

National Laws

Legislation of Interpol member states on sexual offences against children

Kenya - Kenya - Kenia

Nairobi

The information on this page is up to date as of spring 2006

I. Ages for legal purposes

Age of simple majority

The legal age of majority is eighteen (18) years. However, although Kenyan concept of age of majority is in line with the UN Convention on the Rights of the Child, several other statutes in force in Kenya listed below set lower ages. The effect has often deprived persons under the age of eighteen (18) years essential protection.

1. The Penal Code CAP. 63, criminal responsibility (below 8-12 years)
2. Children and Young Persons Act CAP. 141, a child is defined as under fourteen (14) years.
3. Employment Act CAP. 266, under sixteen (16) years.
4. Matrimonial Causes Act CAP. 152, under sixteen (16) years.

Age of consent for sexual activity

Section 143 of the Penal Code CAP. 63 stipulates that

"Any person who unlawfully takes an unmarried girl under the age of sixteen (16) years out of custody or protection of her father or mother, or other person, takes away or detains her against her will, is guilty of a felony and is liable to imprisonment for seven years."

From the above stipulation, the "age of consent sexual activity is therefore sixteen (16) years".

Section 14, Paragraph 3 of the Penal Code CAP. 63 stipulates that

"A male person under the age of twelve (12) years is presumed to be incapable of having carnal knowledge."

Age of consent for marriage

Section 19 of the Marriage Act CAP. 150 states that:

"If either party to an intended marriage, not being a widower or widow, is under twenty-one (21) years of age, no licence shall be granted or certificate issued unless

there is produced annexed to the affidavit, a written consent to the intended marriage signed by the person having lawful custody of any such party."

II. Rape

'Definition of rape', Section 139 of the Penal Code, CAP. 139

"Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed rape."

'Punishment of rape', Section 140 of the Penal Code, CAP. 63

"Any person who commits the offence of rape is liable to imprisonment with hard labour for life, with or without corporal punishment."

'Attempted rape', Section 141 of the Penal Code, CAP. 63

"Any person who attempts to commit rape is guilty of a felony and is liable to imprisonment with hard labour for life, with or without corporal punishment."

III. Other forms of child sex abuse

'Knowledge of age of female immaterial', Section 161 of the Penal Code, CAP. 63

"Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age."

'Abduction', Section 142 of the Penal Code, CAP. 63

"Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony and is liable to imprisonment for seven years."

'Abduction of girls under sixteen (16) years of age', Section 143 of the Penal Code, CAP. 63

"Any person who unlawfully takes an unmarried girl under the age of sixteen (16) years out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of the father or mother or other person, is guilty of a misdemeanor."

'Indecent assault on females', Section 144 of the Penal Code, CAP. 63

"(1) Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment with hard labour for five years, with or without corporal punishment.

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of fourteen (14) years to prove that she consented to the act of indecency;

Provided that it shall be a sufficient defence to any charge under this subsection if it is made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of fourteen (14) years or was his wife."

'Defilement of girls under fourteen (14) years of age', Section 145 of the Penal Code, CAP. 63

"(1) Any person who unlawfully and carnally knows any girl under the age of fourteen (14) years is guilty of a felony and is liable to imprisonment with hard labour for fourteen years together with corporal punishment.

(2) Any person who attempts to have unlawful carnal knowledge of a girl under the age of fourteen (14) years is guilty of a felony and is liable to imprisonment with hard labour for five years, with or without corporal punishment;

Provided that it shall be a sufficient defence to any charge under this section if it is made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of fourteen (14) years or was his wife."

'Detention of females for immoral purposes', Section 151 of the Penal Code, CAP. 63

"(1) Any person who detains any woman or girl against her will-

a) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

b) in any brothel,

-is guilty of a misdemeanor.

(2) When a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, a person shall be deemed to detain that woman or girl in or upon those premises or in the brothel if, with intent to compel or induce her to remain in or upon the premises or in the brothel, such

person withholds from the woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to the woman or girl or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied."

'Indecent assault of boys under fourteen (14) years of age', Section 164 of the Penal Code, CAP. 63

"Any person who unlawfully and indecently assault a boy under the age of fourteen (14) years is guilty of a felony and is liable to imprisonment for seven years, with or without corporal punishment."

'Incest by males', Section 166 of the Penal Code, CAP. 63

"(1) Any male person who has carnal knowledge of a female person who is to his knowledge his granddaughter, sister or mother is guilty of a felony and is liable to imprisonment for five years;

Provided that, if it is alleged in the information or charge and proved that the female person is under the age of thirteen (13) years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the female person.

