and Wildlife, Youth Affairs and Home Affairs. A concise overview of these initiatives is highlighted hereunder.

The Constitution of Kenya, which is the supreme law of the land, does not expressly deal with sex tourism but attempts to address aspects of sex tourism. For instance, 73(2) provides for protection from forced labour. Sex tourism may be viewed as a form of forced labour as many youth engage in it involuntarily as a means of survival. Furthermore, children may be forced to work in the commercial sex industry rather than advance their self development.

Again, the Constitution provides for the protection from discrimination on grounds of sex among others.<sup>36</sup> As it shall be discussed in Chapter Five, the enforcement of sex tourism related laws has been discriminatory against young women despite their neutral construction. In the application of

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<sup>35</sup> Article 9 of the OPC

<sup>36</sup> Section 82(1) of the Constitution



these laws, female sex workers are arrested and prosecuted while their male colleagues and clientele remain untouched.

The Penal Code criminalizes prostitution and other related activities. Sections 153 and 154 prohibit any male or female person from living knowingly, wholly or in part, on the earnings of prostitution. They further criminalize publicly soliciting for immoral purposes and offering pimping services. On the other hand, section 156 criminalizes the running of a brothel or knowingly allowing rental premises, whether as a lessor or lessee, to be used as a brothel.

In dealing with production of pornographic materials and homosexuality which are common forms of sex tourism, the Penal Code in sections 181(1) (a) and 162 (a) respectively prohibits such sexual acts.<sup>37</sup> Homosexuality attracts a penalty of 14 years imprisonment where it occurs between consenting adults of either sex. Production of pornography has a lower penalty of two years imprisonment or fine of KShs 7,000.<sup>38</sup>

The Children Act makes the UNCRC and ACRWC part of Kenyan law. In section 15 it provides that children shall be protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity and exposure to obscene materials. In addition, sections 10 and 13 respectively provide further protection from child labour and physical, psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person. The Children Act places an obligation on the Government to accord treatment and rehabilitation to children who are victims of abuse. However, this is not applied as it shall be discussed in Chapter Five.

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<sup>37</sup> Section 181(1)(a) of the Penal Code provides: “Any person who- for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects or any other object tending to corrupt morals...is guilty of a misdemeanour and is liable to imprisonment for two years or to a fine of seven thousand shillings.

On the other hand, section 162 of the Penal Code specifically provides Any person who-

- (a) has carnal knowledge of any person against the order of nature; or
  - (b) has carnal knowledge of an animal; or
  - (c) permits a male person to have carnal knowledge of him or her against the order of nature
- is guilty of a felony and is liable to imprisonment for fourteen years...

<sup>38</sup> US\$107

Section 7 of the Act also provides for the right to education for all children placing the responsibility on the Government and parents. Compulsory and free primary education is legislated for under this provision. Presently, the Government is in the infancy stages of implementing free secondary education in public schools.

The most progressive and punitive of all pieces of national legislation in relation to sex tourism is the new Sexual Offences Act.<sup>39</sup> One of the aims of the SOA was to revamp and update existing sexual offences legislation. It seeks to impose stringent minimum sentences for convicted sexual offenders and provide maximum protection for victims. The SOA domesticates a number of international conventions to which Kenya is a party.<sup>40</sup> The most significant provision relevant to this study is its express outlawing of child sex tourism, which offence attracts a penalty of imprisonment for a term of not less than ten years and where the accused is a juristic person, to a fine of not less than two million shillings.<sup>41</sup>

Other related offences such as child trafficking, trafficking for sexual exploitation, exploitation of prostitution, child prostitution, defilement, committing an indecent act with a child and child pornography are also provided in the SOA.<sup>42</sup> The trafficking offence relates only to children save for where it is conducted for purposes of sexual exploitation when it extends to all groups.<sup>43</sup> The definition of trafficking in the SOA complies with the Palermo Protocol.<sup>44</sup>

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<sup>39</sup> The Sexual Offences Act received presidential assent in July 2006

<sup>40</sup> These international conventions include CEDAW, UNCRC, African Charter on the Rights and Welfare of the Child, Palermo Protocol and Optional Protocol to the Convention on the Rights of the Child

<sup>41</sup> See Chapter 3 of this dissertation section 3.2 for definition of offence of child sex tourism

<sup>42</sup> See sections 8, 11, 13, 15, 16, 17 and 18 of the SOA

<sup>43</sup> See section 18 of the SOA

<sup>44</sup> Section 13 defines child trafficking as:

(a) Knowingly or intentionally making or organizing any travel arrangements for or on behalf of a child within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence against that child, irrespective of whether that offence is committed;

(b) Supplying, recruiting, transporting, transferring harbouring or receiving a child within or outside the borders of Kenya, for purposes of the commission of any sexual offence under this Act with such child or any other person

In subsidiary legislation, sex tourism is indirectly criminalized in the Municipal Council of Mombasa by-laws which provide for the offences of loitering for the purpose of prostitution and procuring or attempting to procure a male or female for homosexuality.<sup>45</sup>

Any person found guilty of an offence under these by-laws is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months or to both fine and imprisonment.<sup>46</sup> If the offence is continuing in nature a further fine not exceeding two hundred shillings for every day during which such offence continues shall be imposed so long as such fine shall not exceed five thousand shillings.

On the other hand, in policy initiatives, the Government has in collaboration with the private sector, adopted the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (Code of Conduct) in 2005. This action was taken following the establishment of a new National Tourism Policy in 2005 which commits the Government to campaign against all forms of sex tourism particularly child sex tourism. The Code of Conduct was originally developed as an End Child Prostitution in Asian Tourism (ECPAT) network project to combat child sex tourism, in collaboration with UNICEF and UNWTO. Training and sensitization against commercial sexual exploitation of children in the tourism industry targeting hotels, nightclubs, tour operators, law enforcement agents, children, and the community as a whole is being undertaken in the Coast Province.

The youth account for 61% of the unemployed, with ninety two percent (92%) of these youth having no specialized training other than formal schooling (MOYA Fund Status Report: 2007). In response to the high rate of unemployment, the Government placed job creation in its policy agenda by establishing a Youth Enterprise Development Fund (hereinafter referred to as “the Youth Fund”). KShs 1 billion was set aside and the Youth Fund was launched on 1<sup>st</sup> February 2007 by the President (MOYA, 2007:1). The objective of the Youth Fund is to increase young entrepreneurs’ access to loans through financial intermediaries.

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<sup>45</sup> Section 258 (m) and (n) provide: Any person who shall in any street or public place-  
(m) loiter or importune for the purpose of prostitution  
(n) procure or attempt to procure a female or a male for the purpose of prostitution or homosexuality...shall be guilty of an offence.

<sup>46</sup> See section 266 of the Municipal Council of Mombasa By-laws

In response to the UNICEF/GoK study sex tourism, district action plans for Mombasa, Kwale, Kilifi and Malindi were established in December 2007. The district action plans shall be implemented from 2008 to 2010. The Mombasa District Action Plan provides a framework within which activities to combat child sex tourism will be coordinated by the Government through the Children's Department. It harmonizes interventions to avoid duplication of efforts and promote sharing of information, mobilization of resources, facilitate monitoring and evaluation of mechanisms.

The Cash Transfer program targets families who foster orphaned children. It was started on pilot basis in 2004/05 targeting 500 families and in financial year 2006/2007 9,000 families were targeted. A monthly allowance of KShs 1,500 is disbursed to affected families.<sup>47</sup> There is no statistical data on the number of families in the provincial level and more specifically Mombasa district benefiting from the program. A total of KShs 56 million was allocated in the financial year 2006/2007 for the programme (CRC Report (a) 2007:9).

Lastly, the policy of free primary education has led to an increase in the number of children enrolled in schools and dealt with gender disparities at primary school levels. In the year 2003, there was a near gender parity of boys to girls at 51.3% to 48.6% (CRC Report (b) 2007:79). Enrolment in secondary schools is lower as free secondary education was only introduced in 2008. The second periodic report to the CRC indicates that the transition rate from primary to secondary schools in 2003 was 42.3%, indicating that only a few pupils graduate from primary to secondary school. This has been attributed to high poverty levels among the households, child labour and sex tourism especially within the area of Mombasa.

#### **4.5 International Standards vs. National Standards: The Identifiable Gaps**

There are identifiable gaps between national and international standards dealing with sex tourism. To begin with, the Kenyan national laws provide a definition of child sex tourism which envisages and criminalizes where it is in an organized form. It instead places situational exploiters of sex tourism within the ambit of other sexual offences such as child prostitution, child pornography, and defilement among others. Tourism business operators such as hotels, nightclubs, etc., are not held legally responsible for allowing or promoting sex tourism. This is in

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<sup>47</sup> US\$23

contravention with the broader definition of the term as crafted on the international level by the NGO CRC Group which covers the wide variety of tourism business operations, such as hotels and both situational and organized forms of sex tourism.

International human rights standards, especially second generation rights, provide an idealized state of affairs for many African countries. Generally, they are only attainable where a state is capable of making substantial budgetary allocations and prioritizes their implementation. As is the case in many developing countries, such as Kenya, the realization of socio-economic rights for every person, which reduces vulnerability of youth to engage in sex tourism, is way beyond their ability and is not an issue of priority for government. Subsequently, the realization and enjoyment of these rights becomes practically unattainable. Furthermore, since the Constitution fails to incorporate them, trying to hold the state accountable for their provision becomes difficult, if not impossible.

The ICESCR, in foreseeing the difficulties that developing countries would have in the realization of socio-economic rights, encourages international cooperation whereby wealthy states extend a helping hand to poor states. However, in forging these alliances developing countries are forced to adhere to conditions which are not culturally sensitive to each developing state.

In contravention of international standards, Kenyan national laws only provide punitive measures against sex tourism. These measures are not accompanied by preventive and support-based programmes to eliminate the vulnerability of youth to exploitation in the sex tourism industry. At the same time, the government does not enhance efforts to rehabilitate youth victims and those who wish to leave sex tourism.

Existing legislation dealing directly and indirectly with sex tourism does not make it mandatory for the government to provide support-based programmes and rehabilitation services. This gap is, therefore, left to be filled by NGOs and INGOs who are mostly limited in capacity and scope. Consequently, the punitive measures are rendered ineffective as they fail to address the underlying causes for youth involvement in the commercial sex tourism industry. As a result, the vice is further perpetuated in a more private, organized and illicit fashion within which there is

increased exploitation of youth by either elaborate transnational criminal syndicates or individuals in their different capacities.

While international human rights provide intervention mechanisms to be undertaken at all levels, i.e., national, bilateral and multilateral, the national law does not recognize the importance of such collaboration, especially with the tourists' countries of origin. The district action plans are a good attempt to deal with sex tourism at community levels. Their implementation is, however, not legally binding on the state. In addition, the role of international cooperation even at district and provincial levels is not captured in the district action plans, even where some diplomatic missions are represented at district levels.

Lastly, but most importantly, the legal and policy initiatives made by government specifically target children rather than all vulnerable groups affected by sex tourism. The youth above 18 years are excluded in policies and programmes that are directly responsive to sex tourism and resort can only be made to indirect efforts which do not envisage the full extent of the issue of sex tourism. These programmes are inadequate as they are not informed by the youth's experiences. This loophole perpetuates further growth of the practice even among the children whom government seeks vehemently to protect. Directly criminalizing the practice only where it is committed with respect to a specific social group is only a half measure.

## **CHAPTER 5.0: THE COMPLEXITIES OF SEX TOURISM AND DEARTH OF IMPLEMENTATION OF RELEVANT LAWS AND POLICIES**

### **5.1 Introduction**

This chapter discusses the findings made and their impact on legal and policy initiatives dealing with sex tourism under four thematic groups, namely, socio-economic underlying causes, efficacy of laws, efficacy of policy and international human rights standards. It analyses these findings in greater depth with respect to international human rights standards. The emerging themes from the ground are highlighted to direct future studies on the area of sex tourism.

### **5.2 Socio-economic Dynamics: Underlying Factors, Forms and Manifestations of Sex Tourism involving Mombasa Youth**

This thematic group incorporates the findings of related assumptions 2, 3 and 8 which looked into the existence of sex tourism among Mombasa youth and the reasons behind its continued practice its criminalization. These assumptions investigated whether there was acceptance of sex tourism among the youth as a legitimate means of livelihood. The link between sex tourism and internal trafficking was also explored under this thematic group in section 4.2.1.

On the concept of sex tourism, it was found that respondents narrowly viewed sex tourism as engagement in commercial sex with Caucasian, foreign tourists. One female commercial sex worker (CSW) stated,

Sex tourism is the exchange of sexual favours with a tourist especially whites.

Another young CSW simply declared, “Sex tourism is sex with whites”.

Commercial sexual transactions with Kenyan tourists are not understood to comprise sex tourism but are merely classified as prostitution.

Many of the respondents’ views on sex tourism, in the beginning, pointed out to casual prostitution rather than the organised form envisaged in the SOA. After in-depth interviewing, respondents described the existence of organised versions which involved the use of familial

intermediaries locally known as “beach boys”, posting of pornographic materials involving youth in the internet and running of brothels. A female respondent in support of this finding stated:

Beach boys play an important role in sex tourism. They are known to even link up their younger sisters to white tourists they meet who have expressed interest in having girls in the course of their stay.

While reiterating these views, a male CSW aged 28 years disclosed that he acquired his foreign clientele by either being casually picked up in nightclubs or through personal networking. He stated that organized sex tourism is more widespread as it is more effective in obtaining clientele. In his own words:

I have had white women approach me in nightclubs for sexual services. Most of the times though, I meet my clients through other people. I acquire my foreign clients through personal acquaintances in the same way a person would get clients for formalized work through a personal contact. If for instance a tourist wants a specific sexual service, these intermediaries know which person to contact who can offer such services.

