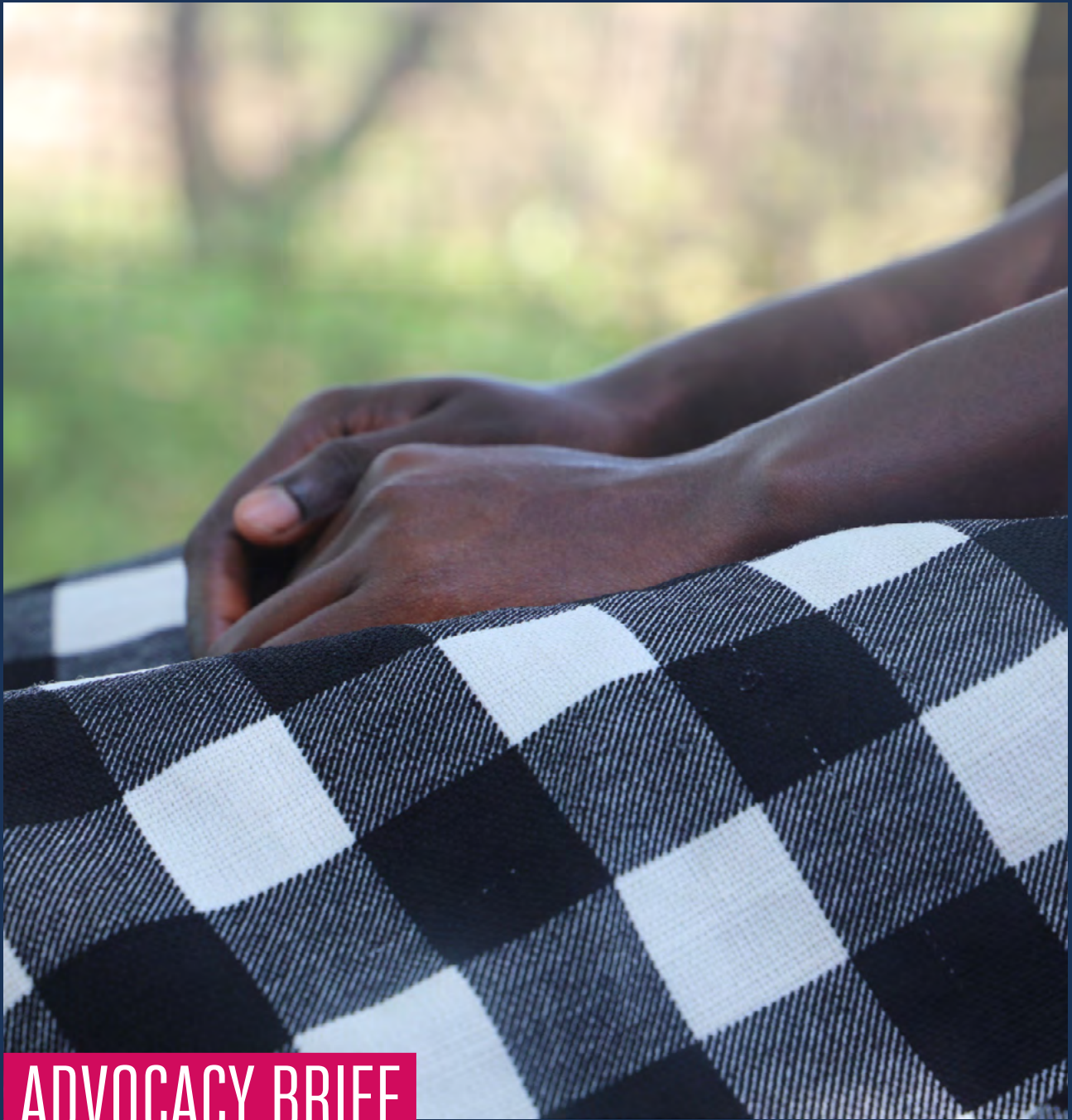




ADVOCACY BRIEF

Enhancing Policy Responses to Addressing Child Sexual Exploitation and Abuse (CSEA) in Kenya

January 2023

ABOUT EQUALITY NOW

Equality Now is an international human rights organization that works to protect and promote the rights of women and girls in the areas of legal equality, harmful practices, sexual violence, and sexual exploitation, with a cross-cutting focus on adolescent girls. Equality Now combines grassroots activism with international, regional, and national legal advocacy to achieve legal and systemic change for women and girls, and works to ensure that governments enact and enforce laws that uphold their rights. Equality Now has a global presence and a diverse network of partners and members in almost every country.



