



REPUBLIC OF KENYA



GUIDELINES FOR THE ALTERNATIVE FAMILY CARE OF CHILDREN IN KENYA

October 2014

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ABBREVIATIONS AND ACRONYMS

AAC	Area Advisory Council
ACC	Alternative Care Committee
ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
BIA	Best interests assessment
BID	Best interests determination
CA	Children Act, 2001
CBO	Community-based organisation
CBS	Central Bureau of Statistics
CCI	Charitable children's institution
CHH	Child-headed household
CHW	Community health worker
CPU	Child Protection Unit (in police stations)
DCS	Department of Children's Services
ECD	Early Childhood Development
FBO	Faith-based organisation
HIV	Human Immunodeficiency Virus
HQ	Headquarters
IDP	Internally-displaced person
MDA	Government ministries, departments and agencies
MoGCSD	Ministry of Gender, Children and Social Development
NCCS	National Council for Children's Services
NGO	Non-governmental organisation
NPA	National Plan of Action
NSBP	National Standards for Best Practices
OVC	Orphans and vulnerable children
SCO	Sub-county Children's Officer
TWG	Technical working group
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
VCO	Volunteer Children's Officer

FOREWORD

These Guidelines for the Alternative Care of Children in Kenya should be read with the Kenyan legislation and, accordingly uphold and give further effect to the core principles laid out in the Constitution of Kenya, 2010; the Children Act, 2001; the Adoption Regulations, 2005, the Charitable Children Institutions Regulations, 2005; and relevant government administrative directives made under the Children Act, 2001.

The Guidelines are also informed by the Government of Kenya's international commitments to the United Nations Convention on the Rights of the Child (UNCRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption 1993 and the Guidelines for the Alternative Care of Children (UN 2010).

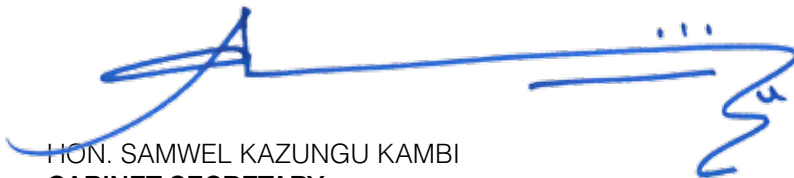
The family is a nurturing and caring environment and is the ideal place in which to raise a child. Growing up in a family helps children to develop a sense of self-esteem, belonging, family values, and religious and cultural identity. Due to the nature of family care, children learn to interact better with the community and are better equipped to face life challenges than those placed in institutions. This is because most institutions are highly structured, controlled and operate according to strict routines.

As noted in the UNCRC, all efforts need to be made to support families to continue to care for their children and, if this is not possible, to place a child in a family-based alternative care arrangement, such as, kinship care, foster care, guardianship or adoption. A range of alternative care services should be available and institutional care should be a temporary measure and used only as a last resort. When institutional care is deemed appropriate for a limited number of children, it should be provided in a small family-like environment.

The Department of Children's Services (DCS) realized the need to develop these Guidelines to provide harmonised national guidance for child welfare and protection practitioners in order to improve the quality of family support and alternative care services in Kenya.

A technical working group with staff drawn from the Department and the National Council for Children's Services (NCCS) and various stakeholders including UNICEF and representatives from civil society was constituted to spearhead the process of developing these guidelines.

A lot of effort has gone into the development of this document and it is hoped that the Guidelines will be of assistance to service providers and policy makers and will contribute to improved service delivery for children.



HON. SAMWEL KAZUNGU KAMBI
**CABINET SECRETARY,
MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES**

ACKNOWLEDGEMENTS

These Guidelines for the Alternative Care of Children in Kenya are an outcome of a long and highly participatory and inclusive consultative process which brought together stakeholders from diverse agencies with outstanding, solid knowledge and expertise in child care and protection.

The guidelines benefited from views and inputs from relevant key Government Ministries, Departments and Agencies, the private sector, civil society, non-governmental organizations and development partners. The Ministry of Labour, Social Security and Services (MoLSSS) played a lead role in the development of the guidelines.

The Ministry is strongly indebted to the following counties – Garissa, Kisii, Malindi, Migori, Mombasa, Nairobi, Nakuru and Turkana – for sharing their rich experiences during fact-finding field visits by staff from the DCS, the Technical Working Group, the consultants and UNICEF. Special thanks goes to officers from the Department of Children’s Services, especially the Alternative Family Care Section for ably spearheading the process. Thanks also to Gad Awuonda and Ghazal Keshavarzian for their immense expertise in legal and technical insights that ensured the guidelines are in line with international, regional and national legal instruments.

Deep appreciation for the immense technical and financial support provided by the Swedish International Development Authority and the UNICEF Kenya Country Office, without which this process could not have been completed.

The Ministry reaffirms its commitment to its role as a duty-bearer for children’s issues and upholds its ownership of the process in improving professionalism in alternative family care services to children.



ALI NOOR ISMAIL, OGW.
**PRINCIPLE SECRETARY,
MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES**

GUIDELINES DEVELOPMENT PROCESS

In 2011, the Department of Children's Services (DCS) called for the development of foster care and guardianship guidelines. In 2012, the scope was widened to cover other forms of alternative care with the aim of producing national guidelines for alternative care services. The DCS was the lead government agency during the process of developing the Guidelines and will be the lead government authority responsible for the Guidelines' implementation and monitoring.

These Guidelines are the result of extensive consultation and collaboration across Government bodies; non-governmental partners and alternative care providers at national, county and sub-county levels.

The development process began in June 2011 through fact-finding field visits to various sub-counties conducted by the Department of Children Services and members of the Technical Working Group for Alternative Care (TWG). Two consultants were commissioned in April 2012. The consultants conducted field visits to various field offices, key government ministries in children matters, alternative care providers, child law practitioners, legal scholars, adoption societies and civil society partners with the supervision and guidance of the DCS and support from UNICEF(KCO).

The development of these Guidelines was informed by the Kenyan legal framework and international instruments, as well as other national alternative care guidelines developed in Africa and other regions. Additionally, it was informed by findings from continuous field implementation experiences and assessments by various child protection actors over a period of time.

During the drafting process, the TWG held numerous consultative workshops. Upon validation and completion of the document, the TWG reviewed the Guidelines and ensured that they are appropriate to the Kenyan context.

A handwritten signature in blue ink, appearing to read 'Ahmed Hussein', with a long horizontal line extending to the right.

AHMED HUSSEIN, MBS, HSC.
DIRECTOR, DEPARTMENT OF CHILDREN SERVICES

EXECUTIVE SUMMARY

The initial goal of the development of these guidelines was to seek to regulate Guardianship and Foster-care of children in the country. The two processes are critical in as far as care and protection of children are concerned.

Later a need arose for the development of guidelines on other alternative care options so as to come up with a document that addresses alternative care in a comprehensive manner so as to guide the Children Act amendments, policy and practice. The scope was widened to include; kinship, places of safety and temporary shelter, adoption, *kafaalah*, child-headed households, supported independent living, institutional care, care of children in emergency situations and support for aftercare. This document provides the meaning of each of these practices, outlines roles of the different duty-bearers and provides a step-by-step guide on how to provide specific alternative care service. It also provides basic standards to be adhered to.

The guidelines seek to recognize the African Kinship system that have existed over the centuries which unfortunately has not been recognized by the formal legislation. They also seek to develop and promote prevention of separation of children from their family, strengthening of family tracing and reunification and providing options on various exit strategies for children in institutional care.

The guidelines also seeks to recognize and promote the practice of *kafaalah* of the Islamic faith among the Muslim community. *Kafaalah* is the commitment by a person or family to voluntarily sponsor and care for an orphaned or abandoned child. The individual or family sponsors the child's basic needs to health, education, protection and maintenance. *Kafaalah* is recognized in the UNCRC.

Kenya is a signatory and state party to many regional and international instruments on the rights of the child. Key among these is the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of the Child (UNCRC). These have been domesticated through The Children Act, 2001.

It is internationally recognized that children are better placed within a family than in an institution. Institutionalization of children does not give children the basic social, emotional, cognitive and intellectual development.

The Children Act, 2001, under PART VIII sets out the provisions for Guardianship while PART XI deals with Foster Care Placement. The Act further sets out rules in the Fourth Schedule that may be cited as Foster Care Placement Rules. Section 152 of the Act states that Foster care placement shall be set out as set in the Fourth Schedule. On Guardianship, the Chief Justice shall make rules of court. It is worth noting that the development of these guidelines is long overdue but they have been developed at a critical time when the Children Act is being amended. These guidelines will therefore guide the amendments as far as alternative family-based care is concerned.

The guidelines were developed through inclusive stakeholder participation from relevant Government departments, faith-based organizations and civil society. Field visits were conducted to selected sub-counties and various meetings were held in Machakos, Nairobi, Naivasha and Nakuru. The process was spearheaded by two leading consultants in the area of child protection. One was sourced from the international pool of experts on care of children without parental care and had coordinated the Bettercare network for several years while the other was sourced locally and had previously been instrumental in the drafting of the current Children Act, 2001.

SECTION I

GENERAL INTRODUCTION



CHAPTER 1: BACKGROUND TO THE GUIDELINES

The purpose of these Guidelines for the Alternative Care of Children in Kenya is to enhance the current Kenyan legal framework and existing practices for children without parental care and those at risk of being separated from their parents. The Guidelines are designed to assist and support government and partners in the implementation of alternative care services for children in Kenya. They are meant to be read with the Kenyan legislation and, accordingly, uphold the core principles laid out in: the Constitution of Kenya, 2010; The Children Act, 2001; the Adoption Regulations, 2005; the Charitable Children Institution Regulations, 2005; and relevant government administrative directives made under The Children Act, 2001. These Guidelines are also in line with the Government of Kenya's international commitments to the United Nations Convention on the Rights of the Child (UNCRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (1993) and the Guidelines for the Alternative Care of Children (UN, 2010) *henceforth referred to in this document as UN Guidelines*.

The Guidelines apply to all children under the age of 18 years living outside of parental care, at risk of being separated from their parents or in need of alternative care. It also applies to young people who are over 18 years of age who are already in alternative care and who need continuing care or support during the transitional period.¹

Alternative care, as presented in the Guidelines, applies to a formal or informal arrangement whereby a child is cared for at least overnight away from the parental home. This can either be by the decision of a judicial or administrative authority, or at the initiative of the child, his/her parent(s) or primary caregiver(s), or spontaneously by a care provider in the absence of biological parent(s). As presented in these Guidelines, alternative care services include the following:

- Kinship care
- *Kafaalah*
- Foster care
- Temporary shelter
- Guardianship
- Adoption
- Supported child-headed households
- Supported independent living
- Institutional care
- Aftercare
- Care for children in emergency situations.

The Guidelines provide practical tools for child protection practitioners who work with children deprived of parental care and those children who are at risk of being separated from their parents. The Guidelines have suggested practical approaches and practices that have been recommended as good practices within and outside Africa. The guidelines are divided into sections of various alternative care services with each providing the following information:

- Determining the most appropriate form of care
- Roles and responsibilities of duty-bearers

¹ Scope of application based on the Guidelines for the Alternative Care of Children, para. 27-28 (UN, 2010).

- Service and care provision
- Reporting and managing cases
- Coordination mechanisms
- Assessment
- Monitoring, reporting and
- Promising practice examples, if applicable.

Brief Situational Analysis of Children without Parental Care and Alternative Care Services in Kenya

The total population of Kenya is approximately 40 million, of which an estimated 16.5 million are children below the age of 14 years.² A large number of these children are in need of urgent additional care and protection. There are an estimated 2.4 million orphans, of which 47% are due to parental deaths as a result of AIDS.³ However, orphanhood is not the only factor that makes children vulnerable in Kenya. An even greater number of children are made vulnerable due to: poverty, harmful cultural practices, family breakdown, abandonment, natural disasters, ethnic and political conflict and poor care arrangements. It is projected that between 30-45% of the 2.4 million orphans end up in charitable children's institutions (CCIs). An estimated 200,000-300,000 children are living and working on the streets.⁴ There are 349,086 children with disabilities.⁵ The Department of Children's Services (DCS) estimates that every month between 15-8 children are reported as being lost in Nairobi, which translates to between 150-216 lost children annually.⁶ These children are all vulnerable to a number of child protection risks such as: abuse; child trafficking; sexual exploitation (40% of children involved in sex tourism on the coast are orphans);⁷ lack of access to education and other basic services; disinheritance; child labour; and living outside of family care.

The Kenya Demographic Health Survey 2005/06 estimates that only 64% of children aged 0-14 years live with both of their parents, 20.5% live with only their mothers and 2.4% with only their fathers, and 13.1% of all children aged 0-14 live outside of parental care.⁸

Communities in Kenya have traditionally responded by placing orphaned and vulnerable children informally with extended family or community members. This is known as kinship care and has been an effective measure for the care of children as it leaves them within the family environment. With increasing socio-economic pressures and weakening family structures, this kinship care mechanism is under threat and many children are at risk of maltreatment. There is an urgent need to recognize and strengthen informal care arrangements, especially kinship care and *kafaalah*. The predominant formal alternative care arrangements are placements in CCIs or other institutional care. Foster care, adoption, and guardianship are practised to a limited extent, and there is a need to scale-up these alternatives.