He added that brothels, which depend on pimping services, are available within easy access of sex tourists. He expressed:

We have a house here in Mtwapa where most of us stay waiting for clients. Many people know about it especially the intermediaries who normally would bring the foreign clients to the premises and have them choose their preferable partner.

Of the 11 youth interviewed engaging in commercial sex tourism, 5 female sex workers representing 45 percent stated that they received money in exchange of sex from tourists. These fees ranged from KShs 500 – KShs 2000 depending on the sexual act and the time expended.<sup>48</sup> It was found that sexual acts such as gay sex involving anal intercourse fetch as much as KShs 15,000- 30,000.<sup>49</sup> Where a CSW has utilised the services of an intermediary, one third of the payment goes into paying for pimping services.

Nevertheless, it was found through other respondents that money was not the only consideration paid for sexual services. One female respondent living in a community with a high prevalence of

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<sup>48</sup> US\$7-US\$30

<sup>49</sup> US\$230-US\$460



commercial sex work expressed that sexual services are also paid for in kind. While referring to a neighbouring young woman who engages in sex tourism she stated,

...I know a lady who lives in a big block of apartments nearby. She had her apartments constructed for her by a white male tourist...

A male CSW reaffirmed that payment by foreign tourists may also be in kind. He intimated that the package usually involves visiting nightclubs, tourists sites, overindulgence in alcohol and drugs, sex and even construction of houses all being catered for by the tourist. He stated,

...My house was built in totality by one of my white female clients on my own piece of land...

Findings showed that majority of the youth engaging in sex tourism were female. Of the 31 youth engaging in commercial sex tourism, 27 were females comprising 84 percent while the remaining 16 percent are males. 36 percent of these young female sex workers were single parents and sex tourism is their means of livelihood. This may be attributed to the lower educational qualifications that are acquired by young women which, in turn, reduces their chances of obtaining reasonably paying jobs. Hence, they are forced into sex tourism for economic reasons. Gender disparity becomes a key underlying factor of sex tourism.

A community leader did not attribute the high number of females in sex tourism to gender inequalities and instead explained:

We have more female youth engaging in sex tourism because there are more male tourists in Mombasa. The male youth find it difficult to acquire female tourists who are fewer in numbers...Due to this scarcity of female tourists they engage in homosexuality.

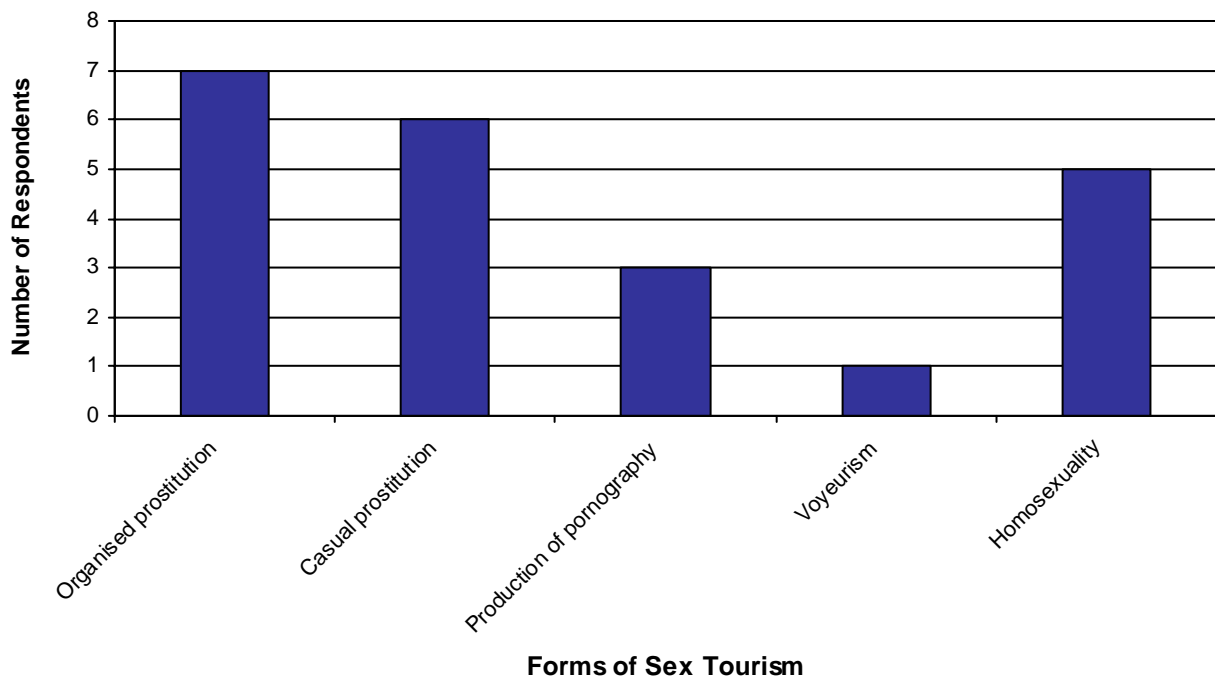
While in the field, it was found that sex tourism is manifested in several forms namely organized prostitution, casual prostitution, production of pornographic material, voyeurism and homosexuality. A male community leader of Shanzu area in Mombasa introduced a different form of sex tourism ingrained in romantic pursuits during the holiday. He stated,

Most of the relationships have the boyfriend-girlfriend element whereby the locals get into love relations with the tourists. However, there is a thin line between romance and commercial sex in such relationships.

A previous study by Pruitt and LaFont on female white tourists in Jamaica observed a similar trend and coined the term, 'romance tourism' to describe these relationships. Both the female tourists and local males see their relationship more in terms of romance and courtship rather than an exchange of sex for money. Although there is still a strong commercial element within which

the female tourist possessed stronger economic power than her local male partner. In addition, the relationships have a high turnover rate resulting in concurrent multiple partners. Some of these local males are reported to have Kenyan wives or girlfriends who keep a low profile during visits by the female tourists.

**Figure 3: Forms of Sex Tourism**

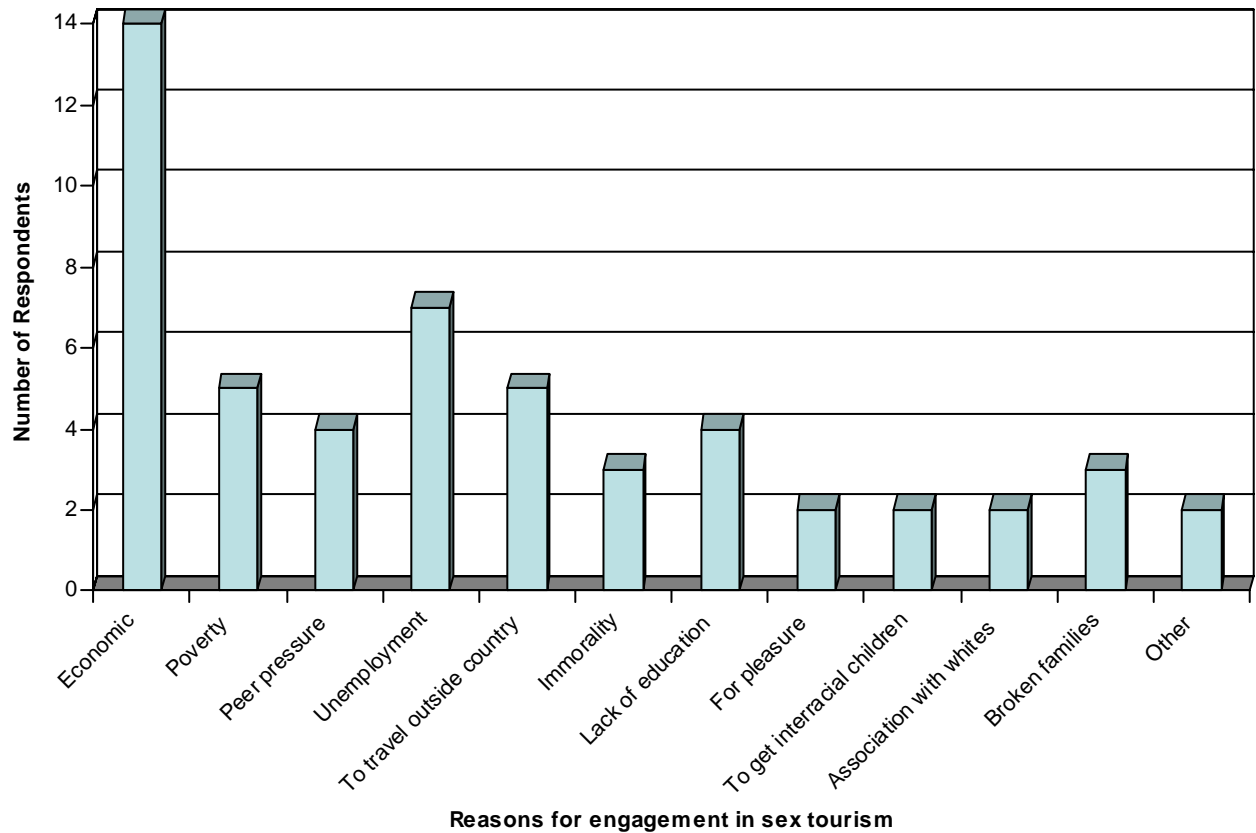


The underlying factors given by interviewed respondents for the continued practice of sex tourism ranged from poverty, peer pressure, unemployment, broken families, immorality, desire to travel outside the country and sexual pleasure, among others. A community leader explained:

An important factor is domestic distress where orphans or children from female headed households are vulnerable to engage in sex tourism.

82 percent of youth engaging in sex tourism whom I interviewed stated that they engaged in sex trade due to economic reasons. Interestingly, all of the CSWs interviewed expressed that they would abandon commercial sex tourism if offered alternative employment hence illustrating the high rate of forced prostitution in Mombasa and the Government's failure to establish adequate rehabilitative programmes.

**Figure 4: Reasons for Youth Involvement in Sex Tourism**



On the other hand, a young female rehabilitated CSW had a different opinion on the efficacy of provision of alternatives. She said:

I do not think that providing these young people with alternative employment will help. They are generally lazy and are looking for easy ways to get money. Sex tourism is one of these easy ways. Alternative employment would mean that they work very hard.

This engagement in sex tourism continues despite knowledge of its direct and indirect criminalization. The comprehensive legislative framework is ineffective in combating sex tourism due to low implementation levels. The aspect of enforcement shall be discussed in further detail in the next thematic group. Notwithstanding, out of the 92 youth I conversed with in the course of the study, 31 youth comprising 34 percent were engaging in sex tourism despite knowing that it is criminalized.<sup>50</sup> On awareness on sex tourism laws, a community leader stated as follows:

<sup>50</sup> These comprised youth I interviewed in both group discussions and individual in-depth interviews

The community is aware that this kind of practice is unlawful but this does not deter them as sex tourism is the way in which they acquire their basic needs...

The new legislative interventions have only caused the manifestation of the practice to evolve in order to further perpetuate its existence. For instance, one tourist police officer interviewed stated that he had noted that underage girls are now fraudulently reporting to police authorities that they had lost their identity cards so that they could legally take out police abstracts which they would then use to access nightclubs and later produce to the same police authorities when accused of loitering.

The failure of the youth to uphold the law may be attributed to socio-economic factors. Since they do not enjoy their basic human rights to work, education, gender inequality, access to opportunities, etc., sex tourism is perceived as an avenue through which their socio-economic status can be improved.

Schuler maintains this argument by acknowledging that it is a fallacy to assume that the mere knowledge of the law is sufficient for the participation of citizenry in upholding the law. She states that in most societies, laws and their application are skewed against women, in the present case youth, especially poor youth with fewer opportunities (Schuler 1992). She further holds that even where laws are responsive to current situations, more powerful social, cultural, psychological and political constraints hinder their application (Schuler 1992:22). Indeed, sex tourism laws are very responsive to the Mombasa situation. However, social and cultural constraints of poverty and complicity towards sex tourism hinder their application. Consequently, legal knowledge of the criminality of sex tourism becomes irrelevant to the youths' lives. This attitude then accommodates its continued practice and legal information fails to generate any change or impact lives.

### **5.2.1 Internal Trafficking: A Key Component of Sex Tourism**

Internal trafficking of youth from other parts of the country to Mombasa is intricately related to sex tourism. Since the respondents did not have a high level of awareness concerning trafficking, during the interviews I sought to uncover whether the youth engaging in sex tourism were locals or resident in Mombasa. Consequently, the aspect of trafficking investigated was whether Mombasa is a place of destination for youth being trafficked from other parts of the country in

accordance with the Palermo Protocol and the SOA.

It was confirmed by a number of key informants that the majority of youth in Mombasa engaging in sex tourism are not originally resident in Mombasa but had travelled from upcountry in search of employment in the tourism industry or to live with a friend or relative upon being orphaned and later ended up in the sex tourism industry after having found no sustainable income. The places of origin are reported as Central, Western, Nyanza and Eastern Provinces.<sup>51</sup> A former female CSW interviewed stated,

Many sex workers come from up country knowing that the sex industry exists in Mombasa. Some travel in search of work in the hotel industry and end up engaging in sex work due to low pay. It is very rare to get indigenous coastal people engaging in commercial sex work.

Another rehabilitated female sex worker in reaffirmed that:

Most of the commercial sex workers in Mombasa are indeed from other communities. The coastal communities do not engage in commercial sex ...

A male CSW who is a native of Mombasa reiterated:

Most of those in sex tourism are from outside Mombasa. When they come to Mombasa they become even better in the business than us who are born and bred from Mombasa.