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ABOUT TRACE KENYA

Trace Kenya is a national counter-trafficking NGO based in Mombasa, Kenya. It was founded in 2006 to support women, young people and children who have experienced human trafficking. Trace Kenya works closely with other local organizations and government institutions on issues of human trafficking, including on policy implementation and access to justice for survivors.



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EXECUTIVE SUMMARY

This Advocacy Brief aims to support civil society organizations to improve legal, policy and other responses to child sexual exploitation and abuse (CSEA) in Kenya.

It is an output of the *Enhancing Policy Responses to Addressing Child Sexual Exploitation and Abuse in Kenya* project which Equality Now and TRACE Kenya implemented in 2022. The project examined existing laws, policies and programs that prevent CSEA and protect children in Kenya, assessing their content and enforcement to provisions in international and regional treaties and good practice. Key legal, policy and program issues were also identified from existing research and expertise¹ and from local stakeholders with on-the-ground experience and expertise on CSEA.

Its content is organized around two governance dimensions, each comprising several pillars:

- The **prevention dimension** (protective legislation; policy and programs; national capacity and commitment)
- The **response dimension** (support services and recovery; justice process)

The challenges and opportunities that exist around each of these pillars are presented here alongside a list of recommendations (grouped according to the three broad themes of Education, Collaboration, and Connection) to support efforts to address CSEA in Kenya.

	PREVENTION	RESPONSE
EDUCATION	Design and deliver training for first responders and other practitioners to identify risks associated with CSEA and to support at-risk children	Design and deliver tailored, trauma-informed training for all staff involved in the identification, investigation, and prosecution of CSEA, including legal, medical, administrative and support staff
COLLABORATION	Coordinate efforts by government and CSOs to develop, resource and implement laws, policies and programs to prevent CSEA	Combine data from research with evidence from existing successful models to streamline services for survivors of CSEA, including by pooling resources and working across sectors and jurisdictions
CONNECTION	Promote public awareness of CSEA, including its causes and its effects, with a focus on historically under-served and hard-to-reach communities	Connect survivors of CSEA with evidence-based support networks, that have both the competence and the capacity to provide long-term, holistic support that takes into account the needs and circumstances of each person

¹ Out of the Shadows Index (2022) – can be accessed at: <https://outoftheshadows.global>

1.0 INTRODUCTION

CSEA IN KENYA

Every year, over 400 million children around the world are exposed to child sexual exploitation and abuse (CSEA). Defined as any exploitative and abusive sexual activity involving a child, CSEA can lead to a lifetime of physical and emotional damage for survivors. In Kenya, where many cases of CSEA go unreported and there is no single national database for recording cases, it is not possible to quantify the scale of the problem. However, evidence shows that CSEA is becoming increasingly common across the country.

The prevalence of CSEA in Kenya has been exacerbated in recent years by the COVID-19 pandemic. Evidence from the Survivors of Sexual Violence in Kenya Network suggests that the pandemic changed patterns of sexual violence against children,² with victims now aged 12 on average³, compared to 16 previously⁴. Forensic medical examiners at gender-based violence recovery centers also noted that survivors attending hospitals for sexual and gender based violations during the COVID-19 pandemic were often below the age of 16.⁵

With CSEA increasingly being perpetrated online and with the use of digital technologies, Kenya's role as a technology hub in East Africa has led to disproportionate growth in the prevalence of online CSEA, including transnational organized crimes such as sex trafficking and the production and distribution of child sexual abuse material. In 2020, between 5 and 13 percent of internet-using children in Kenya (aged 12-17) reported experiencing CSEA online,⁶ while 7 percent of internet-using children were offered money or gifts in return for sexual images or videos of themselves, which were subsequently shared with others.⁷