² Kenya 2009 Population and Housing Census: Kenya National Bureau of Statistics.

³ NAAC 2005, cited in National Plan of Action for OVC, Kenya 2007-2010.

⁴ National Plan of Action for OVC 2007-2010.

⁵ Kenya Social Protection Sector Review, June 2012.

⁶ Figures cited by DCS officer. These figures are obtained from a proportion of children presented to the magistrate of the Children's Court at Millimani Nairobi.

⁷ DCS, MoGCSD and UNICEF Kenya, A Technical Assessment of the Legal Provisions and Practices of Guardianship, Foster Care and Adoption of Children in Kenya, November 2008, p.4. [Hereinafter 2008 Technical Assessment].

⁸ Data cited in National Plan of Action for OVC, Kenya 2007-2010 and 2008 Technical Assessment.

Rationale for Family-based Care

Years of research and experience have shown that institutional care has a negative impact on a child's social, emotional, cognitive and intellectual development. Children are not given the nurturing love and individual attention they need for their brains to develop and for them to grow into healthy, strong adults. The experience is particularly damaging for children less than three years of age.⁹

Inappropriate care and protection of children in some institutional care settings can lead to violations of children's rights, such as: lack of child participation; discrimination; poor nutrition; inadequate sanitation and hygiene; systematic physical and sexual abuse; and lack of education, health and other basic services. Children are often not provided with the personal care, life skills and other services to prepare them for adulthood and life outside an institution.

It has also been established that family-based care is more cost-effective than institutional care. In South Africa, for example, the monthly cost of statutory residential care can be six times more than the cost of providing care to children living in vulnerable families (i.e. home-based care and support for families affected by HIV and AIDS), and four times more expensive than statutory foster care or adoption.¹⁰

The family is a more nurturing, caring environment for a child to be raised in. Growing up in a family helps a child to develop a sense of self-esteem and belonging, family values, religious and cultural identity. Due to the nature of family care, children learn to interact better with the community and to face life challenges better than those in institutions. This is because families are more natural while most institutions are highly structured, controlled and operated on routine.

As noted in the UNCRC, all efforts need to be made to support families to continue to care for their children and, if this is not possible, to place a child in a family-based alternative care arrangement, such as kinship care, foster care, guardianship, adoption or *kafaalah*. A range of alternative care services should be available and institutional care should be a temporary measure and used as a last resort. When institutional care is deemed appropriate for a limited number of children, it should be provided in a small family-like environment.

Scope of the Guidelines

In 2009, the Government of Kenya, through the DCS, commissioned an assessment of child protection interventions in the country. The assessment identified several gaps including lack of clarity on roles and responsibilities of different child protection duty-bearers, and over-reliance on institutional care for children without parental care. These findings mirrored the DCS Alternative Care Technical Assessment done in 2008, which had identified similar gaps and recommended the strengthening of alternative family-based care services in Kenya.

To this end, in 2010, the Government of Kenya embarked on strengthening its national child protection system by taking a more holistic, coordinated and preventive approach in provision of child protection services. As part of this effort, and using the UN Guidelines for the Alternative Care of Children as its framework, the Kenyan Guidelines are intended to:

- 1) Provide guidance to practitioners on how to support families to care for children and reduce unnecessary family separation by promoting parental care and directing family support services to families and children in need.

⁹ 'The Development and Care of Institutionally Reared Children: The Leiden Conference on the Development and Care of Children without Permanent Parents', *Child Development Perspectives*, Volume 6, Number 2, 2012, p 174-180. See also Save the Children, *Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care*, November 2009.

¹⁰ Desmond, C. & Gow, J, "The Cost-Effectiveness of Six Models of Care for Orphans and Vulnerable Children in South Africa", University of Natal, Durban, South Africa, Prepared for UNICEF South Africa, 2001, p. 37.

- 2) Advocate for and outline family tracing and reintegration procedures in instances where children are separated from their families.
- 3) Outline a range of family and community-based alternative care options that exist in Kenya and provide practical guidance to support practitioners in appropriately and safely placing children in these arrangements while the child's family is being traced or when preventive and family support measures have been exhausted and failed. (Refer to Annex C.)

Objectives of the Guidelines

The principal objective of these Guidelines is to provide harmonised national guidance to child welfare and protection practitioners in order to improve the quality of family support and alternative care services in Kenya.

The specific objectives are to:

- 1) Set out recommended policy and practice guidance with the overall goal of enhancing the implementation of the Constitution of Kenya, the Children Act, 2001, the UNCRC and other relevant laws as they relate to the care and protection of children outside of parental care
- 2) Ensure that national alternative care services are in line with internationally and regionally recognized best practices
- 3) Provide guidance on how to support families to care for their children by ensuring that the children remain with them or return to them
- 4) Outline steps to appropriately administer a range of alternative care options, with priority to family- and community-based care arrangements
- 5) Guarantee that institutional care is used only as a temporary measure and as a last resort, and only when appropriate and deemed in the best interests of the child
- 6) Ensure that all alternative care decisions are made on a case-by-case basis, grounded in the principles of the best interests and rights of the child and place the child in a safe, loving and stable environment that meets their basic needs for continuous attachment, with permanency as key goal
- 7) Build the capacity of alternative care authorities, agencies and families in order to protect and promote the well-being of children
- 8) Guide practice, service provision and policy development for all duty-bearers working in the field of child protection.

Intended Users and Duty-bearers

The DCS shall share these Guidelines with all child protection practitioners, relevant government authorities, civil society organisations, community leaders and individuals and institutions responsible for the care and protection of children.

The following are the intended key users and duty-bearers:

Government Bodies

- Ministry responsible for Children Affairs
- Ministry responsible for Health
- The Treasury
- Ministry responsible for Education

- Ministry responsible for Immigration
- Ministry responsible for Labour
- Ministry responsible for Foreign Affairs
- National/Principal Registrar
- Juvenile justice agencies (Judiciary, Police, Prisons, Probation)
- Attorney-General's Office
- Director of Public Prosecutions
- Registrar of births and deaths.

NB. Throughout the document the above mentioned government bodies will be referred to as Government ministries, departments and agencies (MDAs).

Non-governmental bodies

- National and international non-governmental organisations (NGOs)
- Faith-based organisations (FBOs)
- Community-based organisations (CBOs).

Child care providers

- CCI staff
- Foster care providers
- Adoption societies
- Health/social workers
- Centres for children with special needs
- Boarding schools
- Statutory government institutions.

Community

- Children and families
- Community elders
- Religious leaders
- Area Advisory Councils
- OVC committees
- Community health workers.

Private Sector

- Legal practitioners
- Financial institutions
- Business community
- Media
- Institutions of higher learning and research.



CHAPTER 2: NATIONAL, REGIONAL AND INTERNATIONAL POLICY AND LEGAL FRAMEWORKS

Policies and laws are the backbone of any national alternative care system and are crucial to the provision of child welfare services. Kenya has a comprehensive legislation framework, which shapes and guides the implementation and monitoring of alternative care services. These Guidelines are to be read together with the relevant legislation and policies. As the primary duty-bearer, the Government of Kenya is responsible for the execution and oversight of the legislative and policy framework and these Guidelines at the national, county and sub-county levels.

1. National Policies and Legislation

The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 has introduced significant changes in the administration of childcare and protection in Kenya. While the former constitution made no mention of the rights of the child as a specific category of rights, the new Constitution has a number of provisions that specifically address the issue of children. Here are some of the relevant provisions from the Constitution. A number of these legal provisions are discussed in various sections of these Guidelines.

Article	Text
Article 21 (Implementation of rights and fundamental freedoms)	Requires all State organs and all public officers to address the needs of vulnerable groups within society, including children. This entails constitutional obligation on the State primarily to be responsible for the needs of children and in this case children in need of alternative care.
<i>Article 53—Children</i>	Provides for the rights of every child which include the right: <ul style="list-style-type: none"> (a) to basic nutrition, shelter and health care (b) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous or exploitative labour (c) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not (d) not to be detained, except as a measure of last resort and, when detained, to be held for the shortest appropriate period of time and separate from adults and in conditions that take account of the child's sex and age.
<i>Article 53 (1)(e)</i>	This provides for the right of every child to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not. <i>This provision has direct implication for alternative care and protection of children.</i>

<p><i>Fourth schedule</i></p> <p><i>Distribution of functions between the national and county governments</i></p>	<p>Pre-primary education, village polytechnics, home-craft centres and childcare facilities.</p> <p><i>This provision while continuing the previous practice where childcare institutions were established by local authorities indicates that it will be the responsibility of the County governments to establish and run child care facilities for the care and protection of children who are in need of alternative care outside the family.</i></p>
<p><i>Article 14 (Citizenship by birth)</i></p>	<p>Provides that a child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.</p> <p><i>This ensures that no child misses out on the obligation of the Government of Kenya to protect him/her on the excuse that the child is not Kenyan in order to access the rights guaranteed by the Constitution.</i></p>
<p><i>Article 43(3) (social security)</i></p>	<p>This provision obligates the State to provide appropriate social security to people who are unable to support themselves and their dependants.</p> <p><i>This enables poor households to access government social assistance and prevent children being separated from their families due to poverty and lack of basic services. Further legislation and programs are required to operationalise this provision and make it effective.</i></p>

The Children Act, 2001

The Children Act, 2001 has elaborate provisions for institutions and substantive provisions on the care and protection of children in Kenya. Below is a matrix that includes a brief summary of the Act's specific provisions related to parental responsibility, alternative care, and social welfare services. It should be noted, however, that in 2014 the Act is under review to update it and align it to the Constitution of Kenya.

Relevant Provision	Summary of text
<p><i>Section 32 (2) Functions of the Council</i></p>	<p>The Act establishes the National Council for Children's Services (NCCS) which has a mainly advisory role but which is sometimes bestowed with certain limited executive functions. The functions of the NCCS include:</p> <ul style="list-style-type: none"> (a) participation in the formulation of policies on family employment and social security, that are designed to alleviate the hardships that impair the social welfare of children (b) working towards the provision of social services essential to the welfare of families in general and children in particular (c) considering and approving or disapproving child welfare programmes proposed by charitable children's institutions (d) set criteria for the establishment of charitable children's institutions (e) establishing Area Advisory Councils to specialise in various matters affecting the rights and welfare of children.
<p><i>Section 40. Role of Local Authorities</i></p>	<p>The Act provides that it is the general duty of every local authority to safeguard and promote the rights and welfare of children within its jurisdiction and to promote the good upbringing of children by their families.</p>
<p><i>Inspection Committees (S. 68)</i></p>	<p>This provides, among other things, that the Minister may appoint an inspection committee to inspect any rehabilitation school, children's remand home or charitable children's institution.</p>

<i>Guardianship (Part VIII)</i>	The provisions relating to guardianship relate to the appointment of guardians and circumstances in which certain people may be appointed as guardians of a child. Provisions are also made regarding the revocation of guardianship orders, among other things.
<i>Foster care placement (Part XI)</i>	The definition of “foster care placement” is given in Section 2 of the Act where it is defined as “placement of a child with a person who is not the child’s parent, relative or guardian and who is willing to undertake the care and maintenance of the child”. Part XI of the Act on foster care provides for the procedures that apply when placing children in foster care. This part is supplemented by detailed provisions in the Fourth Schedule to the Act. The Chief Justice is empowered to make amendments to the Schedule for the forms and detailed procedure applicable in foster care placement.

Charitable Children’s Institutions Regulations: These rules have elaborate provisions for the management of CCIs. However, there is no mention of the procedures for the entry and exit of children from such institutions. The family-based care and protection of children would require that CCIs are properly regulated with respect to how they accept and exit children from their facilities.

Adoption Regulations: The current rules make provisions for the entire process of adoption and the institutions involved, including the Adoption Committee and Adoption Societies.

Guardianship Rules: These provide, mainly, for the procedures applicable in the judicial process and the forms to be used by people seeking to be appointed as guardians and for revocation of guardianship.

Foster Care Rules: These are contained in a Schedule to the Children Act and basically make further provision for foster care and elaborate on the provisions of the Act.

National Plan of Action for Orphans and Vulnerable Children Kenya 2007-2010 (NPA for OVC), which is due for review, has seven Priority Strategic Areas, namely:

- (a) Strengthening the capacity of families to protect and care for OVC
- (b) Mobilising and supporting community-based responses
- (c) Ensuring access for OVC to essential services, including but not limited to education, health care, birth registration, psychosocial support and legal protection
- (d) Ensuring that policy and legislation is put in place to protect the most vulnerable children
- (e) Creating a supportive environment for children and families affected by HIV and AIDS
- (f) Strengthening national capacity to monitor and evaluate programme effectiveness and quality.