Of the 11 CSWs interviewed only 2, one male and female, were natives of Mombasa and had grown up in the city. The remaining 9 CSWs representing 82 percent had traveled to Mombasa from Western, Central, Rift Valley and Nyanza provinces in search of employment, a better life and or after the death of a parent or guardian. Mombasa hence became a destination where they unexpectedly ended up being sexually exploited due to supervening circumstances. Relatives and close friends were cited as key actors in initiating them into sex tourism. Sharing her story, one female key informant, who is currently a rehabilitated CSW, said:

I was an orphan and I came to Mombasa from Western Kenya to live with my aunt who was a commercial sex worker. She forced me into sex work when I was a young, naïve girl. She would send me out to the nightclubs and secretly keep watch on me as the men approached me. Thereafter she would even scold me for not having behaved properly. I had to do many things to the clients.

Another rehabilitated female sex worker who was recruited into sex tourism by friends stated:

I was initiated into commercial sex through friends. I came to Mombasa from Western Kenya to

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<sup>51</sup> The UNICEF study on sex tourism also found that as many as 45 percent of child sex workers were from outside Coast Province intimating the probability of internal trafficking.

work in the hotel industry. I engaged in commercial sex work after being misled by my colleagues. I would receive many favours from them which I did not know came with a price to pay. I was hence forced to sleep with one of these colleagues. I was an innocent, rural girl who had just arrived from Western.

A male magistrate in Mombasa stated that trafficking of children from rural areas to Mombasa for sex tourism was rampant and conducted in an elaborate, organized system. He said:

Most of these children come from very poor families in rural areas. Some white tourists travel to Kenya and construct big houses in Mtwapa area. They then readily traffic children from the rural areas to urban area of Mtwapa to be sexually exploited. The children are paid KSh 2,000-3,000 per session which to them would be a lot of money since they come from poor families.<sup>52</sup>

Internal trafficking took a different twist when a police officer revealed that some girls were trafficked from nightclubs and entertainment spots to wealthy residential areas in Mtwapa and Nyali within urban areas using big cars wearing *buibuis* where they were exploited in the sex tourism industry.<sup>53</sup> He stated:

Some minors are picked from nightclubs and are transported in big cars in the company of wealthy women who then drive them to their residential homes and beach apartments...The intermediaries fetch 400-500 Euros for each sexual service done by a child. The child would receive much less e.g. 20-50 Euros.

All the respondents of different age groups interviewed found child sex tourism unacceptable, even where it is resorted to for economic reasons, and recommended that strict punitive measures be employed against exploiters and parents who encourage it.

It was, however, found that sex tourism is greatly tolerated and accepted as a legitimate means of survival for youth over the age of majority. A rehabilitated female sex worker stated:

Sex tourism is not regarded as prostitution. It is viewed as a way to find riches. Parents encourage their children to acquire white partners and do not see anything wrong with such arrangements. ..

A community leader had different views concerning the level of acceptance of sex tourism in his area due to his socio-political position in society. He expressed himself thus:

The community around this area finds all forms of sex tourism unacceptable. Religious communities curse such conduct.

Young men did not mind giving up their gender role of providers to be wholly supported by

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<sup>52</sup> Equivalent of US\$ 30- US\$ 46 per session

<sup>53</sup> A *buibui* is a long black gown worn by Muslim women

elderly white women. Sex tourism is highly accepted among youth as a legitimate means of survival to the extent that it has become a profession for some young males. Two young men interviewed reiterated:

We do not think there is anything wrong with young men being supported and kept by older white women. *Ni kazi*, it is work. As for the young women, it is acceptable to engage in sex tourism so long as they are over eighteen. In addition, most of them also have their young Kenyan girlfriends or boyfriends. Our problem is where they are underage. We do not want our young girls to be spoilt by white men.

A male sex worker described sex tourism as a career for which he groomed and trained to compete in the market. He in fact stated that while preparing for his new foreign clients who were to visit Kenya in the months of February and August, he would leave his part-time work to have facial treatments, manicures and hairdressing. On being asked whether he had any qualms about being seen walking and engaging in sexual intercourse with much older women with age differences of between 15 to 30 years age and being supported financially by them he said:

I am not embarrassed about being seen around with a white woman because this is my work, a career. Like any other career we are trained and get inducted by peers on how to treat a white woman, how to approach and talk to her so that we can acquire clients...Nevertheless, it is sometimes not easy to sleep with these old white women. But most of them keep their bodies well. I have to be drunk to perform these sexual services.

It was found that such interracial sexual liaisons caused local youths to engage in sexual acts that they would ordinarily not engage in with African partners. For instance, some commercial sex workers did not condemn gay sex with a white male tourist but they did not regard themselves as homosexuals or ever contemplate gay sex with a fellow African man. A male sex worker interviewed averred:

I have had gay sex with a number of white men... I can never have gay sex with a fellow African. We as Africans have a sense of brotherhood among us. It would be unacceptable. *Mzungu ni kitu tu*, (A white person is just a thing)

The tendency to be exploratory and liberal in sexual expressions is also manifested in heterosexual, interracial relationships. Two young men interviewed stated that it would be an abomination for a young Kenyan man to protract a similar commercial sexual relationship with an elderly Kenyan woman. They in unison stated:

...It would be unacceptable for a young man to be supported and seen around with an older African woman. This is against our African culture and it cannot be classified as the being work.

Interestingly, 64 percent of the youth interviewed who engage in sex tourism, condemned it as unacceptable and justified their engagement to economic needs. All of them admitted that they

were forced into sex tourism and they would abandon it if offered alternative employment. These findings depart from the contentions made by prostitution rights movements who argue that sex workers are not victims or helpless individuals but are capable of making informed decisions. Doezenia states that poverty has been used as a ploy to negate the choice of women in developing countries to overcome economic woes by engaging in sex work as a viable profession (Doezenia 1998: 43). She avers that these discourses imply that no “normal” woman would choose sex work unless “forced” by poverty (Doezenia 1998:44).

Nevertheless, views given by CSWs in Mombasa contradict these proponents and establish youthful sex workers as eligible for human rights protection. Indeed, the situation of CSWs in a developing country such as Kenya differs from that of CSWs in the Western world. The latter are able to make independent, voluntary and lawful choices to engage in sex work as a viable profession.

### **5.3 Efficacy of Law and its Level of Implementation**

This thematic group discusses and analyses the findings made on assumptions 1, 4 and 5 on enforcement of laws directly or indirectly criminalizing sex tourism and their efficacy. These assumptions also included looking into existing mechanisms for detection of information which publishes sex tourism. The yardstick employed to measure the efficacy of laws was based on the following:

1. Reporting of sex tourism related cases
2. Number of cases brought to court
3. Conviction rate
4. Adequacy of sentences
5. Existence of recidivist offenders
6. Corruption free justice system
7. Awareness of new laws

It is not in contention that Kenya has an elaborate, progressive and comprehensive legislative framework dealing with sex tourism. Despite this, it was generally found that it was ineffective in combating sex tourism mainly due to poor enforcement.

All the three judicial officers I interviewed confirmed that they do receive cases of sex tourism



and related prostitution involving the youth. A magistrate in the Mombasa Law Courts, however, estimated that these represented only 30 percent of such incidences occurring within the community. He added that where they did receive cases in court the evidence was overwhelming resulting in a 60-70 percent conviction rate. He said that sex tourism offences that ended up in court did so due to public pressure and the work of courageous victims. He explained:

The cases that are brought to court are exposed by members of the public who notice that a particular home harbours children for sexual exploitation. Another factor is where we have brave children reporting their abusers to the police. I know of a case of a sexually exploited girl found her way out of confinement and reported her case to the police.

It was found that foreign tourists are prosecuted, tried and serve prison terms in Kenya for offences committed within the said jurisdiction. Suspected sex tourists were not extradited for prosecution in their home countries by way of extraterritorial legislation. A magistrate highlighted that:

Foreign tourists have to serve their sentences in Kenya. Most of these perpetrators are very old people and they would expire before even completing their prison terms in Kenya hence expecting them to be extradited for further prosecution in their home countries is unlikely.

Since the enactment of the SOA, which specifically outlaws child sex tourism and imposes stringent minimum sentences, there has been a decrease in the number of relevant cases being brought before court. A magistrate attributed this to either a deterrent effect of the SOA or corruption at police level since the stakes were higher for suspects upon conviction.

Data collected indicated that the cases which mainly reach court involved organized forms of sex tourism rather than casual forms similar to prostitution. A magistrate stated in an interview:

Sex tourists earn huge profits from such organized crime which most of the time is interlinked drug trafficking.

The indication that few cases are brought to the court was clearly demonstrated by the few cases that were pending in the course of field research. There were only three ongoing cases in the Mombasa Law Courts and two in the Children's Court which involved child complainants in two cases in the former law courts. The Kilifi Law Courts which has jurisdiction to hear cases arising in Mtwapa area, did not have any direct cases on sex tourism instead there were a numerous petty offences cases, e.g., drunk and disorderly conduct involving foreign tourists and young women.

The few cases may also be attributed to the rigorous procedure police officers have to undertake prior to pressing charges against a foreigner. Interviews with police officers revealed that the consular or diplomatic mission from which the tourist is a national is to be informed and the consent of the Assistant Police Commissioner from the Nairobi Headquarters is required before proceeding with investigations.

In the three court cases proceeding in Mombasa Law Courts, the foreigners, who were German men, are mainly charged under the SOA.<sup>54</sup>

Of the cases I perused, two involved elderly German men who were found by police on patrol in the company of underage girls outside beach apartments.<sup>55</sup> In Republic v. Gromer Albert the accused aged 62 years was charged with defilement of a girl aged 17 years and being in possession of obscene materials in a camera in which he had taken photographs of a naked woman under the SOA and Penal Code, respectively.<sup>56</sup>

In Republic v. Ludtke Eckhardt Hermann the accused aged 66 years was charged with defilement of a girl aged 16 years and indecent assault of the same girl by intentionally and unlawfully inducing her to engage in an indecent act by touching her private parts, namely, her vagina.<sup>57</sup>

The Children's Court cases involving the two underage girls above were being heard simultaneously. The two girls are both charged with being women living on earnings of prostitution contrary to section 154 of the Penal Code. The particulars of the charge provide that one girl was to receive KShs 4,500 for the pornographic photographs taken and sexual intercourse which money was to be used for her upkeep.<sup>58</sup> The other girl was to receive KShs 6,500 for sexual services which money was also for her subsistence.<sup>59</sup> The girls were held in the

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<sup>54</sup> The UNICEF study also found that German tourists to be common clients to child sex workers

<sup>55</sup> See annexure on newspaper photographs *The Saturday Standard Kenya* 5<sup>th</sup> November 2007 p.10

<sup>56</sup> The charge is brought under section 8(4) of the SOA and section 181(1)(a) of the Penal Code

<sup>57</sup> The charges are brought under section 8(4) and section 6 (c) of the SOA respectively

<sup>58</sup> US\$ 69

<sup>59</sup> US\$ 100

*Shimo La Tewa* Women's Prison Annex pending hearing of their cases because the police did not classify them as voluntary complainants and they did not have a fixed abode, being orphaned children. Consequently, they were remanded so as not to prejudice police efforts to convict the accused persons. Meanwhile both German tourists were out on bond. It is disturbing that these child victims are criminalized and referred to as "women" in the charge preferred, when evidence of age assessment clearly pointed out that they were under the age of 18 years and, hence, children under the law.

As can be seen, the new law dealing with sex tourism is applied in an unacceptable manner. The police authorities find themselves in a dilemma. Because of a lack of resources (e.g., non-criminal protective facilities for innocent child victims), they are forced to criminalize the very victims they are seeking to protect through the prosecution process they are forced to implement if any conviction of a suspect is to become a reality. A tourist police officer handling the cases expressed this perverse situation as follows:

In practice we normally arrest both the suspect and child. Procedure requires that the child remains in police custody for only 24 hours and later be produced before a court of law. This time is insufficient to carry out the preliminary investigations on age assessment, medical examination and court testimony of the minor. These minors are usually orphaned and with no fixed home address where we can track them down to ensure they testify. We are therefore forced to hold these minors implicated in sex tourism in borstal institutions pending their court testimony as these minors are orphaned children with no guardians or fixed home.

Since committal to borstal institutions is only for convicted or remanded child offenders, we institute prostitution charges against the minors. We cannot afford to release them and expect them to faithfully attend court to testify against the suspect tourists if our cases are to be successful. These children cannot be classified as willing complainants

The Sexual Offences Act is a good law but it should have provided us with directions on where such children should be committed prior to our investigations. Government should have established facilities for these purposes.

Westman, in her article on child protection in travel and tourism, stresses that it has been a continuing challenge in sensitizing the Kenyan public to the fact that commercially sexually exploited girls and boys are victims and, therefore, have a right to protection (Westman 2007:33). The absence of safe houses for victims leading to their committal to remand homes only serves to confirm and exacerbate these negative attitudes.

The third case Republic v. Alex Peer Herman, differed in that the accused person was charged with attempted rape of a young woman and assault causing bodily harm of the same complainant

in beach apartments in Mtwapa area under the SOA and Penal Code respectively.<sup>60</sup> The particulars of the case point to sex tourism. Since the matter did not come up for hearing in the course of field research, it was impossible to uncover more facts concerning the case. Nevertheless, it illustrates the extent of violence and exploitation that young people involved in sex tourism experience.

The fact that law enforcement agencies are dealing with tourist suspects under the SOA illustrates a higher level of legal literacy in which there is an attempt to enforce new laws to the extent that child victims of sexual exploitation are criminalized. Due to their social and political position in society, law enforcement agents have a responsibility to participate actively in law enforcement.

This was, however, not the case for all law enforcement agents. One tourist police officer interviewed stated that he did not know that the SOA had been passed into law as his Police Commissioner had not sent a circular informing the station as is the practice.