The dissemination of online CSEA materials is especially difficult for law enforcement to tackle because of the multijurisdictional nature of online sexual crimes where perpetrators and victims may be located in different countries and subject to different laws, and the activities are often conducted through encrypted networks and on the 'dark web'. And while digital service providers and platforms are responsible for filtering, removing and blocking content containing CSEA, they have no obligation to monitor content traffic.

Poverty and socio-economic inequalities remain a key driver of CSEA in many communities in Kenya, and many cases of CSEA go unreported because survivors fear being stigmatized, blamed, or not being taken seriously by law enforcement. Reports from local CSOs show that most children are subjected to CSEA by people they know, often by perpetrators from within their own families. Survivors who do disclose CSEA may not be believed and/or may be physically abused as a result of disclosure, while those who report CSEA may be sent back to homes where they were abused, or forced to live in the same community as their abusers.

2 Rockowitz S et al. Patterns of sexual violence against adults and children during the COVID-19 pandemic in Kenya: a prospective cross-sectional study. *BMJ Open* (2021)

3 Flowe H et al. Sexual and other forms of violence during the Covid-19 pandemic emergency in Kenya: patterns of violence and impacts on women and girls. *PsyArXiv* (2020)

4 2019 Violence Against Children (VAC) Survey Report. Ministry of Labour and Social Protection, Kenya (2019)

5 Johnson K et al. The impact of COVID-19 on services for people affected by sexual and gender based violence. *Int J Gynecol Obstetr.* (2020)

6 Disrupting Harm in Kenya: Evidence on online child sexual exploitation and abuse. Global Partnership to End Violence against Children: ECPAT, INTERPOL and UNICEF (2021)

7 Ground-breaking insights into the risk of online child sexual exploitation and abuse in Kenya. *Interpol* (2021)



2.0 ANALYSIS OF KEY FINDINGS

2.1 Protective Legislation

Overview

International and regional laws that oblige the Kenyan government to address CSEA include the Convention on the Rights of the Child; the International Labour Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the UN Convention against Transnational Organized Crime); and the African Charter on the Rights and Welfare of the Child.

Nationally, the government has enacted laws and policies that seek to domesticate these international and regional commitments. National laws include The Constitution of Kenya; The Information Communications Act; The Sexual Offences Act; The Penal Code; The Children Act; The Computer Misuse and Cybercrimes Act; The Counter Trafficking in Persons

Act; The Data Protection Act; The Prohibition of Female Genital Mutilation Act; The Marriage Act; and The Labour Act. National policies include the National Children Policy Kenya (2010); the National Care Reform Strategy for Children in Kenya (2022-2032); the Framework for the National Child Protection System in Kenya (2011); the National Prevention and Response Plan on Violence Against Children (2019-2023); and the National Plan of Action against Sexual Exploitation of Children in Kenya (2013-2017).

There are also various laws that can be applied in cases of CSEA in Kenya that dictate procedural measures and investigative procedures, govern the prosecution of crimes, and provide for international cooperation. These include the Evidence Act; the Criminal Procedure Code; the Mutual Legal Assistance Act; the Prevention of Organized Crimes Act; the Crime and Anti-Money Laundering Act; and the International Crimes Act.