National Children Policy, 2010: The goal of this policy is to realise and safeguard the rights and welfare of the child. The policy acts as a regulatory framework to coordinate the many related policies and legislations that are geared towards the promotion of children’s rights. In addition, the policy provides direction and purpose in establishing social and child protection mechanisms while mobilising resources for action as well as acting as a criterion for evaluating and monitoring the implementation of various legislations, policies and programmes on issues related to children.

National Social Protection Policy: This policy has been adopted by the Cabinet but, in order to bind all stakeholders, is going through the process of being adopted as a sessional paper approved by Parliament. Some of the proposals in the policy include a more robust social assistance framework that will be coordinated by a National Social Protection Council.

Comprehensive National Health Policy Framework, 2011-2030: In response to the role of the health sector outlined in the Bill of Rights of the Constitution, this framework aims to attain the right to health. It focuses on strategies that will enable rights-holders, including children who are not living with their parents, to enjoy the highest possible level of health care.

Property rights and inheritance: This is contained in the Law of Succession Act (Cap. 160 Laws of Kenya) and mainly deals with the protection of property of deceased people, ensuring, among other things, that dependants of the deceased, including children, are able to secure sustenance from their parents' estate and thereby minimise cases of destitution.

Other legislation of relevance includes the:

- *Sexual Offences Act, 2006* – makes provision for the protection of children from sexual offences. It also provides for child-friendly government services for children who are sexually-abused.
- *Penal Code (Cap.63 Laws of Kenya)* – defines the penal system in Kenya, outlining criminal offences and prescribing penalties. The Penal Code protects children by classifying acts and omissions which amount to child abuse as punishable offences.
- *Matrimonial Causes Act (Cap 152, Laws of Kenya)* – consolidates all the laws relating to matrimonial cases. It is important as it protects children by providing for maintenance and custody of children whose parents' marriage is dissolved.
- *Subordinate Courts (Separation and Maintenance) Act (Cap. 153)* – provides for children in case of the judicial separation of their parents. A married woman can apply for maintenance and custody orders in a case where the husband has wilfully neglected the children.
- *Employment Act, 2007* – outlines the laws governing the employment and protection of employees in Kenya. It provides that no person shall employ a child in any activity which constitutes a "worst form of child labour". The Minister is required to make regulations declaring any work, activity or contract of service harmful to the health, safety or morals of a child.
- *The Refugees Act, 2006* – requires the Commissioner for Refugee Affairs to ensure that specific measures are taken to ensure the safety of refugee women and children. The Commissioner is also required to ensure that a child who is in need of refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by his/her parents or by any other person, receive appropriate protection and assistance. The Commissioner is further required to, as far as is possible, assist refugee children in tracing their parents or other family members. Where the child's parents or other family members cannot be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his/her family.
- *National Youth Council Act, 2009* – provides for a council that is mandated to mobilise resources to support and fund youth programmes and initiatives and to liaise with other organisations to ensure that young people gain access to resources and services appropriate to their needs. The council is a useful forum to assist children exiting (leaving) alternative care because they have reached the age of 18.
- *Counter-Trafficking In Persons Act, 2010* – intended to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime, particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and to

provide for the offences related to trafficking in persons. It criminalises trafficking in persons by pretending to adopt, foster or put a child under guardianship.

2. International Legal Framework

A number of international instruments specific to the care and protection of children have informed the Kenyan legal framework as well as these Guidelines. The Government of Kenya is accountable to the underlying principles and rights outlined in these instruments.

Title of Instrument	Date of ratification or accession by the Government of Kenya
UN Convention on the Rights of the Child, UNCRC (1989)	Ratified, 1990 (domesticated in the Children Act, 2001).
Optional UNCRC Protocol on Sale of Children, Child Prostitution and Child Pornography	Signed, 2000
Optional UNCRC Protocol on Involvement of Children in Armed Conflict	Acceded, 2002
Hague Convention on Protection of Children and Intercountry Adoption (1993)	Acceded, 2007
UN Convention on the Rights of Persons with Disabilities (2007)	Acceded, 2008
International Labour Organization (ILO) Minimum Age Convention and Worst Forms of Child Labour Convention	Ratified, 1979 and 2001 (domesticated in the Children Act, 2001)
African Charter on the Rights and Welfare of the Child (1990)	Acceded, 2000 (domesticated in the Children Act, 2001)
Guidelines for the Alternative Care of Children (resolution adopted by the UN General Assembly 2010)	All UN member states, including Kenya, welcomed the resolution in the UN General Assembly of 2010

The principles that guide these Guidelines are derived from the above mentioned international human rights instruments.

UN Convention on the Rights of the Child (UNCRC)

The UNCRC promotes the care and protection of children within their families as well as addressing the protection and well-being of children deprived of parental care or who are at risk of being separated from their parents.

The following principles in the UNCRC are particularly crucial for the provision of alternative care services in Kenya:

- *Respecting local care and protection practices:* Article 5 upholds the responsibilities, rights and duties of parents or, where applicable, extended family or community members as provided for by local custom and the evolving capacity of the child.
- *Prevention of family separation:* Article 9 clearly stipulates States should ensure that the child remains in the care of his/her family and prevent the unnecessary separation of children from their families, unless deemed in their best interests. If the child is separated due to reasons deemed appropriate by respective authorities, the child should have regular contact with his/her family.

- *Family reunification:* Article 10 specifies that if the child becomes separated from his/her family, all efforts should be made by the authorities to “expeditiously and humanely” reunify the child with his/her family.
- *Emphasis on family-based alternative care:* Article 20 asserts that if the child is temporarily or permanently deprived of his/her family environment, then they should be provided with a range of alternative care services in line with the child’s upbringing, situation and cultural background.
- *Protecting the child from abuse:* Articles 19 and 34 stipulate the responsibilities of States and respective authorities in protecting children from all forms of abuse, exploitation, maltreatment and neglect while in the care of their parents or any other person.
- *Provision of support services and protection mechanisms:* Article 19 upholds the principle of ensuring that families are provided with appropriate supportive services to appropriately care for their children and protect them from abuse.
- *Care planning and monitoring of children in care:* Article 25 upholds the right of a child in care to be under good care planning and regularly monitored by respective authorities.
- *Adoption:* Article 21 asserts that the national adoption system must be based on the best interests of the child, that adoption is authorised only by competent authorities, and that intercountry adoption can be pursued if no suitable arrangements can be made domestically and children enjoy safeguards equivalent to those for children adopted within the country.
- *Kafaalah:* Article 20 (3) lists *Kafaalah* of Islamic law as one of alternative care of for a child temporarily or permanently deprived of his/her family environment. This is listed alongside foster placement, adoption and institutional care.
- *Care and protection of refugee children:* Article 22 stipulates that States must ensure that all refugee children are provided with appropriate protection and humanitarian assistance, including family tracing and reunification. If the child is unable to be reunified, he/she shall be accorded with the same alternative care protection provided for other children, as set out in Article 20.
- *Care and protection of children with disabilities:* (Article 23) recognizes the right of children with disabilities to special care and supportive services.

All articles of the UNCRC relate to children without parental care. However, there are four key principles that are particularly important and link to the above-mentioned specific articles:

1. *Non-discrimination* (Article 2): protects all children from discrimination.
2. *Best interests of the child* (Article 3)
 - a) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
 - b) State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
 - c) State Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, the number and suitability of staff, as well as competent supervision.

3. *Child Participation* (Article 12): Ensures that authorities respect the rights of the child and provide the opportunity for the child to express their views and their opinion to be heard. This principle applies to an individual child and to children collectively in regards to care provision, decision-making, monitoring, planning and policy development.
4. *The rights to survival and development* (Article 6): Stipulates that States should recognize every child's right to life and ensure the survival and development of the child. Additional articles stipulate provision of health, education, physical, mental and spiritual development, etc. (Articles 24, 27–29, 31).

African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC upholds all of the above principles of the UNCRC, with a strong emphasis on ensuring that the “family is the natural unit” and “every child should be entitled to the enjoyment of parental care and protection care”.

- Non-discrimination (Article 3)
- Best interests of the child (Article 4)
- Survival and development (Article 5)
- Handicapped children (Article 13)
- Protection of the family (Article 18)
- Parental care and protection (Article 19)
- Parental responsibilities (Article 20)
- Refugee children (Article 23)
- Adoption (Article 24)
- Separation from parents (Article 25).

International Guidelines for the Alternative Care of Children (UN, 2010)

While the UNCRC provides the underlying principles, these International Guidelines for the Alternative Care of Children (henceforth referred to in this document as UN Guidelines) set out more detailed orientations for policy and practice with the intention of enhancing the implementation of the UNCRC in regards to alternative care.

The international Guidelines are non-binding. However, they are recognized by governments and authorities as a UN-approved document and has been referenced by the Committee on the Rights of the Child in its Concluding Observations on States' compliance with the UNCRC. The Guidelines have also been used as a key reference document for the development of alternative care standards and policies throughout east and southern Africa (e.g., Ethiopia, Namibia, Rwanda, Swaziland, Uganda and Zambia). The UN Guidelines underpin the development and implementation of these Guidelines for Kenya.

Principles of Necessity and Appropriateness

The UN Guidelines are structured around two core principles that are crucial in implementing and monitoring a national alternative care system:

1. *Principle of necessity* (Paras. 32-56): Ensuring that children are not unnecessarily separated from their families and discouraging unwarranted recourse to alternative care by:
 - a. Consulting with family and child
 - b. Upgrading family support and family reintegration services to support families in meeting their parental responsibilities, promoting the rights of the child and addressing root causes of abandonment
 - c. Preventing avoidable relinquishment
 - d. Stopping unwarranted removal
 - e. Addressing negative societal factors
 - f. Ensuring effective gate-keeping
 - g. Regulating private care providers.
2. *Principle of suitability/appropriateness* (Paras. 57–167): If alternative care is deemed appropriate, authorities should ensure that the care option meets minimum standards, such as those relating to: human resources, conditions of facilities, access to basic services, contact with parents/family and protection from violence, abuse and exploitation. Additionally, a range of alternative care services should be available to meet the specific needs of each child. The care option for each child should be selected on a case-by-case basis, based on a care plan suited to his/her characteristics and situation, and provision should promote appropriate long-term solutions.

Residential Care

Residential care “should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests.” (Para. 21)

“In accordance with the predominant opinion of experts, alternative care for young children, *especially those under the age of 3 years*, should be provided in family-based settings. Exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or other appropriate long-term care solution as its outcome.” (Para. 22)





CHAPTER 3: GENERAL PRINCIPLES IN THE PROVISION OF ALTERNATIVE CARE SERVICES

1. General Principles in the Provision of Alternative Care Services

The following principles, as outlined in the UN Guidelines,¹¹ inform these Guidelines and the provision of alternative care services in Kenya.

- 1) The four main principles of the UNCRC – *best interests of the child, non-discrimination, participation and survival and development* – should be key in all alternative care arrangements. (Refer to Chapter 2 for additional information regarding these principles.)
- 2) Family is the fundamental group in society that provides the care and protection for children and all efforts need to be in place to support and nurture families to uphold this primary responsibility. This includes ensuring provision of family support, and tracing and reintegration services.
- 3) All alternative care placements should take into account the importance of placing the child as close as possible to his/her usual place of residence. This will enable continued contact between the child and his/her family and possible family reunification, and will minimise disruption to the child's education and well-being, as long as the contact is in the best interests of the child.
- 4) The primary priority for all alternative care placements, both formal and informal, is provision of a stable, loving and protective home for the child, with permanency as the long-term goal.
- 5) Participation and well-being of the child should be at the centre of all decision-making and he/she should be safeguarded from abuse, violence and exploitation.
- 6) Poverty should *never* be the driving factor or primary justification for removing a child from his/her family and placing him/her in alternative care.
- 7) Removal of a child from his/her family should be seen as a last resort and should be temporary and carefully monitored.
- 8) A child outside of parental care or in alternative care should be afforded all basic human rights, as stipulated in the Constitution of Kenya and The Children Act, 2001.
- 9) Siblings should be kept together during removal and placement in alternative care, except where this is deemed to be unsafe or not in the best interests of the siblings.
- 10) Proper *gatekeeping measures* should be in place to ensure that placement is appropriate to the child's individual needs.
- 11) Informal care arrangements should be recognized and supported in line with the best interests and cultural heritage of the child.
- 12) All children in alternative care should be under the protection of a legal guardian or the relevant public body or authority.
- 13) Provision of alternative care should never be carried out under the primary purpose of advancing the caregiver and providers' religious, political or economic goals.
- 14) Use of institutional care should be limited, provided under strict standards and regulations, and children under three years should be placed in family-based care settings, not institutional care.
- 15) Coordination, information-sharing and cooperation among all Government and non-governmental

¹¹ Principles are taken from the Guidelines for the Alternative Care of Children (United Nations, 2010). These international Guidelines are intended to enhance the implementation of the UNCRC and provide guidance to national alternative care policies and directives.

authorities, agencies and alternative care providers are needed to appropriately and safely provide alternative care for children.