It was found that laws which are gender neutral in construction are used to perpetuate the collective low status of young women in Mombasa. It is mainly women who are arrested and prosecuted for offences such as loitering and prostitution rather than their male colleagues, intermediaries and clientele. These men remained beyond reproach before a male-dominated legal system reducing the efficacy of sex tourism laws.

Schuler proposes that in analyzing the status of women it is necessary to move beyond merely describing the parameters of their lives (Schuler 1992:24). She says that we need to understand who and what causes women's collective low status, what are the functional reasons for their oppression, marginality and dependency and how these inequities are perpetuated. In applying Schuler's theory, male law enforcement agents are found to play out their gender biases and perpetuate women's subordination through their institutions. Patriarchal legal and political institutions are used to punish female commercial sex workers in an attempt to control their sexuality. Since their engagement in sex tourism requires having multiple sexual partners, which conduct defies societal expectations of a passive female sexuality, the law is used as a tool to

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<sup>60</sup>The charge was brought under section 4 of the SOA and section 251 of the Penal Code

restrain their rebellion. In a bid to protect patriarchy, male sex workers, intermediaries and buyers of sexual services remain protected by their fellow male law enforcement agents. Despite their sexual promiscuity and aggressiveness being criminal, it is perceived as characteristically defining masculinity.

To further illustrate this lopsided and discriminatory application of the law, I found that out of 19 cases of loitering perused, only one case involved a male loiterer who was a transgender and had been mistaken to be female.<sup>61</sup> A male police officer said:

I have never heard of men being charged with loitering. It is as impossible as how one cannot charge a woman with raping a man.

Two male city council officers however denied that by-laws are being applied discriminatorily and explained that the discreet nature of homosexuality rendered it difficult to detect it. They stated:

We apply the law without favouritism. Male sex workers are however rarely found loitering as they have designated places where clients frequent for sexual services unlike for female sex workers. It hence becomes difficult for us to detect them. Homosexuality is very private and does not happen in public view.

Intermediaries, who are mainly men and whose services are criminalized, were found never to be prosecuted in court. A male tourist police officer stated:

I have never handled such a case where an intermediary has been prosecuted. I know that it would be very difficult to prove such a case.

These law enforcement agents who expressed helplessness in enforcing the law against men involved in sex tourism were clever enough to devise options to deal with the challenges in proving cases relating to prostitution. Police officers interviewed stated that they did experience difficulties in proving prostitution cases but found options to punish offenders, read women, by instituting petty offence charges such as loitering, indecent dressing, drunk and disorderly conduct etc. A male tourist police averred:

The offence of prostitution requires strong evidence e.g. finding the suspect naked and in the act. This is almost impossible so whenever we find these girls wearing mini-skirts, to appease and attract tourists, we arrest and charge them in court for indecent dressing or loitering under municipal by-laws.

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<sup>61</sup> Republic v. Amina Mohammed

This discriminatory treatment of young women contravenes international human rights which provide for the right to equality and non-discrimination of every person.<sup>62</sup> The importance of the right to non-discrimination is so crucial in human rights to the extent that it is required to be embodied in national constitutions.<sup>63</sup> In domesticating this international standard, the Kenya Constitution provides for protection from discrimination by laws in themselves or in effect. The protection is extended to include discriminatory performance of functions of a public authority.<sup>64</sup> This provision renders the treatment by law enforcement agencies towards female commercial sex workers unconstitutional.

A human rights based justice system requires effective prosecution and punishment of all offenders without discrimination. International instruments oblige states parties to provide special mechanisms to eliminate all forms of discrimination in relation to vulnerable groups such as women and children.<sup>65</sup> Kenya has an obligation to ensure that public authorities refrain from engaging in any practice of discrimination against women by modifying such customs and practices through public education, information and other communication strategies.<sup>66</sup>

It was found that the deterrent effect of petty offences such as loitering is minimal and it became very common to have habitual offenders. Two city council officers and a prosecutor from the Municipal Court attributed the high incidences of habitual loiterers to low fines especially since 70-75 percent of convicted offenders were sentenced to pay a stipulated fine.

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<sup>62</sup> See articles 1 and 2 of the Universal Declaration of Human Rights, article 19 of the African Charter on Human and People's Rights, articles 2 and 3 of the Convention on the Rights of the Child and African Charter on the Welfare of the Child

<sup>63</sup> See articles 2 of CEDAW and the Women's Protocol

<sup>64</sup> Section 82 of the Constitution provides: (1) ...no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (8) and (9), no person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description...

<sup>65</sup> See article 18(3) of the African Charter on Human and People's Rights and articles 2 of CEDAW and Women's Protocol

<sup>66</sup> See article 2 of CEDAW and Women's Protocol

Relevant laws were often enforced by corrupt officials thereby limiting their efficacy. Out of the 11 CSWs engaging in sex tourism, 10 comprising 91 percent complained of harassment from law enforcement agents who would demand for free sexual services or bribes in exchange for not forwarding cases for court prosecution. The one CSW who did not complain of police harassment was male, an illustration of the discriminatory enforcement of the law.

Nonetheless, the tourist police and CSWs had cordial and friendly relations. Two tourist police officers interviewed expressed that CSWs did seek their interventions in incidences of abuse and exploitation by tourists. In such incidences, the police would step in to mediate rather than institute criminal proceedings. One male tourist police officer stated:

We are friendly to these young people and white visitors because many of them come to us to assist them when they have problems in their relationships, finances etc. I have counselled many of them... We cannot ignore that this kind of lifestyle is common within our community...

Another tourist police reiterated the unique relationship they have with CSWs and the assistance they offer by adding the following insights:

Sometimes these sex workers are exploited by the *wazungu*. Some girls meet the tourists when they are still abroad and they make arrangements for them to visit Kenya. When the tourists arrive they would book into apartments and our local girls would provide them with escort and sexual services. Later, some tourists may refuse to pay for the services. Many of these girls involve us when they fear that the tourists will leave the country without them receiving their dues. We intervene to resolve the matter out of court. We will normally call the tourist, talk to him and ask that he pays the girl her dues. Unfortunately, we can not do much where a tourist continues to be arrogant as we cannot compel payment for sexual services.

I personally observed this unique relationship in the course of interviewing a tourist police officer. A young lady, who was pointed out to me as being a commercial sex worker, freely walked into the station to borrow money from the police officers. She appeared to be well known to the police officers.

On the other hand, it was common for foreign tourists implicated in related crimes to offer hefty sums of bribes to law enforcement agents for charges to be dropped, cases discontinued and settled out of court. One police officer confided that he had been offered Kshs 300,000 to drop an ongoing case against a German tourist.<sup>67</sup> Corruption is so entrenched to the extent that for municipal council offences, some convicted offenders acquainted with the powers that be

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<sup>67</sup> US\$ 4615

negotiate court fines.

A male CSW in a group discussion intimated corruption among the police when it came to reporting child sex tourism matters. He stated that the police expect a person to pay KSh 500 for fuel costs before conducting investigations.<sup>68</sup> He added that this conduct discouraged members of the public from reporting cases to the police.

### **5.3.1 The Practicalities of Criminalization of Publication of Information on Sex Tourism**

Information is a key component in propagating sex tourism in the country. While recognizing this fact, the SOA specifically criminalizes the publication of information that facilitates or promotes sex tourism. The internet was anticipated to be an important tool through which information is disseminated. This fact was confirmed when a male magistrate interviewed asserted that:

The internet has been used to propagate sex tourism. Photos of children are taken and posted in the internet to would potential visitors. One of my colleagues has been handling such a case.

I expected that the internet would be employed by Mombasa youth to meet potential sex tourists. I instead found that most of the youth interviewed are not frequent internet users and, hence, contacts with tourists were mainly done firsthand in beaches, nightclubs and through intermediaries.

Nonetheless, an emerging issue from the interview with the magistrate points to the fact that the internet may instead be employed by tourists actively seeking out sex tourism. Confirmation of this was obtained when two young men were interviewed and stated:

Some of these white tourists who visit Kenya come already having information from the internet of hot spots where they can acquire young partners for sexual adventures.

Consequently, for law enforcement agencies to be capable of intercepting and detecting information on Kenya as a sex tourism destination, it was envisaged that they require equipment and mechanisms such as internet monitoring, adequate human resources and motor vehicles.

The Coast Provincial Police Headquarters has an information technology department but it is not employed for detection of internet/cyber related crime. The police shifted responsibility to the

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<sup>68</sup> US\$ 7



Kenya Tourist Board (KTB) to control and regulate such information. A police officer stated:

We as the Tourist Police Unit cannot stop people from publishing information on sex tourism. There are other institutions that should do this work. It is very hard to intercept, regulate or control such information.

On the other hand, a KTB officer had this to say:

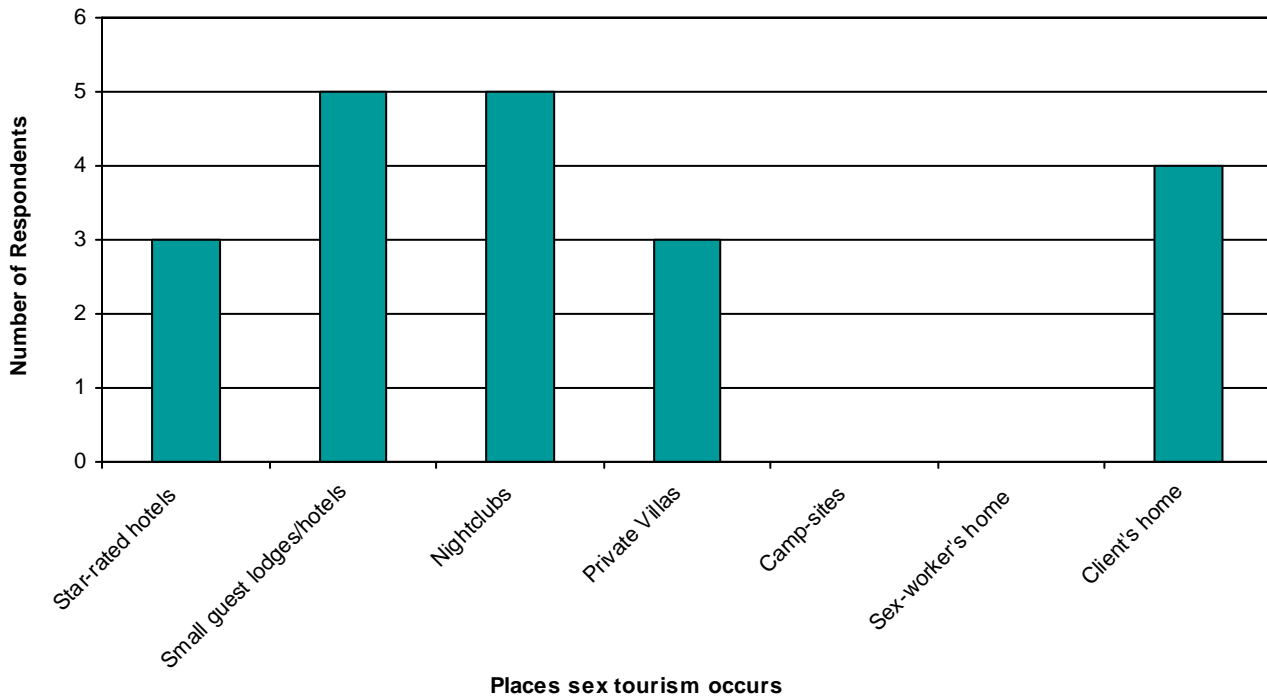
I am not aware that information facilitating sex tourism is published through the internet under the guise of marketing Kenya as a tourist destination. The Kenya Tourist Board does not regulate other bodies or individuals that market Kenya's tourism.

On the adequacy of human resources to detect effectively and intercept sex tourism information, the Tourist Police and Ministry of Tourism and Wildlife advised that they are indeed understaffed and lacked resources such as motor-vehicles to monitor against negative information throughout the entire Mombasa area. This limitation also challenged their capacity to disseminate information against sex tourism to the community and stakeholders in the sector. A tourist officer interviewed painted a grim picture when he stated:

The Coast Province has only two officers who are expected to monitor the area covering North and South Coast i.e. up to Kilifi, Kwale, Tanzanian border and Voi. We are severely incapacitated. In addition, the department has a motor vehicle but the Government has not employed a driver. Government policy dictates that we cannot drive motor vehicles ourselves.

It was found that law enforcement agencies' effectiveness to detect and intercept sex tourism is limited due to the private and public sphere divide. Sexual transactions are increasingly occurring in more private spaces such as nightclubs, residential homes, private villas, beach apartments, etc., which the police do not have access to without search warrants. They can only rely on tip-offs from the public or confessions by aggrieved parties of sex tourism.

**Figure 5: Places where Sex Tourism Occurs**



#### **5.4 Efficacy of Policy and its Level of Implementation**

This thematic group discusses and analyses the findings made in assumptions 6 and 7 relating to the implementation of the Code of Conduct (hereinafter “the Code”). These assumptions investigated the level of enforcement of the Code and the impact of refusal by some establishments to sign the Code. In monitoring the efficacy of the Code, the yardstick established was the laid out criteria which is internationally and universally applied by all signatory members. They are as follows:

1. Establishment of an ethical policy regarding commercial sexual exploitation of children (CSEC) within one year of its signature.
2. Training employees in the country of origin and the travel destination on the issue of CSEC.
3. Introduction of a clause in contracts with suppliers stating a common repudiation of CSEC.
4. Provision of information to travellers by means of catalogues, brochures, ticket-slips, home pages etc.
5. Information provision of the Code and the signatory’s policy in this regard to local key persons such as taxi drivers, restaurant and bar owners, beach operators, decision makers,

politicians, child rights organizations, etc.