Challenges

- **Lack of implementation** – despite the existence of laws and policies to protect against CSEA in Kenya, research indicates that their operationalization is difficult.
- **Lack of understanding** – there is limited understanding of CSEA (and of the associated legal terminology) by survivors, their families, and first responders.
- **Lack of awareness** – there is limited awareness among survivors and their families of the legal and administrative procedures for seeking redress for CSEA.
- **Weak policy communication** – there is a disconnect between policymakers and the general population, particularly at the grassroots level, about policy aims.
- **Non-specific recommendations** – family-level child protection structures, such as those proposed in The Children Act, are not always suitable for preventing CSEA, due to the high proportion of CSEA that is perpetrated by family members.
- **Limited institutional resources** – provision of services to support survivors of CSEA, for example through the provision of medical care, shelter, and psychosocial support, is often limited by a lack of both funding and staff,⁸ including within some institutions that have legal obligations to provide these services.⁹

Opportunities

- **Potential for collaboration** – with many recently adopted laws and policies on child protection, there is potential for the government and other actors to pool resources and coordinate to ensure their implementation.
- **Capacity for improving accessibility** – the Directorate of Children Services is in a good position to coordinate efforts to make legal information more simple and accessible, including to survivors, first responders, caregivers, and communities.
- **Availability of government funding** – institutions mandated under the law to protect children can be resourced by the government. For example, the Children Act establishes a Child Welfare Fund to assist children in distress and need, including funding alternative care and social security programs that safeguard children's rights.

⁸ Wangamati CK et al. Postrape care services to minors in Kenya: are the services healing or hurting survivors? *Int J Womens Health* (2016)

⁹ Sexual and gender-based violence in Africa: Literature review. Population Council (2008)

2.2 Policies and Programs

Overview

National policies and programs that address the social, economic, and environmental conditions and factors that increase children's vulnerability to exploitation and abuse are vital to eradicating CSEA. In Kenya, these policies and programs include:

- **Inua Jamii**—a flagship National Safety Net Program of the Government of Kenya for the beneficiaries of Cash Transfer for Orphans and Vulnerable Children.
- **Presidential school bursaries**—a scheme to increase enrolment, attendance, and school completion rates of orphans and vulnerable children in secondary schools.
- **Child Helpline 116**—a toll-free number for reporting sexual exploitation and abuse, and for providing tele-counseling services.
- **National Assistance Trust Fund**—a fund for the identification, assistance, and compensation of victims, and the prosecution of perpetrators of human trafficking.

The Kenyan government also works to raise awareness about CSEA through collaboration between the Ministry of Education and various schools and community-based organizations. The government has also established offices such as the County Children Offices (CCOs) and Sub-County Children Offices (SCCOs), which capture child registration information, child background information and child protection case forms, including case types, encounters, services, referrals, court sessions, court orders, and institution placements.



Challenges

- **Lack of reach** – National strategies and programs to address the root causes and drivers of CSEA are not reaching grassroots communities and support organizations.
- **Lack of understanding about online CSEA** – development of techniques used by perpetrators of online CSEA can outpace the capacity of government departments such as the police, prosecution and judiciary, while the multi-jurisdictional nature of online CSEA can affect how evidence is collected, stored and presented.
- **Low levels of reporting of CSEA** – survivors of CSEA often have a deep-seated fear of stigmatization, or may not comprehend that they have actually experienced sexual abuse, meaning they are less likely to report the abuse and seek support.

Opportunities

- **Coordination of messaging** – there is the potential for government and non-state actors to coordinate messaging around survivor safety, for example, that returning survivors of CSEA to the care of their family may not always be suitable.
- **Investment in existing policies and programs** – there is an opportunity for significant improvements to be made by promoting and investing in existing policies and programs, as well as providing opportunities for communities to feed back.
- **Using evidence about structural causes of CSEA** – existing research and evidence is available to inform the development of programs that address the economic, social, and environmental factors contributing to CSEA in Kenya.
- **Cross-sector collaboration** – as well as improving coordination between government departments investigating CSEA cases, there is potential to establish collaborations with the private sector, for example, to address online CSEA.
- **Learning from existing models** – peer support models have been effective in some countries, as survivors are often more likely to first disclose CSEA to their peers.
- **Stigma reduction** – evidence suggests that coordinated efforts by government and other actors to reduce stigma around CSEA, including by addressing victim-blaming, can significantly improve both legal and psychological outcomes for survivors.