- 16) All alternative care providers should be registered, licensed, authorised and monitored by the Government of Kenya.
- 17) Particular consideration should be placed on the quality and safety of alternative care facilities and services, ensuring that they meet international standards and enhance the best interests of the child.
- 18) Alternative care providers should ensure that a child receives adequate nutrition, health, hygiene, education, religious and recreational services in order to promote his/her developmental needs.
- 19) All children in alternative care should be provided with consistent and stable care.
- 20) Government and non-governmental agency staff and alternative care providers should be trained, supervised and resourced to effectively provide safe alternative care services.
- 21) The Government of Kenya shall ensure that appropriate laws, policies and resources are in place to support a functioning alternative care system, with priority given to family- and community-based care.
- 22) The Government of Kenya shall ensure that a range of alternative care services is available to all children.
- 23) Continuous research should be conducted to address emerging issues and enhance preventive measures in alternative care arrangements.

2. Determination of the Most Appropriate Form of Alternative Care

In order to determine which alternative care option is the most appropriate for each child, the following measures should be in place as recommended by the UN Guidelines.¹²

- 1) Alternative care decision-making should be carried out via a judicial or administrative procedure, with clear legal safeguards, as stipulated in the Constitution of Kenya, 2010 and The Children Act, 2001.
- 2) The Government of Kenya shall ensure that a comprehensive regulatory framework is in place to guarantee authorisation, registration, monitoring and accountability of all alternative care providers. The framework will serve to monitor referral and admission of a child.
- 3) Alternative care providers should implement rigorous, multi-disciplinary approaches to decision-making that include the full participation of children, families and legal guardians.
- 4) From the start, authorities and alternative care providers must maintain comprehensive records of the child to guide all future decision-making and care planning.
- 5) All decision-making should be carried out on a case-by-case basis and based on a thorough, carefully organised assessment. A qualified, multi-disciplinary team of professionals should carry out the assessment. The assessment should take into account the child's general well-being and safety as well as his/her ethnic, religious, family and community background, medical history, education and other personal and development characteristics. The child and the family should be fully consulted throughout the process.
- 6) Authorities and alternative care providers should minimise frequent changes in care placements.
- 7) *Care planning* will be initiated at the earliest possible time and within one month of care placement. It should be based on the child's emotional, physical and mental development needs; the family's

¹² Ibid

capacity to protect and promote his/her well-being; the child's relationship with his/her siblings; the child's desire to stay close to his/her family or community; and the child's cultural and religious background. The care plan objectives and timeline should be clearly stated and shared with all responsible members of the decision-making process, including the child and his/her family.

- 8) If the child is placed in alternative care via a court or administrative body, the child's family or legal guardian shall be informed of the decision and discuss the ruling with the respective authorities.
- 9) The child, depending on his/her age and evolving capacity, should be informed and prepared throughout the process.
- 10) Alternative care providers and authorities should conduct periodic reviews of the care placement, taking into consideration the child's well-being and personal development as well as his/her views. It is recommended that at minimum the reviews be conducted every three months.
- 11) The paramount consideration during all decision-making is to ensure that decisions are based on the individual needs of the particular child and that care placement promotes stability and permanency through family reunification or provision of a stable alternative care placement.
- 12) Every child in care should be supported with aftercare services once he/she leaves an alternative care placement.
- 13) The best interests determination (BID) process (refer to Glossary of Key Terms) should be promoted for all care arrangements.



CHAPTER 4: ALTERNATIVE CARE DUTY-BEARERS AND COORDINATION MECHANISMS

I. Alternative Care Duty-Bearers

The Children Act, 2001 outlines the roles and responsibilities of government authorities in the care and protection of vulnerable children. The National Council for Children's Services (NCCS) exercises general supervision and control over the planning, financing and coordination of children's rights and welfare activities and advises the Government on these issues. The Department Children's Services (DCS) is mandated with the core responsibility of implementation. Specifically, under the direction of the Director, the Department safeguards the welfare of children and is required to assist in the establishment, promotion, coordination and supervision of services and facilities designed to advance the well-being of children and their families. The table below outlines roles and responsibilities of the various government stakeholders and actors. (Refer to Annex B for DCS organogram.)

Duty-Bearer	Roles and Responsibilities
Government	<ul style="list-style-type: none"> Uphold the child welfare provisions stipulated in the Constitution, the Children Act, 2001 and other laws and policies Uphold principles of the UNCRC and ACRWC Develop and implement child protection policies, laws and regulations Allocate sufficient resources to administer alternative care service provision Coordinate, regulate and supervise other service providers Develop and implement social protection policies and programmes to support and protect families
Civil society	<ul style="list-style-type: none"> Support families and community to be able to care for their children Support the Government in placing children in alternative care and in their monitoring and follow-up Provide technical assistance to Government Raise public awareness on children's rights and in particular alternative care
Alternative care and child care providers	<ul style="list-style-type: none"> Provide alternative care services in accordance with the laws of Kenya, policies and regulations Ensure that the child is cared for appropriately and that the care is in his/her best interest
Community	<ul style="list-style-type: none"> Support families to care for their children Support informal alternative care placements, monitoring and follow-up
Private sector	<ul style="list-style-type: none"> Provide resources to communities to enable children and families to access basic services
Families	<ul style="list-style-type: none"> Care and protect the children in a family environment Meet the child's basic needs as outlined in the Constitution and Children Act, 2001

II. Alternative Care Coordination Mechanism

It is recommended that the Area Advisory Council(AAC) in each Sub-county establishes an Alternative Care Committee, as a sub-committee of the AAC. The Alternative Care Committee's overall objective is to coordinate and strengthen family and alternative care services. The Committee will report to the AAC.

Membership

The Committee should be composed of professionals providing family strengthening and alternative care services in the sub-county, such as representatives from the Sub-county Children's Office, the judiciary, the police, local hospitals, CCIs and adoption societies, along with local administrators and civil society representatives.

Roles and Responsibilities

The roles and responsibilities of the Alternative Care Committee are to:

- a) Facilitate information-sharing and networking among key stakeholders in each sub-county
- b) Support the DCS in the registration and maintenance of the alternative care register
- c) Coordinate alternative care service provision, including family strengthening, tracing and reunification
- d) Support the development and strengthening of referral mechanism amongst duty-bearers in family and alternative care services.
- e) Review and make decisions about the placement of a child in alternative care, the transfer of children between alternative care services, and issues related to compliance with existing legal statutes supporting alternative care
- f) Monitor the progress of each child
- g) Ensure follow-up of cases in the counties and sub-counties.

The DCS will develop Terms for Reference for the operation of the Alternative Care Committee and reporting mechanisms within the provisions of Guildelines for AAC.

Meetings

The frequency of Committee meetings shall depend on the caseload in each sub-county. However, it is recommended that the Committee meets at least quarterly to ensure that there is adequate review and follow-up of cases.



SECTION II

FAMILY SUPPORT AND PREVENTION SERVICES



CHAPTER 5: PREVENTING THE NEED FOR ALTERNATIVE CARE: SUPPORTING FAMILIES AND PREVENTING FAMILY SEPARATION

1. Objective

The objective of this Section, which encompasses chapter 5 and 6, is to provide recommendations for policies and programmes that support families and help prevent family separation. Implementation of these policies and programmes will reduce the need for alternative care services.

2. Overview of Prevention and Support Services in Kenya

In Kenya, most children separated from their families or placed in institutional care have one or both parents alive, or extended family. Often families are separated and children placed in institutional care due to poverty, family breakdown, medical and health crises, abuse or lack of sufficient supportive services. If family and community support services were in place, it would significantly reduce the number of children deprived of care and protection in a family environment.

The first principle of the UN Guidelines, which these guidelines are guided by, is centred on the Government initiating family-centred programmes and policies to ensure that families have the capacity to care for their children. Experience in Kenya has shown that children and their families who are in need of support have numerous needs, which require a range of support services. National policies, such as the National Children Policy (2010) and National Plan of Action for OVC, stress the importance of family-centred services therefore limiting the necessity of use of alternative care placements.

The DCS and other government MDAs, in partnership with civil society organisations (NGOs, CBOs, FBOs, community and religious leaders, and media), cooperative societies and the private sector, should work together to provide a range of supportive services to families and communities.

3. Supporting families

The Government of Kenya, in collaboration with stakeholders, should promote policies and programmes that support parents in meeting their parental responsibilities. These policies and programmes will empower and capacitate families and minimise overdependence on aid. The policies and programmes should address the root causes of child abandonment and family separation. Kenya, already has a range of social protection programmes which include cash transfers to poor families caring for OVC, to the elderly persons (over 65 years), to people with severe disability and also an urban food subsidy scheme for the urban poor. The government should build on these programmes and strengthen existing policies in support of vulnerable families.

Below are recommended support services that should be either provided directly or via referral services to vulnerable families and their children:¹³

- a) *Educational Support*: One of the major reasons children are placed in institutional care, end up on the streets or are not taken back by their families after they have been separated is the inability of families to pay for school fees, books and uniforms. Minimal educational support and school feeding programmes can mitigate these challenges.
- b) *Day Care Services*: It is becoming increasingly common in Kenya for both parents to work outside

¹³ Support services are based on the recommendations of the Guidelines for the Alternative Care of Children, UN 2010, paras. 32-38.

the home in order to meet the financial needs of the family. In rural areas, for example, casual labour is a major source of livelihood. In major cities, increasing numbers of parents are leaving their young children unattended at home while they are at work. Many of these children end up on the streets begging for food. Accessible, affordable, regulated and monitored day care services can support parents to continue to work but also ensure the safety and well-being of their children.

- c) *Health Care Support Services*: In order for children to remain with their families, the government and partners need to ensure the survival of parents and their children via life-saving treatments, sexual and reproductive health services and respite care, among others.
- d) *Parenting Courses and Trainings*: Parenting courses and training in nutrition, health, child development and positive disciplining enhance the capacities of parents and caregivers to support the child through the developmental milestones and provide adequate care. Parenting is difficult but it is made even more difficult by poverty, food insecurity, health crises and family breakdown. These courses should be available for biological, foster and adoption parents and guardians who have the care and control of children. While a number of civil society organisations provide parenting courses, it is recommended that these courses be replicated and supported by both the government and civil societies to cover all counties.
- e) *Advocacy and Legal Support*: These services include free legal assistance to protect the property and inheritance rights of the child, attain birth certificates, write wills or deeds, attain custody and facilitate access to supportive services and grants.
- f) *Supporting and targeting children with mental and physical disabilities*: One of the most vulnerable, but often most neglected, groups are children with special needs. Resources are needed for these children and their families, such as: cash grants to children with disabilities, specialised treatment facilities, respite or day care, psychosocial support and counselling for parents, among other services.
- g) *Community-based outreach programmes*: One of the positive practices emerging in Kenya is community outreach or home visitation programmes in which social workers or community health workers (CHWs) visit families to support them in caring for themselves and their children. During these home visits, CHWs provide psychosocial counselling, HIV and other health treatments, and educational support, and connect families with other services. These programmes should be strengthened and expanded to all counties.
- h) *Child and youth participation and empowerment*: In addition to empowering the parents or caregiver, it is vital to empower children by encouraging child participation, positive decision-making, awareness of children's rights and healthy lifestyles. Programmes such as Child Rights Clubs and Assemblies in schools and communities and free child helplines are excellent ways to foster this participation. Many of these programmes exist and are supported by CSOs and the DCS, but they need to be scaled up.
- i) *Economic empowerment*: Poverty is often the number one reason why families resort to institutional care or abandon their children, and why children end up living on the streets. Financial and material insecurity often affects the family's ability to effectively care for their children and has an impact on other support interventions. It is recommended that economic empowerment strategies are implemented at four levels:¹⁴
 1. National level: The Government of Kenya continues to implement and if possible scale up the national social protection scheme (cash transfer programme) which enables families to care for their children and orphans. Community groups have stressed that this programme has been instrumental in positively caring for both biological and orphaned children. Alternative care and social protection laws, policies and programmes should be linked accordingly.

¹⁴ The four-level approach is presented in Save the Children's report, *Facing the Crisis*.

2. **Community level:** The Government of Kenya, in partnership with CSOs and the private sector, mobilises communities by initiating community income-generating activities, e.g. cooperatives, savings groups and fundraising initiatives.
3. **Family level:** The Government of Kenya, in partnership with CSOs and the private sector, supports micro-loans, income-generating activities, vocational or small business trainings and awareness-raising among families so that they can access government grants and services.
4. **Child level:** A number of programmes can complement the above by targeting the child and taking a more comprehensive long-term approach towards the child's future economic support by promoting formal and non-formal education, vocational training and income-generating programmes.

Across all support service provision, there is need to raise awareness among parents and families to understand their parental roles and responsibilities so as to avoid dependency on external support.