6. Annual reporting on the level of implementation to the Code International headquarters in New York.

In the beginning, these establishments had submitted themselves to the Code through umbrella tourism and hotel industry associations such as Ministry of Tourism, KAHK, MCTA and PERAK from 2003. After training of staff at all levels in member establishments, they were encouraged to sign as individual establishments. It was found that out of the 412 registered hotels in Coast Province only 40, comprising 10 percent, are signatory members to the Code. This in itself already limits its effectiveness as the Code only binds signatory members.

Generally, the level of implementation of the Code is dependent on the management of the establishments and their capacity for implementation. The 40 signatory star-rated hotels and nightclubs are in the infancy stages of applying some elements of the Code. However, the ripple effect of its enforcement in star-rated hotels is already being felt by the community who observe that sex tourism has declined considerably within these high income hotels. One female respondent stated:

Sex tourism is rare in most beach hotels because they have strict rules. Access into these hotels is usually monitored and restricted. A single guest is forced to pay an extra fee before being accommodated with a sexual partner.

Some signatory hotels had taken further responsibility in implementing the Code to the extent of disseminating information on child sex tourism and sexual exploitation to neighbouring communities. An NGO officer interviewed stated,

Some hotels have taken ownership of the campaign and are now educating communities against sex tourism...

It is reported, however, that some signatory hotels decline to display and provide materials promoting responsible tourism to travellers on the ground that they are offensive to guests and may be perceived as accusing well-meaning guests of engaging in sex tourism.<sup>69</sup> Others claim that the materials may deter potential guests as they imply that sex tourism occurs within their premises.

It is also reported that none of the signatory companies had submitted their annual reports to the

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<sup>69</sup> See annexures for brochures and stickers campaigning against sex tourism

Code International in New York.

An NGO officer working on implementation of the Code expressed the opinion that there were emerging challenges in so far as private villas and small lodges are concerned, as sex tourism is now shifting to these places. He stated:

Our problem is with the private villas, small lodges and campsites which cannot fulfill the six criteria of the Code due to their unique attributes and financial capacity. We have been negotiating with the Secretariat to allow establishments to be members even where they are unable to fulfill any one of the six criteria.

CSWs interviewed indicated that clients' homes were becoming a more common venue for sexual transactions, thus confirming the fact that the practice is becoming more private and going underground, where exploitation and harassment may be higher.

Nevertheless, all the efforts under the Code are geared towards curbing child sex tourism rather than all forms of sex tourism which has the effect of limiting its effectiveness. Sex tourism involving youth over eighteen years is, instead, referred to as consensual prostitution and beyond the scope of the hotel industry. The Chairperson of the KAHC, Mombasa Branch in recognizing the limitations of this approach firmly observed:

Single tourists coming for holidays should not be allowed to get in their hotel rooms with local young female partners because Kenya is gradually becoming a sex tourism destination. Hotels should take the initiative to bar these tourists at the reception area. Let it be made clear to them that Kenya is not a sex tourism destination and that we don't condone such practices...<sup>70</sup>

It is, therefore, hoped that the initiatives under the Code shall be extended to cover all groups of persons who participate in sex tourism, if the intention of legal and political processes is to prevent, suppress and punish sex tourism as a whole, rather than sex tourism with respect to children.

There are aspects of the Code that are being consistently applied by some signatory members due to persistent efforts and funding by NGOs and INGOs, such as SOLWODI, UNICEF, Save the Children Sweden and Austrian Development Cooperation. They include: trainings for the hotel staff and managers on commercial sexual exploitation of children, production of campaign

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<sup>70</sup> See annexures on newspaper articles Act on, "Child Sex Tourism, say Hoteliers" in Kenyan Daily Nation, 11 December 2007

materials, distribution of brochures, posters and stickers promoting responsible tourism and awareness raising to community members.<sup>71</sup>

Members of the tourism and hotel industry who failed to sign the Code have limited its scope and effectiveness. An NGO officer stated that it was up to the Government to make it mandatory for all establishments to sign the Code prior to renewal or obtaining licenses. Meanwhile, signatory members and implementing partners are making no efforts to raise awareness, lobby and advocate for the Code to be signed by non-signatory members. A proprietor of a non-signatory nightclub stated:

I have never seen the Code of Conduct. KAHC has failed in its duty to advertise and disseminate the Code to the members of the industry. They have not told us the benefits of signing the Code.

Two non-signatory establishments interviewed stated that they are not guilty of practising sex tourism. They contended that they have in-house measures to ensure children are protected and to reduce the incidences of sex tourism within their premises, e.g., production of identity cards at the entry point of nightclubs for revellers who appear underage, payment at full hotel rates by a single guest for any other person accompanying him/her to the hotel room, disallowing entry to some premises of women unaccompanied by a man. In an observation mission to non-signatory establishments, however, I noted that the entrance fees in many nightclubs are affordable to urban teenagers with some being as low as KSh 100.<sup>72</sup> I personally observed a group of teenagers being granted permission to a nightclub known to be a hot spot for sex tourism after exchanging pleasantries with the security officers. They were not requested to produce any identity cards. In the process of attempting to reduce incidents of sex tourism by restricting access to unaccompanied young women, some establishments violate constitutional rights of non-discrimination. Interestingly, section 82(7) of the Constitution expressly protects persons from discriminatory treatment in relation to access to beer halls, entertainment spots, hotels, restaurants etc.<sup>73</sup>

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<sup>72</sup> US\$1.50

<sup>73</sup> Section 82(7) provides, “...no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public...”

## **5.5 Human Rights Standards Vis-a-Vis Gaps in Responsive Sex Tourism Initiatives**

This thematic group discusses and analyses findings made in assumptions 9 and 10 dealing with the existence of outreach and support-based activities to combat sex tourism. The provision of preventive programmes is viewed as a human rights obligation imposed on the government.

It was found that general laws did not make it mandatory for the government to carry out preventive programmes in order to address the underlying causes of sex tourism. As a result, the government could not be held accountable under national laws for provision of these services. The Constitution itself does not provide for socio-economic rights and so their enjoyment by Mombasa youth could not be directly enforced. The government justified itself by advocating a progressive realization of these rights.

The few support-based activities that do exist, are not formulated with sex tourism in mind which means that they fail to deal effectively with the issue.

It was found that NGOs, INGOs and religious organizations are filling in this gap by conducting programmes that offered support-based activities to legislative and judicial measures by government. These outreach activities, however, are limited in scope and resources. The government only offers technical assistance and free medicinal supplies to some NGOs, e.g., contraceptives through the Ministries of Health, Planning and Home Affairs. Examples of support-based activities taking place are life skills training to sex workers and youth, voluntary counseling and testing (VCT), vocational training, peer-education, provision of small loans and income generating activities.

In an interview with an NGO officer it was revealed that these support-based activities are not undertaken for the sole purpose of rehabilitation, but rather so that they may empower CSWs to protect themselves from HIV/AIDS and to provide them with VCT services and life skills. She stated:

Our main purpose is to empower commercial sex workers on safer sex through support groups, training on reproductive health, HIV/AIDS, counseling, distribution of condoms and peer education. A subsistence allowance is offered to each CSW. Our programmes do not aim at behavioural change.

Another NGO specifically working with youth provides a number of preventive programmes especially in relation to sexual behavioural change through information and trainings. Since sex tourism involves having multiple partners, protective measures against HIV/AIDS infection and VCT services are imperative. The youth centre coordinator in an interview described the nature of work they undertake:

Out of the 60,000 youth to whom we provide information every year, 150 have sex tourism related cases emanating from North Coast. We provide them with life skills training and counseling services to empower them to make informed choices about their sexuality. We also conduct clinical outreaches that provide VCT for HIV/AIDS and treatment for STIs. In these outreaches, the Government supplies us with medicines.

He further stated that they collaborate with other NGOs in Mombasa specifically working in this area e.g. SOLWODI.

A religious organization working to rehabilitate sex workers takes a different approach in its outreach activities whereby behavioural change is encouraged on a spiritual level. A male pastor and founder of the programme said:

My main goal is to transform the lives of sex workers not to protect them. My vision is to see the lives of sex workers transformed. The government has failed to take action by putting in place rehabilitative programmes for sex workers who wish to abandon sex trade and find legitimate ways of surviving. My ministry hence provides these women with shelter, discipleship, entrepreneurial training and loans to begin small scale businesses.

The government programmes that attempt to address underlying socio-economic causes of sex tourism include the Youth Fund through which young people acquire loans to begin income-generating activities and cash transfers of KShs 1,500 to families hosting orphaned children.

All the youth interviewed had heard of the Youth Fund but none had benefited from it due to bureaucratic hurdles set by the Government. Majority of the Mombasa residents reiterated the views of the youth that the inaccessibility of the Youth Fund had not rendered it ineffective in improving the lives of young people. A community leader stated:

The government should make the Youth Fund more accessible to our Mombasa youth by relaxing the bureaucratic requirements. There are a number of barriers that one has to overcome to acquire the loans... The stringent procedures lock out the Fund from the ordinary person. The government is giving with one hand and taking away with the other. Furthermore, many of the young people are not empowered with entrepreneurial skills to make wise decisions on how to utilize the loans.

A male youth expressing his dissatisfaction about the Fund said:

I have heard them talk so much about the Youth Fund but I have never seen any young person in my home area benefit from it.

A male sex worker said of the Youth Fund as recourse for him to abandon sex tourism:

I am aware of the Youth Fund but I do not think that it can help me much. It takes too long to acquire the loan and then one has to mobilize a group to acquire a loan.

On the cash transfer system, an INGO officer working with UNICEF stated:

...Together with the Ministry of Home Affairs we initiated cash transfer systems across the country to alleviate poverty. There are 40 districts countrywide benefiting from the system. Mombasa is one of the beneficiary districts. Every family hosting an orphaned child in these districts is eligible to Kshs 1500 per month. The money is to be used for purchasing food, uniforms etc for the orphans.

The sum of KShs 1, 500 may not be adequate to cover all costs of education for orphaned and vulnerable children.<sup>74</sup> Due to time limitation, views from Mombasa residents on the cash transfer system could not be collected.

Interestingly, in the course of an interview with a UNICEF officer it was revealed that despite there being a department dealing with youth over the age of majority, this department is not incorporated in the sex tourism project. The UNICEF officer said,

We do have a department that specifically carries out programmes for the youth. The main work undertaken by the department is provision of life skills training and HIV/AIDS education. We do not offer loans for income generating activities.

The marginalization of the youth above 18 years in programmes and campaigns against sex tourism is again replicated on the international level by UNICEF.

In respect to the international human rights instruments, the Kenyan government has failed to comply with human rights standards which require states parties to take all appropriate measures which include support-based activities and preventive programmes for youth as well as drawing up legislation and policies. This neglectful attitude of the government towards undertaking active preventive services has overburdened NGOs, INGOs and religious organizations which are themselves constrained by their lack of resources, capacity and scope. Where collaboration between government and NGOs exists, however, the government offers only technical and no financial support to outreach initiatives. One NGO officer working in a youth centre stated:

We do collaborate with the government ministries in particular the Ministries of Health and Planning through the National Coordinating Agency of Population and Development. The

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<sup>74</sup> US\$ 23



government normally provides us with medicine such as contraceptives but not financial support.

In comparing the findings to human rights standards, it is revealed that the Government has failed to offer adequate or significant protective and preventive services to sex tourism victims such as:

1. Shelters for victims.
2. Medical and counselling services.
3. HIV/AIDS awareness and education specifically targeting youth in sex tourism
4. Vocational training.
5. Facilitating tertiary education for all, including implementing strategies to keep children and young people in school.
6. Provision of life and entrepreneurial skills to youth.
7. Easy access to credit facilities.
8. Creation of legal awareness and education to grassroots communities on sex tourism.
9. Financial support to NGOs through budgetary allocation.

The absence of these support programmes further weakens the ability of existing laws and policies to combat sex tourism. A community leader summed it up by saying:

The law cannot be effective where the youth are concerned as there are no measures in place to deal with the factors underpinning sex tourism. If the government shall fight poverty then idleness among our youth in Mombasa and consequently sex tourism will also disappear.

## **5.6 Emerging Themes: An Analysis**

In the course of the research, a number of emerging issues from the various sources of data were unearthed. I chose to specifically highlight and discuss the themes I considered most important as they pointed out new directions into future research and scholarship in sex tourism.

Information, which is highly influenced by technological advancement, is a core aspect that has the effect of perpetuating sex tourism. Recognition of this fact specifically caused the SOA to criminalize the publication of sex tourism information under the guise of marketing Kenya as a tourist destination. It emerged that while the police was incapacitated to detect and intercept sex tourism information it relegated its law enforcement responsibility to KTB which does not to have any regulatory mechanism for tourism marketers. The aspect of information could be viewed from various angles.

It emerged from some respondents' interviews that public campaigns against sex tourism would in fact bring Kenya to the attention of potential foreign sex tourists as a likely destination especially where the campaigns did not properly indicate the legal implications of such behaviour. From an interview with a professional tourism marketer, it emerged that publication of information on sex tourism incidences in the country only served to discourage well meaning tourists from visiting Kenya.

During data collection, it was uncovered that the sex tourism industry is an aspect of organized, transnational crime that is intertwined with the drug trafficking due to its high lucrative nature. This organized form of sex tourism renders it a complex issue to curb, punish and suppress. Consequently, national laws and initiatives alone may not adequately deal with the issue. Sex tourism being a global phenomenon requires global intervention. I could not further explore this emerging theme as it was beyond my ambit as a student researcher.