2.3 National Institutional Capacity and Commitment

Overview

Kenya has a strong national child protection framework and operational capacity, which is coordinated by the National Council for Children Services and the Department of Children Services. Some of the national institutions involved in child protection in Kenya include:

- **The Anti-Human Trafficking and Child Protection Unit (AHTCPU)** – operates under the Department of Criminal Investigations (DCI) to investigate cases of CSEA and child trafficking. The DCI has a specialized cyber division for investigating online CSEA in collaboration with the National Center for Missing and Exploited Children, and implements protocols on victim support.
- **The Court Users Committees (CUCs)** – established under the Judicial Service Act of 2011 to address specific concerns arising from children's cases.
- **The National Council on Administration of Justice (NCAJ) Special Taskforce on Children's Matters** – focuses on issues pertaining to children and the legal system.
- **The Counter Trafficking in Persons (CTiP) Secretariat** – leads on policy formulation and raising awareness about human trafficking, as well as providing secretariat to the Counter Trafficking in Persons Advisory Committee.

In addition to these groups, the Ministry of Education also coordinates sexual education in schools and collaborates with other partners to raise awareness about CSEA.



Challenges

- **Lack of coordination** – there is limited coordination between government agencies involved in reporting, investigation, the justice system, and victim after-care services.
- **Lack of guidance for CSOs** – a lack of central guidance for the implementation of the National Child Welfare Program results in disconnected efforts by CSOs.
- **Lack of awareness** – implementation of policy is limited by a lack of awareness about how government departments work together, and their individual roles.
- **Lack of comprehensive data on CSEA** – while there has been some progress made in terms of data collection, inadequate and inaccurate capture of CSEA data hinders understanding of the problem and prevents proper allocation of resources.
- **Lack of funding** – inadequate funding plans, both within and beyond government departments, impedes service delivery and can delay access to justice for victims.

Opportunities

- **Collaboration between government and CSOs** – there is potential to pool resources for training and capacity-building at both county and grassroots levels, particularly to address online CSEA, and to streamline judicial processes while also making them more child-friendly.
- **Improving first response** – increasing awareness among front line practitioners of the systems and support available to the children they work with at the local level.
- **Strategic government leadership** – the government is in a good position to lead a process to establish National Guidelines on Child Protection.
- **Increase accessibility to justice processes** – there is potential to develop public awareness campaigns about which services are free of charge, while the Department of Justice is in a position to lead efforts to address other factors that hinder access within the justice system itself.
- **Improving data collection** – CSOs can support government efforts by sharing the knowledge and data they collect on CSEA.

2.4 Support Services and Recovery

Overview



Imprisonment of the perpetrator may be only the beginning of the journey for a survivor of CSEA, and there is often a need for long-term psychological and emotional support. However, aftercare for survivors of CSEA in Kenya is limited. Many support and recovery services, such as the Gender Violence Resource Centre, are run by CSOs, who are not always equipped to support the large numbers of children in need.

There have been pockets of progress in some areas, for example, the establishment of the cyber centre within the Anti-Human Trafficking and Child Protection Unit has increased capacity to support survivors of online CSEA, while the establishment in some counties of POLICARE¹⁰ and Children Protection Centres have improved collaboration between services.

Challenges

- **Lack of support for survivors** – many institutional and social support systems for survivors of CSEA (including families) are ineffective and/or not child-friendly, while basic trauma counseling and/or psychoeducation alone might not be effective.
- **Services can be re-traumatizing** – a lack of coordination means survivors may be required to repeatedly recount their exploitation or abuse to service providers.
- **Loss of knowledge and expertise** – often, police officers who are trained in responding to CSEA are transferred to other stations, leaving gaps in support.
- **Lack of safeguarding** – survivors of CSEA are not always offered the screening and/or support needed to identify the abuse and to escape their abusers.

Opportunities

- **Existing models for delivery** – there is an opportunity to expand holistic services, such as Kenya's recently established POLICARE and Child Protection Centres, to all counties.
- **Existing evidence of impact** – there is lots of research and evidence available to inform the development of more child-friendly support services, which take into account the needs of different children and are provided on a long term basis.