4. Preventing family separation

The UN Guidelines emphasise the important role that Government, in collaboration with partners, plays in preventing family separation by putting into place clear policies and programmes that ensure the child remains in his/her family, whenever possible.

The following are measures recommended for the government, in collaboration with partners, to help in prevention of family separation¹⁵

- a) *Keeping child(ren) with or close to family:* When parents are temporarily unable to care for their child, he/she is best cared for in the extended family or close to the family home.
- b) *Family assessment:* For families at risk of violating the rights of or abandoning the child, the DCS, in partnership with partners, should regularly assess the family and child's situation by conducting home visits and speaking with community members. Families should be linked to psychosocial, counselling or family mediation support services in order to reduce family tensions and risk factors. Decisions to remove the child or place the child back with his or her family should be based on this assessment. (Refer to Glossary of Key Terms in Annex A, Chapter 5 and Annex C for additional information regarding family assessments.)
- c) *Maternal care services:* Support services should be in place in hospitals, maternal health facilities and community centres to support mothers and fathers, in particular adolescent parents and single mothers, during the ante, peri and postnatal period. These programmes should prepare the parent(s) and empower them to care for their child and, if the parent(s) has any difficulties in caring for the child, the health care or social worker can discuss their problems and work with them. Additionally campaigns are needed to reduce stigma around children born out of wedlock and those born with disabilities and/or diseases, such as HIV. The campaigns should target and include community and religious leaders and members of the community. This will help prevent the child being abandoned or placed in a vulnerable situation during the first few days, weeks or months of his or her life.
- d) *Alternative care gate-keeping services:* Child protection staff, care providers in maternity hospitals and alternative care facility social workers should counsel parents or legal guardians wishing to relinquish a child permanently or temporarily and inform them of the consequences and impact on the child of their intended action. The care providers should establish links with interdisciplinary social services to address the reasons for a child being abandoned. If it is determined to be in the best interests of the child, the social worker should work with the parent/caregiver to look for other family members to care for the child or, if that is not possible, find a permanent family placement

¹⁵ Guidelines for the Alternative Care of Children, UN 2010, paras. 39-48.

within a reasonable period.

- e) *Abuse and neglect awareness*: Special trainings should be put in place for teachers, school directors, community groups and others working with and for children to help them detect situations in which a child is vulnerable to violence, abuse, neglect, exploitation or risk of abandonment and inform them how to help such a child and their family.
- f) *Parents in prison*: Government authorities and the DCS should work with children whose parents are in prison to ensure the best care for the children while their parents are serving their terms to minimise the risk of long-term family separation and abandonment of the child. Preferably, the child should be placed with family members while the parents are in custody and be facilitated to maintain contact with his/her parents.

5. Model of Promising Practice

Supporting Families via the Cash Transfer Programme in Kenya

The Kenyan Cash Transfer for Orphans and Vulnerable Children (CT-OVC) programme started in 2004 because it was recognized that poor families were finding it difficult to care for and protect these children. The overall objective of the programme is to provide a social protection system through regular and predictable cash transfers to poor households living with OVC in order to strengthen their capacity to care for and protect these children and promote their development. It is expected that, as a long-term result, these children will be able to overcome the intergenerational cycle of poverty. Having started with 500 households in three sub-counties in 2004, by June 2012 it had scaled up to cover all 47 counties, with a reach of 145,590 households (with approximately 509,565 OVC).

The programme transfers 4,000 Kenyan Shillings (around US\$48) to each household every two months. Households are selected through a rigorous process that involves both geographical and household targeting. While ensuring coverage in all counties in the country, geographical targeting prioritises sub-counties and wards with the highest HIV prevalence, the highest number of orphans and the highest levels of poverty. A community committee, known as a Location OVC Committee (LOC) initially identifies all potential households. Child-headed and youth-headed households are given priority in the selection of beneficiaries whenever resources are limited

An impact evaluation exercise in 2007 and two follow-ups in 2009 and 2011 show that the programme has resulted in:

- a 13% reduction in the proportion of households living under US\$1 a day
- improvement in dietary diversity
- an increase in health consumption
- a 15% increase in 6–7-year-olds enrolled in primary school
- a 6% increase in 13–17-year-olds enrolled in secondary school
- a significant reduction in child labour among beneficiary households, and
- a 12% increase in households with birth certificates.

The second follow-up in 2011 showed that the programme had had a significant impact on sexual and psychological behaviour, with children in CT-OVC programme households significantly less likely to get depressed, less likely to have two sexual partners and less likely to be forced to or have transactional sex.





CHAPTER 6: PROMOTING FAMILY TRACING AND REINTEGRATION

1. Objective

The objective of this chapter is to emphasize the importance of undertaking a comprehensive tracing and reintegration programme for children who have been separated from their biological parents, family or legal guardian(s). Effective implementation of family tracing and reintegration programmes will reduce the need for institutional placement or other alternative care placement.

2. Overview of Family Tracing and Reintegration

Where a child is found to have been separated from his or her family or placed in alternative care, efforts should be made to ensure that the child's family is found and, whenever possible, the child is reintegrated with his/her family as soon as possible. The DCS shall play a supervisory role and ensure that the Government of Kenya statutory institutions, CCIs and other alternative care agencies carry out well-planned family tracing and reintegration programmes.

Family tracing refers to activities undertaken by authorities, community members, relatives or other agencies for the purpose of gathering information and locating parents or the extended family or legal guardian of a separated or lost child.

Family reintegration refers to the process by which a child is reunited with his/her parents or extended family or legal guardian and is able to integrate back into his/her family. During this process, activities will be undertaken to equip the child and the family with the necessary capacity, including resources for proper placement and reintegration.

2.1 Key Tracing and Reintegration Principles

Protection of the Child and Family: Protection and safety of the child and his/her family is the first priority and should underline all tracing activities and information-sharing. In sharing information and using social media, priority should be given to ensuring minimum risk to the child and family, while at the same time providing as much information as is necessary for tracing.

Tracing in insecure circumstances and situations may endanger the child or family and in such cases tracing may have to be postponed.

Involvement of the child: Prior to initiating tracing activities, the organisation in charge of the child should discuss the tracing process with the child, based on his/her age and evolving capacities. A consent form should be prepared for the child, family (applicable where family is known) and respective organisation to sign. The child should be updated on progress throughout the tracing process.

3. International and National Legal Framework

International

The UNCRC recognizes the importance of family tracing and reintegration. Article 10 calls for authorities to expeditiously reunify the child with his/her family if separated.

National

At present, the Kenyan legal framework, specifically the Children Act, 2001, does not acknowledge or reference family tracing and reintegration and there are no formal guidelines or regulations.

4. Roles and Responsibilities of Tracing and Reintegration Authorities and Agencies

An effective tracing and reintegration programme entails complex and rigorous organisational, human and financial resources. There is need for organised and coordinated efforts by the Government of Kenya (specifically the DCS), community members, alternative care providers and CSOs that are responsible for the care and protection of separated and lost children. All organisations and authorities involved in family tracing and reintegration should use the same approach. This will ensure appropriate cooperation and information-sharing, and minimise duplication of activities and resources.

The success of tracing and reintegration is dependent on the capacity and openness of the Government and non-governmental and community partners to effectively collaborate, communicate and coordinate. All staff should be appropriately trained and capacitated to undertake tracing and reintegration activities. Most importantly, the child and his/her active participation, should be at the centre of the process. (For an illustration of Steps in Family Tracing and Reintegration, refer to Annex F.)

4.1 Roles and Responsibilities of the Government of Kenya

The Ministry in charge of children affairs shall:

- a) Advocate for allocation of adequate budget, material and human resources to support and oversee tracing and reintegration
- b) Whenever possible, provide technical and financial support to non-governmental agencies implementing tracing and reintegration programme
- c) Oversee overall coordination of tracing and reintegration programme
- d) Ensure quality and professionalism in tracing and reintegration processes
- e) Monitor nationwide tracing and reintegration efforts through its County and Sub-county Children's Offices and Child Protection Centres
- f) Maintain the national- and county-level tracing/reintegration database
- g) Ensure national and county annual reports on tracing and reunification are prepared.

In order to trace families, provide appropriate services to facilitate reintegration and monitor post-placement, the DCS should work closely with other government MDA and other stakeholders. Personnel in these institutions should undergo capacity-building through training and development to support the DCS and stakeholders in tracing and reintegration efforts and be held accountable for their actions.

4.2. Roles and Responsibilities of Alternative Care Committee

As outlined in Chapter 3, an Alternative Care Committee, which is a sub-committee of AAC, will be formed in each Sub-county to facilitate coordination, collaboration and implementation of alternative care programme. The role of the Committee in regards to tracing and reintegration will be to:

- a) Facilitate information sharing and networking
- b) Support the Sub-county Children's Officer (SCO) in establishing and maintaining a separated children register

- c) Support the Sub-county Children Officer to maintain a register of all civil societies that are engaged in tracing and reintegration activities
- d) Coordinate various stakeholders doing tracing and reunification and support strengthening of referral pathways in this area
- e) Support civil societies undertaking tracing and reunification
- f) Monitor progress in the tracing and reunification of each child
- g) Ensure follow-up of cases in the counties and sub-counties.

4.3 Roles and Responsibilities of Non-Governmental and Community Actors

Non-governmental and community-based actors can complement the role of the Government and may take on full or partial responsibilities in the tracing and reintegration process. For those who will take partial responsibilities, they must work with local DCS to agree on handover/ referral from the point where their responsibility ends. These actors include: national and international NGOs, faith-based groups and community based organisations; OVC committees; community health workers; community associations; religious and community leaders; and agencies specialising in emergency response, family tracing and management of lost and found people. Such actors will share their intention with the local DCS office so as to enhance collaboration and coordination of tracing and reintegration efforts in the County and Sub-county. All respective organisations should be trained in tracing and reintegration strategies and procedures.

In partnership with the DCS, NGO staff and community volunteers will carry out registration, family tracing, family mediation, reunification of children and follow up monitoring for children who have been reunified with their family. The partners may also complement the work of the DCS by providing training, procuring necessary resources, facilitating the flow of information, providing reintegration support services and providing ongoing technical support.

All NGOs and other agencies working on tracing and reunification will maintain an individual file for each child, starting with identification of the child, and including the reunification process and monitoring after reunification. If an NGO hands over a child to another actor, they shall maintain a referral form in the file.

4.4. Roles and Responsibilities of Statutory Institutions, CCIs and Temporary Shelters

Statutory institutions for the care of children, CCIs and temporary shelters should include tracing and reintegration as one of their core programmes and exit strategies. Once a child is admitted, staff should develop an individual care plan, with clear actions towards tracing and reintegration with the child's family. All staff should be sensitised and trained to understand the importance of family tracing and reintegration and the steps needed to properly administer these efforts. The staff should have the qualifications to effectively carry out these activities, including social work, psychosocial support and counselling skills.

5. Recommendation for a National Tracing and Reintegration Unit and Database

It is recommended that a National Tracing and Reintegration Unit be established within DCS headquarters in Nairobi. Once established, specific Children's Officers shall be assigned to the unit to lead, coordinate and monitor tracing and reintegration efforts across the country.

The unit should expand and strengthen tracing and reintegration services by, for instance, ensuring that a module for lost, abandoned and separated children is included in the National Child Protection

Database. In order to do this, the DCS should partner with the judiciary (Children's Court and Police Service), the Ministry of Planning (Kenya National Bureau of Statistics), and other relevant line ministries, departments and tracing agencies in ensuring that information is processed and the database maintained. The national database will facilitate record keeping and monitoring, and enable the timely and regular flow of information to the Government and partners in a harmonised and organised manner.

The database will help in the effective tracing of families in a number of ways. For instance:

- a) Lists can be produced according to specific categories that will help staff carry out better and faster tracing. For example, lists of families with missing children and lists of separated children can be generated within specific localities. This will help speed up tracing and put less pressure on limited transportation resources.
- b) Data on both separated children and parents and relatives looking for their missing children can be entered into the database, enabling them to be effectively identified and matched.
- c) The database will ensure proper coordination and collaboration between the Government and non-governmental agencies and structures.
- d) It will serve as an effective mechanism for the public to turn to when reporting or looking for abandoned or lost children.

Awareness campaigns to sensitise the public on what they should do in case of a lost or missing child should be intensified. Equally, the DCS should build the capacity of staff working at the Child Helpline (116) Service Centre to handle and refer cases of lost, abandoned and separated children reported to them.

6. Tracing Methods

Tracing should be started as soon as the case is registered/reported and should be in line with existing regulations. Tracing should only be abandoned when there is reasonable evidence that the family cannot be found. Community members should be actively engaged in tracing efforts since they may have more information than Government and NGOs. Various methods have been used in tracing and reintegration and can be used either as stand alone methods or jointly. Some methods that have worked in Kenya and in other countries are indicated below. (See Annex G for details of these tracing methods.)