Despite the signing of the Code by star-rated hotels and nightclubs and high level awareness, sex tourism is reported to be now taking place in even more private areas e.g. beach apartments, private villas and residential homes. These establishments are more difficult to monitor as they do not require licensing and are not classified as falling under the realm of the Code. In light of this emerging issue it is expected that any initiatives taken by the government and tourism stakeholders would be superseded by new manifestations of the practice. This may be attributed to the lack of adequate preventive programmes addressing the underlying causes of sex tourism.

## **CHAPTER 6.0: RECOMMENDATIONS AND CONCLUSIONS**

### **6.1 Introduction**

This chapter begins by proposing strategies and interventions to be made at all levels to address social, legislative and political processes. Since children and youth are perceived differently by society and the law, the recommendations made take into account the distinction between these two social groups and the differential positions at which they stand with respect to the current programmes set up by the government, NGOs and INGOs. Further, proposals are also made towards improving responsive initiatives already in place to increase their efficacy in light of the findings made in the course of the study. Finally the chapter ends the piece of work by making brief tentative conclusions on the study and its implications.

### **6.2 Interventions and Strategies for Children**

This first section provides an action plan for intervention and strategies specifically geared towards dealing with child sex tourism. It recommends legislative/judicial, social and political based actions to be taken at all levels with due regard being made to already existing mechanisms to deal with child sex tourism.

#### **6.2.1 Legislative/Judicial Based Interventions**

There is rich body of laws that seeks to criminalize child sex tourism and related offences such as child pornography, child prostitution, child trafficking and defilement which laws provide stringent penalties against offenders. The legislative based interventions shall mainly target the enforcement of these laws.

Firstly, amendments to existing laws to effectively deal with sex tourism is recommended. The Constitution should be amended to incorporate socio-economic rights such as the right to education, work, an adequate standard of living etc. The SOA definition of child sex tourism in section 14 should be broadened in accordance with the NGO CRC Group definition. In addition, the SOA should legislate as a mandatory requirement the provision of preventive programmes and support based activities for victims of child sex tourism through Children's Departments throughout the country. These preventive programmes would include shelters and rescue centres, formal or vocational training, foster or adoption placements for orphans, free counselling and

medical services, information on legal rights and financial assistance. The existence of these programmes throughout the country would deal with internal trafficking which supplies child sex workers to Mombasa.

It is also recommended that child protection units be established in all major police stations throughout the country which would be run by police officers sensitized on issues of child rights, gender and sex tourism.

Judicial officers in children's courts should also undergo gender and child rights sensitization. Currently, some magistrates have undergone training on the SOA. Such awareness and training on relevant laws should continue with the government collaborating with NGOs and INGOs.

Prosecution of perpetrators of child sex tourism i.e. clientele, intermediaries, parents who force their children into sex industry, traffickers, etc. Children should not be criminalized but protected as victims. The government should also provide *pro bono* lawyers to victims of child sex tourism so that they can be represented rather than criminalized by the justice system.

The government should also make the signing of the Code mandatory for all hotels, nightclubs and rental villas. A report detailing the level of implementation of the Code should also be submitted to the relevant ministries and the Code International prior to renewal of licences. Meanwhile, awareness and lobbying for the signing of the Code to various establishments in the travel and tourism industry should be undertaken by NGOs and INGOs in collaboration with the Government.

Finally, these legislative and judicial interventions should be undertaken nationally and internationally. Since child sex tourism is universally regarded as unacceptable, the home countries of sex tourists should be brought on board. Kenyan law enforcement agents have little practical experience detecting, investigating and prosecuting these crimes in contrast with authorities in the home countries. Consequently, sharing of information to enhance the effectiveness of the investigation and prosecution of extraterritorial child exploitation offenses would be invaluable for Kenyan law enforcement agents.

The mobility of sex tourists renders it difficult for law enforcement agents, localised and with limited jurisdiction, to detect them before they leave the country. Consequently, the application of extraterritorial laws, most of which do not require dual criminality, shall ensure that sex tourists who commit offences against children in Kenya can be prosecuted, tried and sentenced in their home countries. The legal system of countries that have been cited as home countries of sex tourists have extraterritorial legislation that the Kenyan law enforcement agencies have not been implementing.

### **6.2.2 Social Based Interventions**

The actual provision of preventive and support-based programmes would improve the socio-economic position of children and reduce their vulnerability to engage in child sex tourism. The Government should be more proactive in the provision of social services to children affected or at risk by providing financial support to recognized NGOs and religious organizations. In particular, there are very few shelters and rehabilitation centres in Mombasa. The government in partnership with NGOs and INGOs should set up these centres to provide accommodation, rehabilitative and counselling services to orphans, drug addicted children and child sex workers. The provision of social based interventions would require commitment and prioritization by the Government as higher budgetary allocations would be needed.

Retention of children in school is the first step towards dealing with the supply side of the equation of sex tourism. The introduction of free secondary education would ensure that poor children remain in school and deal with gender disparities in higher levels of education. Children who choose to drop out of school should be registered in vocational training to acquire life and other skills to compete in the job market. Mentorship programmes should be conducted in schools through professional and alumni associations to motivate children to pursue their education.

The HIV/AIDS epidemic has led to an increase in the number of orphans. Public education on HIV/AIDS, provision of VCT and anti-retroviral treatment should continue to be taken to grassroots levels. The government is commended for the cash transfer system. It is, however, recommended that a higher monthly allowance be provided. In addition, children should be provided with sex education in schools from primary level so that they can be empowered to

protect themselves from HIV/AIDS infection.

There should be increased awareness among the host communities and the country in general on commercial sexual exploitation of children, child rights and reporting mechanisms. Legal education through barazas, theatre, role plays etc at grassroots levels should be conducted regularly specifically targeting parents, children, community and religious leaders, hotel and nightclub staff, media etc.

The media should be incorporated in public education to highlight cases of child sex tourism. In collaboration with government, NGOs and INGOs documentaries or infomercials on sex tourism should be produced and aired on national television, radio, internet, etc.

Continuous research and studies on the area of sex tourism should be conducted on a periodic basis to ensure that the policies and initiatives undertaken are responsive and informed by the lived realities of children. In pursuance of this recommendation, child participation is imperative in establishing policies and laws to deal with issues affecting children. The government should, therefore, collate views of children and incorporate them in their laws, policies and programmes.

Collaboration between government, NGOs, INGOs and religious organizations working on child sex tourism is encouraged and recommended. The Mombasa District Action Plan provides a framework within which such collaboration can flourish.

### **6.2.3 Political Based Interventions**

These interventions lie on both the side of Kenya as a destination country and the home countries of the sex tourists. Collaboration is necessary if action against child sex tourism is to be effective. The organized and transnational nature of sex tourism means that it can only be effectively combated if action is taken at national, bilateral and multilateral levels. Kenya should be open to interventions by home countries of sex tourists should they detect or intercept intended child sex tourism. Legislation with checks and balances can be enacted to allow for such intervention by international community. On the other hand, home countries should willingly provide information and intelligence they receive on sex tourism to Kenya as a destination country. The first step into international collaboration would be to promote this

agenda of child protection diplomatically with the countries whose nationals have been identified as sex tourists.

Since all countries prohibit child sexual abuse and exploitation, there is a corresponding obligation to protect children against sexual abuse, whether committed by nationals or foreigners. The international community has an obligation to prosecute and hold accountable any abuser regardless of his or her nationality and whether the abuse was committed in the home or destination country. Consequently, home countries have a critical role to play in preventing such sexual abuse by tackling demand and ensuring effective and responsive measures are in place to fully investigate and prosecute the commission of these crimes.

The laws of home countries of sex tourists allow for proactive measures to prevent the commission of acts of child sex tourism. A home country of a sex tourist may learn that a known sex tourist has attempted to plan travel to a known child sex tourism destination country. In that situation, some states endeavour to prevent the intended offender's travel from the home country and prosecute him/her for the acts he/she committed in his home country using provisions that criminalize the attempt to commit child sex tourism. Other states may use their conspiracy or incitement laws to criminalize the planning of a sex tour trip, even if no travel has yet taken place. Outside collaborations in the realms of prosecution, states may take steps to limit the travel of convicted sex offenders, or notify destination countries of such travel which can lead to the offender being refused admission to the destination country.

High profile advocacy on the issue of child sex tourism has a great impact and places the issue in the public domain. The President, Police Commissioner, Ministers, high judicial officers, Coast Province Members of Parliament, among others, should openly condemn child sex tourism and state the country's position on the issue. This shall confirm the political will of the government to deal with the issue.

### **6.3 Interventions and Strategies for Youth**

Interventions and strategies for youth differ from those of children as the legislative framework covering them is distinct from that of children. In addition, in the course of the study many respondents viewed youth as having capacity to decide to engage in sex tourism and, hence,

policies and laws should not offer any protection to them.

### **6.3.1 Legislative/Judicial Based Interventions**

Constitutional amendments are imperative. These should include the incorporation of socio-economic rights so that the youth can hold the government accountable for their provision. In compliance with CEDAW and the Women's Protocol, the Constitution should provide gender as a ground for non-discrimination to ensure that the law in itself and effect is not discriminatory against young women.

Currently, the laws on trafficking only protect children. The Government should fast-track the enactment of the Counter-Trafficking in Persons Bill which should provide protection to all vulnerable groups including the youth. The Bill should include preventive and protective measures and provide for the effective prosecution and punishment of traffickers in compliance with the Palermo Protocol.

Section 14 of the SOA should be amended to apply to all groups of persons. Thus the reference to a "child" should instead be reference to "any person" so as to encompass the other vulnerable groups and outlaw the offence of sex tourism in its totality and not just in respect of children. This amendment would comply with the National Tourism Policy that commits the government to campaign against all forms of sex tourism.

The laws on prostitution under the Penal Code should be amended to ensure that youth, especially young women in sex tourism, are not criminalized and discriminated against in its application. There should be an end to impunity towards key actors and actual beneficiaries of sex tourism, namely, intermediaries and predominantly male clientele. The law enforcement agents should effect arrests, prosecute and punish all participants. Legal action against these groups should deal with complicity of sex tourism among the youth and community. In addition, law enforcement agents should be trained in methods for preventing sex tourism and trafficking and prosecuting related cases while being gender-sensitive.

The relevant laws should legislate for the provision of preventive and rehabilitative services to be



provided by the government with respect to youth engaging in sex tourism. These preventive services should include appropriate housing, vocational or formal training, easy access to credit, counseling services, empowerment through life skills, HIV/AIDS prevention and treatment, distribution of contraceptives, education on legal rights, VCT services, among others.

### **6.3.2 Social Based Interventions**

The majority of the youth are forced into sex tourism due to economic reasons. The Government should address the root causes in order to eliminate the exploitation of youth by sex tourists and traffickers. Efforts for rehabilitation and social integration for victims who wish to leave sex tourism should be undertaken and enhanced to deal with the supply side.

It is recommended that existing support-based activities would be improved. For instance, the bureaucratic procedure of acquiring loans under the Youth Fund could be relaxed, entrepreneurial and life skills could be offered to the youth, youth friendly information on HIV/AIDS should be readily available, as well as shelters, vocational training, employment creation, etc.

The government in partnership with private sector should study the phenomenon of sex tourism involving the youth which contributes and impacts on child involvement. Studies undertaken thus far have only targeted children. More research that specifically looks into youth's lived experiences should be undertaken. The findings should shape policies and laws dealing with sex tourism.

The Ministry of Youth Affairs and the youth department under UNICEF have not been incorporated into the efforts towards dealing with sex tourism. It is important that they collaborate in the efforts so the interests of the youth are taken into account.

All initiatives should be geared towards eliminating the possibility of Kenya becoming a world renowned sex tourism destination. Members of the tourism and hotel industry should take stricter measures against accommodating single guests who promote prostitution within their premises.

Public awareness to educate the community on laws and change societal attitudes on sex tourism

should be undertaken in barazas, in schools, churches, media, institutions of higher education among others. These sessions would challenge attitudes of acceptance towards sex tourism as a viable career.

A regulatory body for tourism marketers should be established under the auspices of the KTB through which all marketers should be registered and a code of conduct prepared so as to raise standards of tourism marketing and monitor all agencies.

### **6.3.3 Political Based Interventions**

Since some members of the international community have legalized commercial sex work, international cooperation should instead be directed towards combating organized, transnational crime which underlies sex tourism. The government should co-operate with sex tourists' home countries by way of exchange of information and expertise on the means and methods used by organized criminal groups for purposes of sex tourism and trafficking and the possible means for detection especially in cases of cyber related crime.

The Government should express commitment to suppress sex tourism through directives and statements by high government officials against the practice among youth.

## **6.4 Conclusion**

Sex tourism is a global phenomenon. Kenya must be commended for its legislative and policy interventions to protect children from sexual exploitation in the tourism and travel industry. As this study has demonstrated, however, the youth are also vulnerable to sex tourism and initiatives that have failed to adequately target them only nullify government efforts with regard to children.

Implementation of sex tourism laws is difficult and ineffective due to lack of preventive programmes and poor enforcement. Due to the failure by government to deal effectively with the underlying causes of sex tourism identified as poverty, unemployment, gender inequality, etc., the practice continues despite the enforcement of some punitive measures. Instead, sex tourism merely evolves in response to legislative measures to accommodate its perpetuation. [In this

environment, the legislative intention to curb sex tourism through the passing of multiple laws is easily defeated by an industry which continues to grow simply by readily adapting its *modus operandi* so as to undermine any new law.] The danger is that this renders the youth more prone to sexual exploitation by organized transnational criminals and leads it further underground in deeper private spheres where it cannot be easily detected and intercepted by law enforcement agents.

In conclusion, the most effective way to deal with sex tourism is to address the limitations of the already existing interventions at all levels. For the laws to be effective against sex tourism, the underlying causes such as poverty need to be addressed in preventive and support-based programmes. In addition, impunity towards active actors such as intermediaries and foreign buyers should end. Collaboration between public and private sectors on both national and international levels shall strengthen existing efforts.