¹⁰ POLICARE, a portmanteau of the English words 'POLICE' and 'CARE,' is a National Police Service (NPS) integrated response to Sexual and Gender Based Violence in Kenya.

2.5 Justice Process

Overview

In Kenya, survivors of CSEA are entitled to various legal protections during the justice process, in line with Article 19 of the UN Convention on the Rights of the Child. These include the right to give evidence under a protective cover or through an intermediary, the right to proceedings taking place outside an open court, and the right to prohibition of publication of personal identifiers.¹¹

Many courts in Kenya are making efforts to create more child-friendly environments, including by allowing children to give evidence on camera and/or in a safe space. Children's courts have been established in some counties, and all child offenders are entitled to free legal representation. In terms of evidence, there is no need for corroborating material evidence as long as the court finds the survivor credible. Medical and psychosocial services that survivors need when navigating the justice system are borne by the State.¹²

Challenges

- **Lack of robust interview protocol** – the guidelines for forensic interviews lack protocols for obtaining verbal evidence from survivors, with only five questions listed. This can lead to insufficient evidence, or even cast doubt on the survivor's credibility.
- **Limited access to justice processes** – some services that should be free are charged to the public, which hinders accessibility and impedes the administration of justice.
- **Long delays to court cases** – CSEA cases are frequently adjourned in the courts, delaying justice for survivors and facilitating witness tampering. Delays can also affect incident recall, particularly in the case of child witnesses.

Opportunities

- **Development of guidance around online CSEA** – there is an opportunity to collate evidence about online CSEA, including new forms of digital crime, and to provide guidance for officials on investigating and prosecuting cases involving online CSEA.
- **Exploration of reparation for CSEA cases** – existing models from other jurisdictions provide opportunities to explore compensation for survivors of CSEA.

¹¹ The Sexual Offences Act, 2006

¹² The Sexual Offences Act, 2006

3.0 CONCLUSION AND RECOMMENDATIONS

The evidence presented thus far highlights some of the key challenges involved in addressing CSEA in Kenya, as well as identifying the opportunities that exist to build upon current efforts to prevent and respond to this difficult issue.

The following recommendations, which are grouped according to the three broad themes of Education, Collaboration, and Connection, are intended to support efforts by State and non-State actors to address CSEA in Kenya.

Prevention

EDUCATION



- Raise awareness of newly adopted laws and policies, in particular the Children Act (2022) and the National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse (2022-2026), within the law enforcement and justice sectors, as well as CSOs and communities, for example through the delivery of legal training sessions and/or the publication of accessible explainer guides.

COLLABORATION

- Coordinate efforts by the government, the private sector, CSOs and grassroots organizations to work in partnership.
- Develop, resource and implement laws, policies and programs that address the economic, social, and environmental factors that underlie CSEA.

CONNECTION

- Raise awareness among those working with vulnerable communities of the services that exist to prevent CSEA and on how to support at-risk children.
- Develop public awareness programs targeting those who are hardest to reach, including children who are out of school, children with disabilities, and children living in remote places or in humanitarian settings such as refugee camps.

EDUCATION



- Design and deliver tailored, trauma-informed training for all staff involved in the identification, investigation, and prosecution of CSEA, including legal, medical, administrative and support staff.
- Ensure that the justice system is tailored to the needs of survivors.

COLLABORATION

- Streamline services for survivors of CSEA, including by pooling resources and working across sectors and jurisdictions.
- Work with the government to ensure that the justice process is adapted to meet the needs of child survivors, with specially trained staff, child-friendly spaces and proper accountability measures.
- Adopt and apply approaches that uphold the best interests of the children and to ensure adequate resources are allocated for long-term support systems that promote the well-being and safety of survivors and their non-offending caregivers.

CONNECTION

- Connect survivors of CSEA with evidence-based support networks that have both the competence and the capacity to provide long-term, holistic support that takes into account the needs and circumstances of each person.
- Develop mentorship programs for survivors and their families to provide children who have been exploited or abused with a support system, and establish evidence-based peer-to-peer mentoring schemes in schools and communities.

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