- i. Obtaining information from the child
- ii. Using information from a Sub-county Children's Officer's Social Inquiry Report or Police Lost Child Report or the hospital where a child was abandoned
- iii. Obtaining information from a 'Good Samaritan' who assisted a separated child
- iv. Use of media
- v. Tracing between countries.

Important considerations during tracing

a) *Child's photo*: As soon as an officer of government or other agencies learns that a child is lost or abandoned, the officer should take immediately two photos of the child (one passport size and one full length). The photos should be kept in a safe place where their quality will not deteriorate. The photos will be useful during verification that people claiming to be the child's family are indeed related to him or her.

b) Child's possessions: The authorised officer of either the Government or other agencies receiving a separated child should obtain a photograph of the child immediately after receiving the report or registering a separated child and keep the child's clothes and other possessions (jewellery, toys, etc.) safe. These may be needed for subsequent verification of family ties and /or identification of the child, in particular for young children and babies who do not have the capacity to share information.

c) Minimise permanent moves or name changes of child: Authorities or other agencies should ensure that actions taken relating to a separated child do not hinder tracing and eventual family reunification. Such actions may include changing the name of the child, freeing the child for adoption (domestic or international), or moving the child far from the place where he or she was found. Such permanent actions should only be undertaken, if relevant, when all tracing efforts have been exhausted. The community where the child was found is more likely to know the child and therefore make it easier to trace the family.

d) The Environment Adjustment Report (EAR): EAR is the national document normally used to assess the child, family location and preparedness of the family to take back the child. The EAR should be completed in conjunction with the DCS during tracing and updated during subsequent reintegration visits. In case of future separation, the EAR may be used in tracing a child's family.

e) Family Verification:

Before reuniting the child with the traced parent(s), it is important to verify that they are indeed his or her parent(s). If the child is old enough and the separation has not been long, the process is usually easy and verification can be done through family visits, showing photographs or asking for relevant documentation (i.e. a birth certificate, parents' identity cards, Police Occurrence Book (OB) Number, or the child's school records) and information from family members and verification from the child.

Verification methods for young children or babies include asking family members to describe the child's physical characteristics, such as birthmarks or scars; asking the identified parent/family member to describe clothing or accessories the child was wearing at the time of separation; and asking community members or neighbours to confirm that they are the parent/family of the child. This can be done with or without the child being present. In extreme cases where parents insist that the child is theirs, but other information indicates otherwise, DNA identification may be considered.

7. Overview of Family Reintegration Process

In order to prepare and support the child and family for his or her possible return home, the situation should be assessed by a multidisciplinary team of social workers, counsellors and other duly designated individuals, in consultation with the child, family and alternative caregivers. This will determine whether the reunification of the child with his/her family is advisable and in her/his best interests.

Once determined that it is in the child's best interests, family reintegration should be designed as a measured, regulated and monitored process, supplemented by regular follow-ups and support mechanisms that take into account the child's age, needs, evolving capacities, causes of separation and current alternative care placement. This should be a careful process, with clear objectives and activities, and should be dependent on assessments and the child's individual care plan. The family, authorities/organisations and alternative caregiver's primary responsibilities should be set out in writing and agreed on by all concerned (the child, family, CCI and SCO). All concerned parties should have a written copy of the document. Both the child and his/her family should be part of the decision-making process.

The child and family should be appropriately supported and prepared and the child should never be sent home without the above procedures having been followed.

For children who have been separated from their families for an extensive period of time or who have been in a long-term alternative care placement, the reintegration process may be more challenging. It may take a significant period of time for the child to feel like a member of the family again and to adjust within the family, community and school environment. With these children, the caregivers may need additional support and the reunification process carefully planned and implemented. Staff and all involved should be mindful of these potential challenges. An individual care plans for the child helps prepare for these challenges.

7.1. Conditions for Family Reunification

A child may be reunified with his/her family if the following conditions are met:

- a) Child's family has been traced and verified
- b) Reasons for separation have been established and addressed and, where possible, follow-up mechanisms put in place
- c) Child has agreed to be reunified with his/her parents or extended family members. (If the child is unwilling to return to the family, his/her reasons should be objectively evaluated and the decision made in the best interests of the child.)
- d) Assessment has been conducted to verify that family reunification and reintegration is in the best interests of the child
- e) Child's family are willing to take him/her back and are mentally and physically capable of taking care of the child.

7.2. Components of Family Reintegration

Some key components must be taken into consideration for the family reintegration to be successful, as evidenced by successful work in Kenya and other countries. These components include assessment of the child's family; ensuring that the child and family are in contact with each other before reunification; counselling of the child before reunion with the family; undertaking family mediation with the child's family, especially if the separation was intentional; providing a reunification kit where necessary; and sensitisation of staff and community members on the purpose of reintegration.

(Refer to Annex H for more details on reintegration components and steps.)

8. Monitoring and Follow-up

The SCO, together with the Alternative Care Committee, partners and community members, should conduct quarterly follow-up visits of the reunified child/family during the first year following reunification and once per year thereafter until the child and family are well adjusted. It is recommended that the follow-up continues for a minimum of two years following family reunification. The follow-up visits should evaluate the child's health, nutritional, educational and psychosocial development status. Based on the follow-up visit findings, the organisation/authorities should provide additional support services to enable the child to be properly reintegrated with his/her family.

Community leaders and/or community caregivers, such as the OVC committee, community health workers, the AAC and Chiefs should be included in follow-up visits to support monitoring of the child's safety, adjustment and well-being following reunification. Respective organisations or the SCO should develop a standard monitoring tool and prepare quarterly and annual monitoring reports.

9. Actions Needed Following Failure of Reintegration

In some cases, a child may be unable to successfully reintegrate into his/her family. For these children, an alternative care plan should be put in place based on the child's specific needs and situation. The reasons for removing the child from the family should be shared with both the family and the child. This will be the responsibility of the organisation or the SCO that conducted the reintegration process. It is recommended that the decision to remove a child from their family be shared with the Alternative Care Committee.

10. Confidentiality

All information and data gathered on the child and his/her family during the tracing and reintegration process should be kept confidential and secure. Authorities and organisations should ensure that the child's record is preserved and that his/her safety is taken into consideration when sharing information about the child, including photographs.

11. Models of Promising Practice

Thika and Malindi

Thika and Malindi are examples of counties where government coordination around tracing and reintegration is working well and can serve as a promising practice for other locations.

Thika Sub-county Children's Office

Led by the Sub-county Children's Office (SCO), there is strong Government and non-governmental partnership, collaboration and networking around family tracing and reintegration in Thika. A wide network of stakeholders – the SCO, AAC, police, CCI, civil society, business community and hospital social workers – work together to trace, place children back with their families and follow-up after reintegration. There are also a number of committees – Street Children Committee and CCI Managerial Committee – which ensure that children are reintegrated back with their families.

Malindi Child Protection Centre

The Child Protection Centre (CPC) has been critical in Malindi SCO's successful tracing and reintegration efforts and illustrates the importance of coordination and collaboration. The CPC has a team of three Children's Officers, four social workers, one counsellor, one legal officer and one police officer on site. There are proper case management and family support systems in place. The team works together, and with Government and non-governmental partners, to effectively trace and reintegrate lost and abandoned children. In 2011, the CPC reintegrated 20 children from Malindi to as far away as Western Kenya. First, the social workers assess the child, provide counselling services and try to gather information about the child's family. If the information is found, they assess the family situation and provide family mediation services if needed. Social workers conduct home visits and work closely with other SCO offices for reintegration, follow-up and monitoring.

SECTION III

PROVISION OF ALTERNATIVE CARE SERVICES



CHAPTER 7: KINSHIP CARE AND KAFALAH

1. Objective

The objective of this chapter is to provide a brief overview of kinship care practices in Kenya and general recommendations for monitoring, improving and supporting these placements. The intention is to provide guidance to government and community authorities in protecting children living with extended family members.

The section seeks to address shortfalls in kinship care which include gaps in record keeping, and the care and protection of children in kinship care.

The chapter further provides guidelines on kafaalah, which is the Islamic care arrangement, through which children deprived of parental or family care can benefit. The chapter defines what *Kafaalah* is, provides for regulations needed to safeguard the rights of children under *Kafaalah* and further specifies the rights and obligations of both the child and the care giver.

2. Overview of Kinship Care in Kenya

In Kenya, communities have historically and traditionally cared for and protected orphaned, abandoned and vulnerable children within the extended family. According to the Government of Kenya Cash Transfer Programme, of those orphans who do not reside with any parent, some 40% live with grandparents and 34% with other relatives. Kenyan society places enormous value on the role and responsibility of the extended family in caring for these children.

The care arrangement is traditionally discussed and determined by family members or community elders, with no involvement of the DCS or external agencies. In most cases, the family (typically the father's relatives) discusses which family member will take in the child/children and the wider family network tries to support the family during the initial placement period by collecting funds and material goods.

3. Definition of Kinship Care

Informal Kinship Care

A private arrangement within the family environment whereby the child is looked after on a temporary or long-term basis by his/her extended family from either the maternal or paternal side, without being ordered by an administrative or judicial authority. The family members include: grandparents, aunts, uncles, older siblings and first cousins.

Formal Kinship Care

An arrangement, ordered by an external administrative or judicial authority, whereby the child is looked after on a temporary or long-term basis by his/her extended family from either the maternal or paternal side. The family members include: grandparents, aunts, uncles, older siblings and first cousins.

4. Categories of Children Who May Benefit from Kinship Care:

Children who may benefit from kinship care include those:

- a) Who are orphaned
- b) Who are abandoned
- c) Whose parents are in prison
- d) Who have been separated from their parent(s) during an emergency situation
- e) Whose parents have separated or divorced and have given up their parental responsibility
- f) Who have been living and working on the streets and are unable to return to their parents.
- g) Those with special needs, such those with a mental or physical disability.

5. Benefits of kinship care

Within most Kenyan communities, kinship care is the most culturally appropriate and understood form of alternative care as it is based on community mechanisms and processes. It provides great benefits to the child, and typically children prefer this type of arrangement. It allows the child to maintain cultural, religious and linguistic links with his/her family and community and enables continuity, stability and a sense of identity and self-esteem. The child is also likely to experience less distress after his or her parents have died or after being separated from the parents. A child cared for within his/her own family environment generally experiences fewer placements and avoids the risks associated with institutional care. Kinship care is also more cost-effective than institutional care. During instances of family separation, kinship care can be an important temporary arrangement until the child's family has been traced and he/she can be reunified with them.

Potential Risks of Kinship Care

Since kinship care is unregulated and not supported by the Government or external agencies there are potential risks. Community leaders have noted that due to large numbers of societal challenges in Kenya, including increasing poverty levels, caring for an extra child is becoming increasingly difficult for many families. These pressures, along with a lack of monitoring and families' inability to access support services, are leading to children experiencing abuse, violence, neglect and exploitation. Many are moved around from household to household and the family taking in the child may be the only one willing to do so, rather than the most suitable and in the best interests of the child.

6. International and National Legal Framework

International

The UNCRC acknowledges and respects the role and responsibility of "members of the extended family or community" in caring for children (Article 5) . The UN Guidelines formally recognize kinship care as one of the alternative care options available to a child deprived of parental care.¹⁶

National

At present, the Kenyan legal framework, specifically the Children Act, 2001, does not acknowledge or reference kinship care and there are no formal guidelines or regulations. Kinship care therefore differs from one community to another.

¹⁶ Guidelines for the Alternative Care of Children, UN 2010, paras. 29, 76-79.

7. Key Recommendations to Strengthen Kinship Care in Kenya

While it is important not to interfere with the positive aspects of the informal nature of kinship care and communities' natural care mechanisms, it is also critical that the well-being of all children in Kenya is protected.

The DCS, in collaboration with stakeholders, should consider what package of support services should be available to children and their caregivers, as well as the level and type of monitoring needed to safeguard the child but not be overly intrusive, threatening or disruptive.

Issues to consider:

- i. Assess the child and carers to determine the needs that must be addressed and the types of support services needed.
- ii. Receive consent from family members prior to placement in order to minimise future tensions and family conflict.
- iii. Prepare the child and family prior to placement through trainings and counselling.
- iv. Ensure that the child's views are taken into account in making the decision by encouraging family members to meet with the child during the decision-making process.
- v. Encourage families to keep siblings together except where it is not in the siblings' best interests.
- vi. Maintain the child as close as possible to his/her usual place of residence and close family members in order to minimise disruption and facilitate reunification and reintegration with his/her parent(s).

Improving the quality of care in kinship foster care and strengthening the capacity of families

- a) The DCS, in collaboration with stakeholders, shall develop initiatives to protect children in kinship care from neglect, abuse, violence and exploitation.
- b) Based on the assessment and needs of the family, the DCS, in collaboration with stakeholders, shall put efforts to ensure that caregivers have access to needed support services by directly providing the services and/or referring families and children to service providers. These services include:
 - i. Healthcare: treatment, prevention and rehabilitation services
 - ii. Education: school fees vouchers and Early Childhood Development (ECD) services
 - iii. Day care and respite care
 - iv. Community outreach programmes
 - v. Counselling and mediation
 - vi. Access to adequate and affordable housing
 - vii. Economic strengthening: income-generating programmes, vouchers, micro-loans, vocational training, etc.
- c) To support families' care for an extra child and in extremely vulnerable cases, the government shall explore the possibility of providing extra financial assistance to the family. Community leaders have stressed that additional financial assistance, such as the cash transfer programme, significantly reduces instances of child abuse and exploitation.
- d) Parenting trainings shall also be promoted in order to build the capacity of families to care for, discipline and communicate with children.