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# THE STANDARD BUSINESS

FRIDAY, MAY 4, 2007

## Tourism earnings set to hit Sh61 billion target

BY EDITH FORTUNATE  
AND REUTERS

KENYA'S tourism earnings rose 19 per cent to Sh17.5 billion (\$258.5 million) in the first quarter of 2007 compared with the same period last year, the Kenya Tourist Board (KTB) says.

It also projected an 8.5 per cent rise in annual earnings to Sh61 billion this year compared to Sh56.2 billion earned in 2006.

Last month, KTB said the expected increase in tourism earnings was based on a forecast of more than one million arrivals this year.

Tourism was Kenya's highest foreign exchange earner last year. The country is famous for its palm-fringed white beaches and national parks.

"Tourism earnings from January to March 2007 increased to 17.5 billion shillings compared to 14.7 billion over the same

period last year," KTB Managing Director Dr Ongong'a Achieng told a press conference.

Tourist arrivals rose by seven per cent to 501,817 over the first quarter compared with 469,239 over a similar period last year.

Kenya received 48,806 visitors from Britain — its leading market in the first quarter, compared with 40,139 visitors in the same period last year.

Tourists from Italy grew by 15 per cent with arrivals standing at 32,838 in the first quarter compared to 28,598 in the year ago period, KTB said.

Visitors from the United States rose by 20 per cent to 22,802 in the first quarter compared with the same period last year.

Giving a review of the first quarter performance, KTB said the tourism sector has continued to perform consistently well over the past three years.

"Poor infrastructure is one of the challenges facing our domestic tourism and I am happy to report that the Government is fixing the Mai mahiu-Narok road," Achieng said.

The performance review noted that tourists wanted to be in control in organising their trips especially when travelling for leisure, and that technology has provided them with the ability to do just that.

Achieng said domestic air access has improved tremendously during the first quarter.

"Fly 540 introduced a new 'no frill airline' concept in this country for the first time which has encouraged healthy competition and lowered flying costs," he said.

All these new developments have facilitated domestic travel and in built flight connections to destinations of international tourists' interests within the country.

"With the increased flights into the African region by Kenya Airways the number of consumers coming into the country has increased by 17 per cent," said the MD.

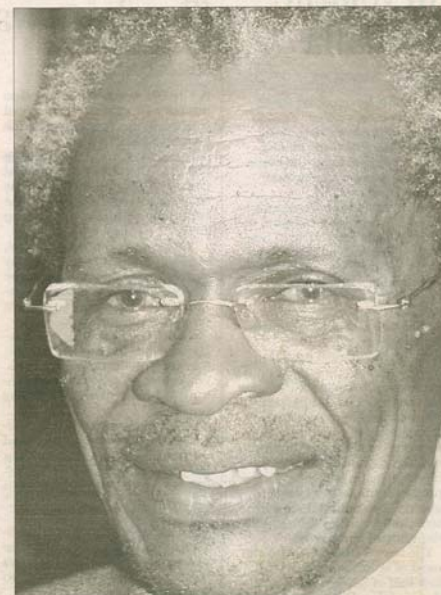
KTB Chairman Mr Jake Grieves-Cook said: "We need to liaise with investors to build high quality classified accommodations in new areas apart from the centre of interests like Mombasa".

He lamented that KTB cannot market undeveloped areas because it will not be of help.

"The image of Kenya tourism has improved, but a lot needs to be done to increase the demand of Kenya as the best tourism site".

He urged the Government to invest more resources and to strengthen the Kenya shilling.

"We would also like the Government to increase the allocations of funds to the sector," he said.



KTB Managing Director Dr Ongong'a Achieng.



P10 23/10/2007 EAS

# Kenya makes in-roads in tourism, says survey

BY JOHN OYUKE

BAD roads remain a major threat to the development of tourism in the country, a new survey has disclosed.

The *Exit Survey of International Tourists*, however, shows that majority of international visitors are satisfied with their holidays and Kenya as a tourism destination.

Tourism Trust Fund (TTF) managing director, Dr Dan Kagagi, said though many tourists are generally happy with Kenya as a destination, industry stakeholders cannot afford to sit on their laurels.

He was speaking during the release of the survey, which studied more than 2,400 tourists at Jomo Kenyatta and Moi International Airports in Nairobi and Mombasa, during a TTF and Kenya Tourist Board (KTB) conference in Nairobi yesterday.

According to the survey conducted between Septem-

ber 27 and October last year, Kenya was rated highly by most tourists.

It shows that 96 per cent of the travellers reported that their expectations were met in respect to quality of services offered, compared to four per cent who were dissatisfied.

Highly rated reasons for satisfaction included enjoying the whole experience (21 per cent), hospitality of Kenyan people (20.3 per cent) and attractive and appealing sceneries (10.1 per cent).

The dissatisfied tourists reported that most services were expensive (18 per cent), in particular charges in the hotels.

Another 16 per cent of the tourists reported that Kenyan roads are dilapidated, while others reported poor treatment and unfriendliness (12 per cent), and duration of the allocated visit being too short

(3.6 per cent).

The survey further disclosed that a majority of tourists visiting Kenya are increasingly younger, highly educated, and well paid.

Kagagi said while it is pleasing that a majority of tourists are satisfied with their holidays and the destination in

general, it was also important to note that a significant number found roads to be in poor condition.

KTB chief executive, Dr Ong'ong'a Achieng said that through the study, the marketing body now has better knowledge of its potential clients.

"This information would certainly form the basis for the future and I am certain that our marketing plans will be more effective because of this research," he said.

Kagagi described the findings concerning the Internet, where 40 per cent of the foreign tourists used the Internet for information on Kenya, to be a key highlight of the importance of online marketing.

"We were very interested to note the Internet was the leading source of information on Kenya for tourists. This underscores our commitment to focusing on e-tourism," he said.



Number of tourists interviewed

2,400



EAS 27/11/2007 Tuesday

## INTERNATIONAL NEWS

# Women tourists flock Kenya for sex adventures

BY JEREMY CLARKE, MOMBASA

**B**ETHAN, 56, lives in southern England on the same street as best friend Allie, 64.

They are on their first holiday to Kenya, a country they say is "just full of big young boys who like us older girls".

Hard figures are difficult to come by, but local people on the coast estimate that as many as one in five single women visiting from rich countries are in search of sex.

Allie and Bethan – who both declined to give their full names – said they planned to spend a whole month touring Kenya's palm-fringed beaches. They would do well to avoid the country's tourism officials.

"It's not evil," said Jake Grieves-Cook, chairman of the Kenya Tourist Board, when asked about the practise of older rich women travelling for sex with young Kenyan men.

"But it's certainly something we frown upon."

Also, the health risks are stark in a country with an Aids prevalence of 6.9 percent. Although condom use can only be guessed at, Julia Davidson, an academic at Nottingham University who writes on sex tourism, said that in the course of her research she had met women who shunned condoms – finding them too "businesslike" for their exotic fantasies.

The white beaches of the Indian Ocean coast stretched before the friends as they both walked arm-in-arm with young African men, Allie resting her white haired-head on the shoulder of her companion, a six-foot-four 23-year-old from the Maasai tribe.

He wore new sunglasses he said were a gift from her.

"We both get something we want – where's the negative?" Allie asked in a bar later, nursing a strong, golden cocktail.

She was still wearing her bikini top, having just pulled on a pair of jeans and a necklace of traditional African beads. Bethan sipped the same local drink: a powerful mix of honey, fresh limes and vodka known locally as "Dawa", or "medicine".

She kept one eye on her date – a 20-

year-old playing pool, a red bandana tying back dreadlocks and new-looking sports shoes on his feet.

He looked up and came to join her at the table, kissing her, then collecting more coins for the pool game.

Grieves-Cook and many hotel managers say they are doing all they can to discourage the practice of older women picking up local boys, arguing it is far from the type of tourism they want to encourage.

"The head of a local hoteliers' association told me they have begun taking measures – like refusing guests who want to change from a single to a double room," Grieves-Cook said.

"It's about trying to make those guests feel as uncomfortable as possible ... But it's a fine line. We are 100 per cent against anything illegal, such as prostitution. But it's different with something like this – it's just unwholesome."

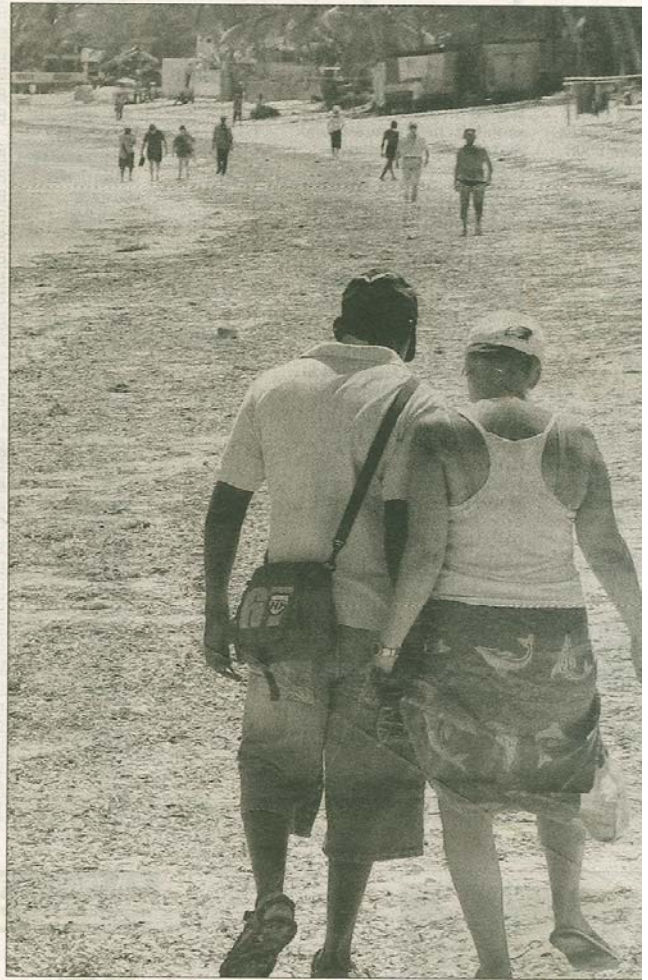
These same beaches have long been notorious for attracting another type of sex tourists – those who abuse children. As many as 15,000 girls in four coastal districts – about a third of all 12-18 year-olds girls there – are involved in casual sex for cash, a joint study by Kenya's Government and UN children's charity UNICEF reported late last year.

Up to 3,000 more girls and boys are in full-time sex work, it said, some paid for the "most horrific and abnormal acts".

Emerging alongside this black market trade – and obvious in the bars and on the sand once the sun goes down – are thousands of elderly white women hoping for romantic, and legal, encounters with much younger Kenyan men.

They go dining at fine restaurants, then dancing, and back to expensive hotel rooms overlooking the coast.

"One type of sex tourist attracted the other," said one manager at a shorefront bar on Mombasa's Bamburi beach. "Old white guys have always come for the younger girls and boys, preying on their poverty ... But these old women followed ... they never push the legal age limits, they seem happy just doing what is sneered at in their countries."



A Kenyan man walks with an unidentified tourist at the Jomo Kenyatta Pul Beach in Mombasa, last week. PICTURE: REUTERS

Experts say some thrive on the social status and financial power that comes from taking much poorer, younger lovers. "This is what is sold to tourists by tourism companies – a kind of return to a colonial past, where white women are served, serviced, and pampered by black minions," said Nottingham University's Davidson.

Many of the visitors are on the lookout for men like Joseph.

Flashing a dazzling smile and built like an Olympic basketball star, the 22-year-old said he has slept with more than 100 white women, most of them 30 years his senior.

"When I go into the clubs, those are the only women I look for now," he told Reuters. "I get to live like the rich

mzungus (white people) who come here from rich countries, staying in best hotels and just having my fun."

At one club, a group of about 25 dancing men – most of them Joseph look-alikes – edge closer and closer a crowd of more than a dozen white women, all in their autumn years.

"It's not love, obviously. I didn't come here looking for a husband," Bethan said over a pounding beat from the speakers.

"It's a social arrangement. I buy him a nice shirt and we go out for dinner. For as long as he stays with me he doesn't pay for anything, and I get what I want – a good time. How is that different from a man buying a young girl dinner?" — Reuters



# More US tourists expected

BY PHILIP MWAKIO

AMERICA is poised to become Kenya's leading source of foreign tourists next year with projections of over 100,000 arrivals annually.

According to the US ambassador to Kenya, Mr Michael Rannerberger, projections indicate that the number of American tourists coming for holiday in Kenya could hit the 100,000 mark.

Currently, the number of American tourists coming to Kenya annually is 86,000.

"Kenya's reputation as a tourist destination in the US has increased in the last five years owing to tremendous achievements in various fields," said the envoy.

Ranneberger said the Kenya Tourist Board (KTB) has aggressively marketed the country as a preferred tourism destination.

He was speaking aboard a visiting US naval warship, USS Porter, at the Mombasa port.

The ship is part of the US naval fleet in the multinational maritime task force guarding international waterways along the Horn of Africa and Gulf regions.

Hoteliers were upbeat over the envoy's remarks. Mr Charles Muia, Mombasa Serena Beach Hotel General Manager, observed that the in-

crease in number of American tourists would lead to more revenue.

"American tourists are very big spenders and are known to mingle freely with the locals," he said.

He, however, stressed the need for construction of proper road infrastructure and equipping the Tourist Police Unit (TPU) in support of tourism development.