(3) If any male person attempts to commit any such offence as aforesaid, he is guilty of a misdemeanor.

(4) On conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of twenty-one (21) years, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or less period;

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect."

'Incest by females', Section 167 of the Penal Code, CAP. 63

"Any female person of or above the age of sixteen (16) years who with her consent permits her grandfather, father, brother or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother or son, as the case may be) is guilty of a felony and is liable to imprisonment for five years."

IV. Child prostitution

This is being evidenced among street girls who engage themselves in activities such as hawking or begging during the day and later switch to prostitution at night. This is, however, a very hidden phenomenon.

'Procuration', Section 147 of the Penal Code, CAP. 63

"Any person who-

a) procures or attempts to procure any girl or woman under the age of twenty-one (21) year to have unlawful carnal connection, either in Kenya or elsewhere, with any other person or persons; or

b) procures or attempts to procure any woman or girl to become, either in Kenya or elsewhere, a common prostitute; or

c) procures or attempts to procure any woman or girl to leave Kenya, with intent that she may become an inmate of or frequent a brothel elsewhere; or

d) procures or attempts to procure any woman or girl to leave her usual place of abode in Kenya, with intent that she may for the purposes of prostitution become an inmate of or frequent a brothel either in Kenya or elsewhere,

-is guilty of a misdemeanor and, subject to the provisions of section 27, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to corporal punishment;

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless the witness is corroborated in some material particular by evidence implicating the accused."

'Procuring defilement by threats or fraud or administering drugs', Section 148 of the Penal Code, CAP. 63

"Any person who-

a) by threats or intimidation procures or attempts to procure any woman or girl to have unlawful carnal connection, either in Kenya or elsewhere; or

b) by false pretences or false representations procures any woman, or girl to have unlawful carnal connection, either in Kenya or elsewhere; or

c) applies, administers to or causes to be taken by any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with the woman or girl,

-is guilty of a misdemeanor;

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless the witness be corroborated in some material particular by evidence implicating the accused."

'Householder, etc., permitting defilement of a girl under thirteen (13) years of age', Section 149 of the Penal Code, CAP. 63

"Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of thirteen (13) years to resort to or be upon, those premises for the purpose of being unlawfully and carnally known by any man, whether the carnal knowledge is intended to be with any particular man or generally, is guilty of a felony and is liable to imprisonment for five years;

Provided that it shall be a sufficient defence to a charge under this section if it is made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of thirteen (13) years."

'Householder, etc. permitting defilement of girl under sixteen (16) years of age', Section 150 of the Penal Code, CAP. 63 :

"Any person who, being the owner or occupier of premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl above the age of thirteen (13) years and under the age of sixteen (16) years to resort to or be upon those premises for the purpose of being unlawfully and carnally known by any man, whether the carnal knowledge is intended to be with any particular man or generally, is guilty of a misdemeanor;

Provided that it shall be a sufficient defence to any charge under this section if it is made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen (16) years."

'Conspiracy to defile', Section 157 of the Penal Code, CAP. 63

"Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a felony and is liable to imprisonment for three years, with or without corporal punishment."

'Male person living on earnings of prostitution or soliciting', Section 153 of the Penal Code, CAP. 63

"(1) Every male person who-

- a) knowingly lives wholly or in part on the earnings of prostitution; or
- b) in any public place persistently solicits or importunes for immoral purposes,

-is guilty of a misdemeanor ; and in the case of a second or subsequent conviction under this section the court may, in addition to any term of imprisonment awarded, sentence the offender to corporal punishment.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he satisfies the court to the contrary be deemed to be knowingly living on the earnings of prostitution."

'Woman living on earnings of prostitution or aiding, etc., prostitution', Section 154 of the Penal Code, CAP. 63

"Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a misdemeanor."

V. Child pornography

The Kenyan law on pornography is codified and applies without distinction both to minors and adults.

First, there is the power of the minister to declare a publication which, in his opinion, is not in the interests of public morals, prohibited. This power is contained in Section 52 of the Penal Code, CAP 63 Laws of Kenya.

The power given to the minister protects both the child/minor and adult from exposure to publications which are morally decadent. Once the publication is prohibited, it cannot reach the public including minors.

A penal provision is made in Section 53(1) of the Penal Code. Under this provision, printing, importation, making, publishing, supplying, selling or offering for sale, distributing, reproducing or being in possession of a publication which the Minister has declared prohibited under Section 52 Penal Code, is a criminal offence punishable with imprisonment for a term not exceeding three years.