- e) For older caregivers, additional health and nutritional support is essential to minimise and offset the potential negative impact on the carer's health.
- f) Contact between the child and his/her biological family, when known and in the child's best interests, shall be encouraged.

Legal protection of children in kinship care

The DCS, in collaboration with stakeholders, shall encourage caregivers to obtain proper legal documentation and other services for the child, such as: birth registration, school registration, identification cards, passports, parents' death certificates, birth certificate for adopted child and other relevant documents.

Capacity-building and awareness-raising initiatives

- a) The capacity of the DCS, Chiefs, community-based structures and civil society needs to be built so that they better understand kinship care and ways in which they can work with community-based mechanisms to support and monitor the welfare of children in kinship care arrangements.
- b) The community should be made aware and educated on ways to protect children from possible discrimination, stigma and exploitation by the kinship family. This can be achieved through avenues such as chief barazas and religious gatherings.

Record keeping on children in kinship care

- a) In order to minimise potential harm and the risks associated with kinship care, it is recommended that a kinship care registry is maintained at the Chief's office in each location, and shared with area SCO. The Volunteer Children's Officer (VCO) will register and monitor kinship care placement.
- b) Through public awareness campaigns and community outreach, families should be encouraged to notify and voluntarily register the number of non-biological children under their care with the Chief's Office. Registration can be linked to provision of services, such as the cash transfer programme.

Monitoring of children in kinship care

- a) In order to ensure that the child is protected and appropriate support services are provided, regular monitoring should be undertaken.
- b) Since kinship care is perceived to be a "private family matter" it is important for the DCS to work closely with Chiefs, community and religious leaders, community-based structures and civil society to monitor the kinship care placement by conducting periodic home visits and intervening when problems arise. Under the DCS, VCO has main responsibility for supervision and monitoring of the placement. Community leaders can provide information on which families the DCS should visit and alert them to potential abuse or neglect cases and monitor the placement to ensure that the child is protected and to review the level of support required.
- c) The Cash Transfer Programme, for example, can serve as a monitoring mechanism for families caring for non-biological children and OVC committee and the Cash Transfer Beneficiary Welfare Committee members can monitor and supervise the children to ensure that they are receiving appropriate care and protection. Both committees should share monitoring information with the DCS and Chiefs.
- d) Monitoring of children in kinship care should be in comparison with the family's biological children. Indicators should include: amount of food and resources that the child receives; the amount of

domestic chores done by the child; school attendance; the child's health status; family interactions; and the psychological well-being of the child. The Child Status Index tool can be used for this monitoring -see Annex J.

- e) The property and inheritance of the child should be monitored to minimise mismanagement by relatives. An inventory of the child's property should be maintained in the DCS and Chief's office.

Transition from kinship care to formal care arrangements

- a) In cases where parents are no longer alive or are incapacitated, the Government of Kenya shall recognize the kinship caregivers as the legal guardians of the child and encourage registration of these placements through guardianship orders. *However, it is important to note that formalising does not lead to better protection and supportive services should not be dependent on formalisation.*
- b) Where a child requires permanent alternative care, an assessment should be made to determine whether the current family members wish to take permanent, legal responsibility for the child, either through kinship adoption, *kafaalah* or legal guardianship, and whether such arrangements would be in the child's best interests.

8. Kafaalah

a) Definition of Kafaalah

Kafaalah refers to the Islamic mode of alternative child care in which a person or family voluntarily commits himself/herself to sponsor and care for an orphan or any other child deprived of family care.¹⁷ The individual or family sponsors the child to meet its basic needs for health, education, protection and maintenance. *Kafaalah* is officially recognized by both the UNCRC in Article 20 and by the Guidelines for the Alternative Care of Children, para 2(b).¹⁸ Article 20 of the UNCRC states that:

1. *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*
3. *Such care includes, inter alia, foster placement, kafaalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

b) Overview of Kafaalah in Kenya

The care and protection of orphaned and vulnerable Muslim children in Kenya is guided by the interpretations of Islamic law (*Sharia*).

The concept of "adoption" is known as *tabanni* and is considered *haram* (forbidden) under Islamic law. It is prohibited in Islam in order to safeguard the biological lineage and not to confuse biological parentage.

While Muslims are enjoined to bring up non-biological children in their house and to love them as they love their own children, the attribution of those children should always be to their true, biological parents. If the identity of the child's parents is unknown, then the child should be given a general attribution that originates with the child. The individual or family sponsors the child in order to meet the

¹⁸ UNCRC Article 20: "State Parties shall in accordance with their national laws ensure alternative care for such a child. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children." Guidelines for the Alternative Care of Children, para. 2(b): "To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and *kafaalah* of Islamic law."

child's basic needs for health, education, protection and maintenance. Islamic law therefore proposes *kafaalah* as a model of alternative care for such children.

The person or family taking a child under *kafaalah* is known as the *Kafiil*. *Kafaalah* is practised up to the age the child is able to support him or herself. Although under *kafaalah* the non-biological child is not entitled to inheritance, unlike the biological heirs who have a fixed and predetermined share, the *kafiil* family should give the non-biological child some property through *wasiyya* – bequeathing – whereby the *kafiil* directs that after his/her (*kafiil's*) death, the child under *kafaalah* is given a portion of the estate not exceeding one-third. Further, the child can benefit from a gift given during the lifetime of the *kafiil* or the *kafiil* can set up a trust (*wakf*), provided that it does not adversely affect the biological heirs. A child under *kafaalah* has no obligation to repay the *kafiil*.

Similarity and differences of kafaalah with adoption, guardianship, kinship care and foster care

The common similarity between all these alternative care practices is that the adult acting as the parent of the child (i.e. adoptive parent, foster parent, guardian, *kafiil* or a kinship carer) is expected to provide for all basic needs of the child, provide parental guidance and act and make decisions in the best interest of the child.

Kafaalah can be described to be similar to guardianship in that, a child under *kafaalah* preserves his/her surname (father's names) and does not become a legal member of the *kafaalah* family, just as in guardianship arrangement.

The main difference of *Kafaalah* and adoption is that, unlike in adoption, the lineage and parentage of the child under *kafaalah* cannot be taken away or changed under any circumstances. The relationship of the child with biological family is preserved and the child retains the name of his/her family/lineage. There is also a difference on the right of the child to inheritance. Although the child under *kafaalah* can benefit from the estate of a deceased *kafiil*, it is not through inheritance but through a bequeath (*wasiyya*).

Kafaalah can be described to be similar with kinship care because extended family members of the child can take in the child on their own volunteerism as *Kafiil* and as per expected cultural practice in African communities. In Kenya, both kinship care and *kafaalah* are informally practised.

Kafaalah can be described to be similar to the foster care because non-family members of the community can also take in a child and become *kafiil* to the child. The difference is that foster care is processed through an administrative process unlike *kafaalah* which is informally practiced in Kenya.

The main difference between *kafaalah*, guardianship, adoption and foster care is that *kafaalah* is based on Islamic teaching and in Kenya, it is not administered by any government agency and has therefore remained an informal practice. It is in the best interest of the child that *kafaalah* is structured and regulated.

c) Qualifications of a kafiil under kafaalah

Individuals or couples are eligible to be the *kafiil* of a child under *kafaalah* if they meet the following qualifications:

- They are Muslim
- Preferably an extended family member. (Under Islamic law, the preference is for the orphaned child to be placed with extended family members.)
- A married couple provided that one is able to care for the child placed under his/her *kafaalah*
- A single woman or single man may be eligible subject to the laws of Kenya

- Individuals or couples should have the capacity to provide for the child in line with the laws of Kenya
- Although Islamic law does not specify a minimum age for a prospective *kafiil*, he/she must have attained the age of majority in line with the requirements of the Children Act, 2001, such as those applied for adoption. (See Chapter 11 on Adoption for more details.)

d) Eligibility of a child under *kafaalah*

Kafaalah is appropriate when:

- A child is an orphan and is in need of care and protection. (In Islam, an orphan is a child without a father and below the age of puberty. If the mother has died he/she is not an orphan but may still need alternative care.)
- A child is vulnerable either due to the death of the mother or incapacity of the parent(s) to care for the child
- The parents of a child have divorced and are unable to take up their parental responsibilities (in the absence of other members of the extended family)
- The child is being raised in an environment that is not in the best interest of the child
- The child is separated from his/her family due to reasons such as natural or man-made disasters.

e) Procedures for *kafaalah*

In order to ensure that *kafaalah* is practised in a manner that ensures compliance with both the laws of Kenya, Islamic laws and the best interests of the child, the following procedures are proposed.

The DCS shall produce a form to be filled according to the following procedure:

- If the relatives of the child are known, one family member will sign the form to show that the family has consented to the person named on the form to acting a *kafiil* for the child. (N.B. If the child is in a CCI, the management shall be involved.)
- The prospective *kafiil* shall inform the local administration of his/her intention to act as *kafiil* to the particular child and the local administrator will sign and stamp the form to indicate knowledge of the matter.
- The prospective *kafiil* will inform the local Imam of his/her intentions. If the Imam agrees that the person will bring up the child within Islamic teachings, he will sign and stamp the form recommending the *kafiil*.
- After the local administrator and Imam have signed the form, the prospective *kafiil* will take it to the local DCS officer who will carry out an assessment and, if deemed appropriate, sign and stamp the form to acknowledge the person's suitability to act as *kafiil*. The DCS shall make the final authorisation for the child to be put under *kafaalah*.
- The DCS will establish and maintain a register of all children under *kafaalah*, continue to monitor the welfare of each child and instigate prosecutions if the terms of *kafaalah* are broken.
- In case of a dispute, the *Kadhi* courts may issue a *kafaalah* order and are responsible for protecting the child's inheritance from his/her biological parents, and any property that has been bequeathed to the child by the *kafiil*.
- If the relatives or lineage of the child are not known, tracing of the lineage of the child should be in line with the laws of Kenya.

f) Roles and responsibilities of key stakeholders in kafaalah practice

Role of the DCS to include:

- Ensuring that the general welfare of the child is upheld within the laws of Kenya
- Assessing the prospective *kafiil* family
- For children whose lineage is not known, facilitating the tracing process
- Monitoring the welfare of the child
- Maintaining the *kafaalah* register
- Making final recommendation for *kafaalah*
- Prosecuting matters relating to the child under *kafaalah*.

Role of the *kadhi* includes:

- Protecting the child's inheritance from his/ her biological parents
- Protecting the property that had been bequeathed to the child by the *kafiil*, if any
- Protecting the property that had been given to the child by the *kafiil* or set up in trust during the *kafiil's* lifetime
- Issuing a *kafaalah* order in case of a dispute.

Role of the Imam to include:

- Recommending the *kafiil* for *kafaalah* and signing and stamping the form
- Supporting the DCS in monitoring the welfare of the child under *kafaalah*.

Role of the *kafiil* to include:

- Informing the DCS, local administrator and Imam of their intention to support and care for a child under *kafaalah* and of any changes and concerns that may affect the appropriate care and protection of the child
- Upholding parental responsibility and authority over the child
- Meeting all the basic needs of the child
- Protecting the child's inheritance and property rights through a trust.

Role of a child under *kafaalah*:

- Respecting the *kafiil*
- Working for the cohesion and unity of the family.

Role of Islamic religious leaders and NGOs:

- Advising on and creating awareness about *kafaalah*.
- Supporting the *kafiil* family on parenting and meeting the needs of the child depending on their assessment of the family.





CHAPTER 8: FOSTER CARE

1. Objective

The objectives of this chapter are:

- i. To facilitate the DCS and other service providers to carry out public awareness programmes on foster care as an alternative care option for children.
- ii. To encourage and promote the recruitment of foster parents
- iii. To outline steps for appropriate administration of foster care placements.
- iv. To build the capacity of foster care authorities and foster families to protect and promote the health, safety, education, well-being and cultural heritage and dignity of children placed in their care.
- v. To ensure that all foster care decisions are grounded in the principles of the best interests of the child and maintain that the child is in a safe, loving and stable home that meets his/her basic needs for continuous attachment. The ultimate goal is either reunification with the biological family or placement in a permanent alternative home.

These guidelines provide guidance on building an effective foster care system in Kenya.

2. Definition of Foster Care

Formal foster care: According to the Children Act, 2001, foster care is “the placement of a child with a person who is not the child’s parent, relative or guardian and who is willing to undertake the care and maintenance of that child.”