Alliance Group of Hotels Chief Executive Officer, Mr Raymond Matiba, conceded that the American market was very strong and could compete effectively with United Kingdom (UK), and Germany, two of the leading markets for Kenya.

Matiba said the scheduled direct flight by Delta Airlines from the US would be a big boost to the local industry.

"This will be a big boost to potential travellers from the US who have had to contend with changing flights to reach Kenya," he said.

Sopa Lodges Kenya General Manager, Mr Patrick Marekia, said his group was looking forward to increased business and was upgrading its units.

"We have mainly handled the American market and are preparing adequately for any increase in arrivals from that part of the world," he said.



P. 10

The Saturday Standard  
NOVEMBER 3, 2007



**IN THE DOCK**  
Germans Ludtke Herman, 66, and Gromer Albert, 62 at the Mombasa Law Courts where they appeared before Chief Magistrate Boaz Olao charged with defilement and possessing obscene material. Gromer denied the charges and was released on a bond of Sh200,000 while Herman was not allowed to take plea since he does not understand English.

— PICTURE: ANDREW KILONZI



DAILY NATION  
Tuesday December 11, 2007

**CONSUMER PROTECTION**  
Manufacturers act on curbing  
ad using SMSs **Page 32**

## Act on child sex tourism, say hoteliers

By NATION Correspondent

Hoteliers want a new law enacted to allow State inspectors to access private villas and homes to fight child prostitution.

The Kenya Association of Hotelkeepers and Caterers (KAHC) claimed there was a possibility of child sex abusers fleeing from mainstream hotels and finding new hideouts in the villas, small lodgings and private homes.

KAHC Coast branch chairman, Mr Mohamed Hersi, also urged the government to bar 29 listed international child sex abusers from entering the country. Their names and descriptions are on the internet, he said.

A recent report by United Nations International Child Education Foundation reveals that today, major hotels account for four per cent of child sex tourism while private villas and homes account for 12 per cent.

### Young female partners

Single tourists coming for holidays should not be allowed to get in their hotel rooms with local young female partners "because Kenya was gradually becoming a sex tourism destination." "Hotels should take the initiative to bar these tourists at the reception area. Let it be made clear to them that Kenya is not a sex tourism destination and that we don't condone child sex practices," said Mr Hersi.

He spoke to hotel managers and employees at Coral Key Beach Resort in Malindi during the second signing of the Code of Conduct for the protection of Children from Commercial Sexual Exploitation in Travel and Tourism by 21 hotels from the North Coast at the weekend.

Regional Unicef advisor, on child protection, Ms Margie de Monchy regretted that child sex exploitation was a growing industry all over the world Kenya among those with a thriving market.

## Sexual exploitation of children is a crime

- everywhere!

Child sexual exploitation is a global crime. Many countries have enacted extraterritorial law. Based on this law, child abusers are arrested and punished, regardless of the location of the crime.

According to Kenyan law, the Children's Act 2001, every human being below 18 years is protected from sexual abuse and exploitation.

Take action if you are suspicious. You can report to the hotel manager, your travel guide, travel agency, to the local police or other authorities or your home country police.




## In Kenya

For more information you can contact one of the agencies or Non Governmental Organisations that are involved in the protection of children.

24-hours Police Hotline: 999

The Kenya Police Children's Desks,  
Nairobi: (020) 2400400/27202235  
Mombasa: (041) 311403  
Kisumu: (052) 2022267

Children's Department; Government Crisis Desks,  
Nairobi: (020) 248844  
Provincial Children's Office, Mombasa  
(041) 2227680  
Provincial Children's Office, Kisumu  
(052) 2210303

ECPIK- End Child Prostitution, Pornography and Trafficking in Kenya  
P.O. Box 43982, NAIROBI  
Tel: (020) 605 378  
E-Mail: [ecpiik\\_coalition@yahoo.com](mailto:ecpiik_coalition@yahoo.com)  
[ecpiik@alphanet.co.ke](mailto:ecpiik@alphanet.co.ke)

SOLWODI- Solidarity with Women in Distress  
P.O. Box 17038, Mombasa  
Tel : (041) 222327  
E-Mail: [solwodi@wananchi.com](mailto:solwodi@wananchi.com)

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More information: [www.ecpat.net](http://www.ecpat.net), [www.unicef.org](http://www.unicef.org),  
[www.thecode.org](http://www.thecode.org), [www.world-tourism.org](http://www.world-tourism.org), [www.Interpol.int](http://www.Interpol.int)

# HELP

## PROTECT OUR CHILDREN



## FROM SEXUAL EXPLOITATION










Layout: Katarina & Ulrik Westman  
Printers: RealTime Communications  
Nairobi October 2005







<h2 style="text-align: center;">Tourism and exploitation</h2> <p>Sexual exploitation of children is an increasing global social, cultural and economic problem. The increase of sexual exploitation of children in developing countries is because exploiters feel safer from prosecution in these countries. This could be because of poverty, unemployment and lack of knowledge.</p> <p>Sexual exploitation of children involves both foreign and domestic tourists and travellers. According to UNICEF, the world has over two million sexually exploited children, so called "child prostitutes". Child exploiters defile, dehumanise, demoralise and damage the children's childhood and future.</p>	<h2 style="text-align: center;">Commitment of the tourism industry</h2> <p>Many International and European tour operators, hotel chains and travel agencies have signed up for the "Code of Conduct" so as to protect children from sexual exploitation.</p> <p>Stakeholders in the international tourism industry are becoming more active in both protecting and taking an active stand against sexual exploitation of children.</p> <p>With the "Code of Conduct" the tourism industry commits itself to training their staff on this issue, informing clients and including clauses in contracts with suppliers.</p>	<h2 style="text-align: center;">Kenya makes a difference!</h2> <p>The Kenyan Government and tourism industry fully support the six criteria for the "Code of Conduct":</p> <ul style="list-style-type: none"> <li>-To establish a corporate ethical policy against commercial sexual exploitation of children.</li> <li>-To train the personnel.</li> <li>-To introduce clauses in contracts with suppliers, stating a common repudiation of sexual exploitation of children.</li> <li>-To provide information to travelers through catalogues, brochures, in-flight films, etc.</li> <li>-To provide information to local "key persons" at destinations.</li> <li>-To report annually.</li> </ul> <p>The Code of Conduct is being implemented in collaboration with the Government of Kenya, Kenya Tourism Federation, Association of Hotel Keepers and Caterers, Mombasa and Coast Tourist Association, Kenya Tourist Board, Kenya Association of Tour Operators and ECPIK (End Child Prostitution, Pornography and Trafficking in Kenya) and other partners.</p>
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 30%;"> <h3 style="color: red; text-align: center;">TOURISTS WELCOME</h3>  <h3 style="color: red; text-align: center;">KENYA PROMOTES RESPONSIBLE TOURISM</h3> </div> <div style="width: 65%; background-color: black; color: white; padding: 10px; text-align: center;"> <h3 style="color: red;">SEXUAL ACTIVITY WITH CHILDREN IS A CRIME</h3> <p style="color: white;">ANY ONE UNDER 18YRS IS A CHILD</p> <h3 style="color: red;">EXPLOITERS WILL BE PROSECUTED</h3> <p style="color: white;">REPORT TO 999</p> </div> </div>		



## L'exploitation sexuelle des enfants est un délit partout dans le monde!

De nombreux pays ont édicté des lois dites «extraterritoriales». Cela signifie qu'un coupable peut aussi être poursuivi par la justice de son pays de résidence ou d'origine pour un délit qu'il a commis ailleurs.

Conformément à la loi kenyane «Children's Act», tous les moins de 18 ans sont protégés contre les abus et l'exploitation sexuels.

Ne restez pas inactif si vous voyez quelque chose de suspect: contactez la direction de l'hôtel, le guide, votre agence de voyages, le poste de police le plus proche et les autorités ou la police de votre pays.



Layout: Katarina & Ulrik Westman  
Printers: RealTime Communications  
Nairobi October 2005

## Informations et contacts au Kenya

Si vous désirez davantage d'information sur la situation ou la protection des enfants au Kenya, contactez l'une des instances ci-dessous:  
Hotline de la police (24 h sur 24): 999.

Police du Kenya, département «Protection de l'enfance»  
Nairobi - (020) 2400400/27202235  
Mombasa - (041) 311403  
Kisumu - (052) 202267

Département «Protection de l'enfance»  
Cellules de crise du gouvernement:  
Nairobi - (020) 248844  
Bureaux régionaux du Gouvernement pour la protection de l'enfance - Mombasa: (041) 2227680  
Kisumu: (052) 2210303

ECPIK - End Child Prostitution, Pornography and Trafficking in Kenya:  
P.O. Box 43982, Nairobi  
Tel: (020) 605 378  
Email: ecpiik\_coalition@yahoo.com, ecpiik@alphanet.co.ke

SOLWODI - Solidarité avec les femmes et jeunes filles en détresse:  
P.O. Box 17038, Mombasa  
Tel: (041) 222327  
Email: solwodi@wananchi.com

Projet soutenu par:  
Coopération Autrichienne pour le Développement, Ministère du Travail et de l'économie Autrichien, Ville de Vienne - Affaires Etrangères, Hotelplan, ECPAT Hollande et UNICEF Kenya.

Contact et rédaction:  
ECPIK, Nairobi, Tel: 020 605378, Email: thecode2005@yahoo.com and respect/ECPAT Austria, Vienna, Email: ecpat@respect.at

Complément d'information: www.ecpat.net, www.unicef.org, www.thecode.org, www.world-tourism.org, www.interpol.int











## AIDEZ VOUS À PROTÉGER NOS ENFANTS CONTRE L'EXPLOITATION SEXUELLE



## Tourisme et exploitation

L'exploitation sexuelle des enfants a des racines sociales, culturelles et économiques. Le phénomène prend de l'ampleur en particulier dans les pays en voie de développement en raison de la pauvreté, du chômage et de l'ignorance des dangers encourus. Autre raison: les coupables s'y croient souvent à l'abri de poursuites pénales.

Les coupables viennent de partout. Il s'agit aussi bien de touristes autochtones que d'étrangers. Selon les estimations de l'UNICEF, quelque 2 millions d'enfants dans le monde sont chaque année victimes d'exploitation sexuelle. Les coupables déshonorent les enfants, leur enlève leur dignité d'être humains et détruisent leur enfance et leur avenir.

## L'industrie touristique soutient la protection de l'enfance

De nombreux voyageurs internationaux et européens, chaînes hôtelières et agences de voyage ont déjà signé le Code de Conduite pour protéger les enfants contre l'exploitation sexuelle.

Toujours davantage de représentants de l'industrie touristique prennent des mesures pour protéger les enfants et condamnent de manière unanime toute forme d'exploitation sexuelle des enfants.

Par le biais du Code de Conduite, les instances du tourisme s'engagent entre autres à informer les vacanciers, à former leur personnel et à ajouter une clause supplémentaire (protection des enfants) dans les contrats signés avec leurs partenaires commerciaux (hôtels).

## Le Kenya se distingue!

Le gouvernement et l'industrie touristique du Kenya approuvent totalement le Code de Conduite et les 6 principes qui en découlent:

- Introduction d'une philosophie d'entreprise qui s'inscrit clairement contre l'exploitation sexuelle des enfants.
- Sensibilisation et formation des personnel.
- Établissement de clauses dans les contrats avec les prestataires exprimant des clairement le refus de l'exploitation sexuelle des enfants.
- Publication et diffusion de documents destinés à la clientèle ayant trait à l'exploitation sexuelle des enfants.
- Collaboration (communication d'informations) avec les destinations.
- Rapport annuel sur les mesures effectuées.

Le Code de Conduite est appliqué en collaboration avec le gouvernement kenyan, diverses instances du tourisme telles que l'association des hôteliers et fournisseurs des hôtels (KAHC), la fédération kenyane du tourisme (KTF), l'association du tourisme de Mombasé et du littoral (MCTA), l'association kenyane du tourisme (KTB), l'association des opérateurs du tourisme (KATO) ainsi que l'organisation internationale de la protection de l'enfance ECPK (End Child Prostitution, Child Pornography and Trafficking of Children in Kenya) et d'autres partenaires.

LES TOURISTES SONT  
LES BIENVENUS



LE KENYA SOUTIEN UN  
TOURISME RESPONSABLE

TOUTE RELATION SEXUELLE AVEC  
UN ENFANT EST UN DELIT  
LES MOINS DE 18 ANS SONT DES ENFANTS



LES CONTREVENANTS  
ENCORENT DES  
POURSUITES PENALES

HOTLINE DE LA POLICE: 999

ANNEXURE 10





## ANNEXURE 12

### QUESTIONNAIRE

#### Personal Details

Residential Address.....

Place of origin.....

Age.....

Sex.....

Marital Status.....

No. of Children if any.....

1. What is your level of education?

a) Primary level      b) Secondary level      c) College level      d) University level

2. What do you understand by the term “sex tourism”?

3. What is your view concerning sex tourism

4. If not originally from Mombasa, when and how did you come to Mombasa?

5. What was your purpose behind leaving your place of origin to Mombasa?

6. What year did you begin sex work

7. Why do you engage in commercial sex work?
8. Where are the sexual activities carried out?  
a) Big Beach hotels   b) Small guest lodges/hotels   c) Pubs/nightclubs/ restaurants  
d) Private villas/Campsites   e) My home   f) Client's home
9. Which are the nationalities of your clientele? Kindly list their countries of origin.
10. If you had another source of income, would commercial sex continue to be your preferred choice of work? Please tick where appropriate.  
a) Yes                      b) No
11. Have you ever been harassed or arrested by the police for engaging in commercial sex work?
12. If you have been arrested, what did the police charge you with?
13. What do you do to protect yourself from police harassment and violence by clients?
14. What action would you want the government to take regarding your sex work?

THANK YOU