Informal foster care: This is not covered by the Children Act, 2001. It occurs when community members informally take in children who have been orphaned, abandoned, lost or neglected, without undergoing any formal processes via the Sub-county Children’s Office or Children’s Court.

3. Types of Foster Care

Based on the best interests of the child, DCS and its partners shall choose one of the following foster care models to place a child.

Foster family care: placement of a child with a person who is not the child’s parent, a relative or guardian and who is willing to voluntarily undertake the care and maintenance of that child for a period up to 12 months, subject to renewal.

Emergency foster care: Placement of a child with a pre-selected, vetted and qualified emergency foster parent for a few days, weeks or months.

Community-based foster homes: placement of a group of children, not more than six, whose parents are untraceable, orphaned or are in need of specific support, in rented houses within the community and are cared by a home mother/caretaker who is recruited by an organisation supporting foster care.

4. Overview of Foster Care in Kenya

In practice, there are very few foster care arrangements via formal authorities and government MDA and other authorities in Kenya. In addition, there is a public perception that the process of foster care

placement is long and tedious. There is lack of supervision, understanding and awareness around foster care among DCS staff, NGOs, CCIs, and community members, which contributes to the low numbers of children in foster care.

The practice of informal foster care is very common in Kenya and practised in both emergency and non-emergency situations. While the exact number of informal fostering arrangements is unknown, it is estimated to be large.

5. International and National Legal Framework

International

According to the UNCRC and ACRWC, the first priority for a child is to be cared for by his/her parents. Only when such care is inadequate or inappropriate should foster care be considered.

National

Foster care is legally recognized in the Children Act, 2001. The Act provides provisions for administering foster care in Part XI (Sections 147–153) and Schedule 4.

6. When to Consider Foster Care

Foster care can be provided for orphans and vulnerable children until the child is reunified with his/her parents or placed in suitable permanent alternative care, such as adoption.

Foster care enables children to stay in a family environment and reduces unnecessary placement in institutional care. Research has shown that children placed in foster care have higher development, health and psychosocial outcomes than children in institutional care.

For foster care to be effective and provide children with protection, a good standard of care is needed with efficient foster care authorities, trained foster parents and an effective monitoring and supervision mechanism. A combination of these components will help to ensure the appropriate care and protection of the fostered child.

Foster care is appropriate when the child is:

- (a) A double orphan
- (b) Abandoned
- (c) Separated from his/her biological parents due to detention or an emergency, and the child is unable to live with extended family
- (d) Affected by physical or mental disability and at risk of being placed in institutional care because the family is unable to care for him/her due to the parents' disability
- (e) Not allowed to live with his/her biological parents or extended family in his/her best interests
- (f) The victim of physical, sexual or other form of abuse within the family
- (g) Not provided with adequate care and protection in his/her present care environment
- (h) Living and working on the streets and his/her family is untraceable, or the parents are undergoing rehabilitation, and
- (i) Where the child's parents are untraceable or certified to be terminally ill or mentally incapacitated, and the child is unable to live with extended family.

The authority responsible for foster care placement is responsible for ensuring that these criteria are met, including requirements on the eligibility of the foster parent and the child.

Foster care may *not* be appropriate where the child:

- (a) Has been found guilty of a criminal offence, unless provided leave of court
- (b) Needs therapeutic treatment and care to deal with a physical or mental disability or behavioural issues
- (c) Is removed from his/her home due to financial or material poverty, and
- (d) Where there is a danger of separating siblings.

7. Legal Implications of Foster Care

Foster care confers upon the foster parent the parental responsibilities of maintaining and caring for the child. Foster placement comes to an end if the court discharges a care order. (A care order is an order by the court under Section 132 of the Children Act, 2001 and mainly seeks to protect the child from harm occasioned by lack of adult care). The court may, where it considers that it would be in the best interests of the child, authorise a foster parent to arrange for the child's travel from Kenya. The court shall not authorise such arrangements unless the child and his/her parents or guardian or any other person who has parental responsibility for the child consents.

According to The Children Act, Section 148 (4) and (5) *"A foster parent shall not remove a child from the jurisdiction of the Republic of Kenya without the leave of the court and such leave shall only be granted upon exceptional circumstances being shown... Where such leave is granted, the court shall impose such conditions and restrictions as it shall deem appropriate having regard to the best interests of the child."*

Foster care will apply where a person is resident in the Republic of Kenya and has been a resident for a period of at least 12 months.

8. Foster Care Agencies and Partners

Most children referred for formal foster care have already been placed – under a care order issued by a court – in an institution, such as a CCI. According to the Children Act, 2001, the Director of Children's Services and the manager of a rehabilitation school or CCI are the main agencies and authorities in the foster care placement process.

In order to effectively and efficiently administer foster care placements, the DCS shall work closely with child protection partners in each county, such as government MDAs, NGOs, CBOs, FBOs, adoption societies and other relevant community structures.

The Sub-county Alternative Care Committee will work in close consultation with the DCS to administer recruitment, assessment, matching, training, monitoring and supervision of foster parent(s) and placement preparation for foster children. If the parliament enacts a Children Act Amendment Bill to be submitted to it in the coming years, the Ministry in charge of children affair may extend the responsibility of placement and monitoring of foster care to representatives from the above-mentioned child protection partners.

9. Responsibilities of the DCS

With respect to the child, and in collaboration with partners, the DCS shall:

- (a) Ensure that all alternatives to keep the child in his/her own family have been investigated and that foster care is the most appropriate care placement for the child.
- (b) Establish a system, and train staff accordingly, to recruit, assess, train and match the needs of the child with the abilities and resources of potential foster parents and to prepare all concerned, in particular the foster child.
- (c) Introduce and maintain a register to keep track of all children in foster care.
- (d) Consult and involve the child during all stages of the placement process taking into consideration his/her age, evolving capacity and circumstances.
- (e) Treat the child with respect and dignity and ensure that he/she is protected from violence, abuse, exploitation and neglect at all times.
- (f) Ensure that siblings are not separated, except where it is in their best interests.
- (g) Initiate a reunification process with parents, families or legal guardians and, where this is not applicable, seek alternative long-term or permanent care options.

With respect to foster parent(s), the DCS, with partners shall:

- a) Identify, assess, recruit and train a pool of foster parents in each county who can provide children with foster care while maintaining ties to the biological family, community and cultural group.
- b) Introduce and maintain a foster care register of potential foster parents in each Sub-county.
- c) Maintain a list of individuals who have been found unfit to foster.
- d) Establish a Foster Parents' Association in each Sub-county to provide foster parents with mutual support, an opportunity to make their voices heard and to contribute to practice and policy development.
- e) Develop and provide training and counselling services for foster parents at regular intervals, before, during and after the placement. The training shall include sessions on child protection, parenting skills, handling adolescents, children with behavioural problems and children with special needs.
- f) Complete a foster care agreement and foster parent's certificate of registration and any other documents as spelt out in the Children Act. The form and certificate should be signed by the Sub-county children officer and counter-signed by the foster parent and a witness.
- g) Develop a comprehensive care plan for each foster child, in partnership with foster parents, which will be monitored throughout the placement period.
- h) Provide the foster family with information on the child's health, education, psychological, emotional and family history before placement and ensure that the foster family treats this personal information in a confidential manner.
- i) Follow up and monitor the care offered to each child at regular intervals throughout the foster care placement.
- j) Limit the number of children in a foster care home at one time to a maximum of six (inclusive of all children in the household).
- k) Provide a grant to ensure that the basic needs of each child in foster care are met on a case-by-case basis, including in emergency foster placements. This grant shall be based on strict criteria, as recommended in the National Social Protection Policy and the Cash Transfer Programme.
- l) Treat the foster family with respect.
- m) Raise community awareness about the positive roles and responsibilities of foster parents.

With respect to the child's biological parents/family, the DCS, with partners, shall:

- (a) Preserve family ties by placing the child in geographic proximity to his/her family, and arrange frequent visits, except where it is not in the best interest of the child.
- (b) Support and encourage the foster child's ongoing contact with his/her biological parents and extended family, except where it is not in the best interest of the child.
- (c) When appropriate, place siblings together in a single foster home, or, if this is not possible, place them in geographic proximity.
- (d) Take into account the opinions of the biological parents and/or members of the extended family in the selection of a foster parent(s) in respect of religion, language and ethnic background.
- (e) Respect the rights of the biological parents to receive information on the child placed in foster care, except where it is not in the best interest of the child.
- (f) Reunify a foster child with his/her biological parents, in a timely and efficient manner, when the DCS reviews the case and deems it is in the best interest of the child.

With respect to developing and maintaining a foster care service, the DCS shall:

- (a) Develop a foster care operation manual.
- (b) Appropriately and continuously train Children's Officers, Volunteer Children's Officers and other stakeholders in foster care recruitment, assessment, training, placement, and monitoring.
- (c) Identify staff within each county to be responsible for managing foster care services.
- (d) Create opportunities for internship and work experience for social science students to support the DCS in appropriately administering foster care services.
- (e) Work with Alternative Care Committees to support foster care placement decisions.
- (f) Maintain confidential records of each child at sub-county and county level and submit these to DCS headquarters.

10. Qualifications of a Foster Parent

According to The Children Act, 2001 "foster parent means a parent registered under this Act to receive and retain a child for the purpose of caring for and maintaining the child apart from the child's parents, guardian or relative." Individuals or couples are eligible to apply to be appointed as foster parent(s) if they:

- (a) Are a Kenyan citizen
- (b) Are a foreign resident in the Republic of Kenya who has been a resident for at least 12 months continuously.
- (c) Are at least 25 years old
- (d) Hold a certificate of good conduct and a recommendation letter from the area Chief and/or religious leader
- (e) Can demonstrate the ability to meet the child's needs
- (f) Where necessary, can provide proof of their physical and mental health status (to be confirmed by a licensed physician)
- (g) In the case of a married person, can demonstrate that their spouse agrees with and has no objection to the placement. The consent of any other member of the household may also be necessary,

including that of the prospective foster parent's children.

- (h) Can demonstrate that they have the knowledge and skills to protect and nurture children in a safe, healthy environment and meet the development needs of the child

According to The Children Act 2001, no single man may qualify to foster a female child and no single woman may qualify to foster a male child. However, it is important to note that there are efforts to amend the Children Act to allow single women to foster either a boy or a girl or both.

Once a prospective foster parent has been assessed, the Children's Officer shall complete a foster parent assessment record, and write a report outlining the suitability of the foster parent.

11. The Rights and Responsibilities of a Foster Child

The DCS, with partners shall ensure that the foster child's active participation and decision-making in his/her placement is upheld and emphasised, according to the child's age and evolving capacity. If the child requests removal and expresses concern during and after the placement, the DCS shall investigate and take appropriate action, and, where necessary, remove the child immediately and provide other alternative care.

Foster parents, biological families and foster care agencies have a responsibility to ensure that a child in foster care enjoys all the rights specified in the UNCRC, the Constitution of Kenya and the Children Act, 2001. These include the right to a birth certificate (without changing the names of biological parents); protection, physical and emotional health care; shelter; education; food and nutrition; clothing and personal belongings; recreational and social activities; the development of healthy moral behaviour; and spiritual development.

While in foster care, the child must uphold the following responsibilities:

- (a) Respect for the foster family, community and authorities
- (b) Participation prior to and during placement according to his/her age and evolving capacity
- (c) According to age and evolving capacity, work towards resolving family conflicts to further the goal of family reunification
- (d) To maintain contact with biological parents and extended family, unless deemed inappropriate by the authorities
- (e) Adherence to the rules, values, and responsibilities of the foster care home except where these violate the child's rights. In which case, the child must report to the official of government or civil society that monitors this foster care placement.

Protection of property of children in foster care

An inventory of the child's property shall be compiled by the DCS in collaboration with family members, local administrators and other relevant stakeholders who shall sign the document. The inventory shall be maintained by the DCS with a copy placed at the Chief's office.

Where necessary, a guardian shall be appointed for the protection of the property of the child in accordance with the provisions of The Children Act, 2001. (Refer to Chapter 10 on Guardianship.)

A child's personal property shall be handed over to him/her when he/she is reunited with the biological family, placed in permanent alternative care or reaches the age of maturity.

12. Children with Special Needs

The DCS, in collaboration with partners, should ensure that placements are available for children with special needs and that a pool of qualified foster parents is recruited and trained. Foster families should be provided with training and counselling services specific to the child's needs, prior to and during placement. Additionally, the DCS should ensure that the foster families are linked with therapeutic, respite, health and psychological services, and that the grants given to them are sufficient to provide care needed and support to child with special needs.

13. Support for a Child Exiting Foster Care

Once the foster child is ready to leave care, he/she should be supported with aftercare services provided by the DCS, in close collaboration with partners.

14. Foster Care Procedures, Planning, Placement and Follow-Up

Pre-Placement Assessment and Screening of the Child

A Children's Officer, or Voluntary Children's Officer, will be designated to each child to manage the pre-placement assessment, screening and matching. Standardised assessments forms and tools developed and provided by DCS will be used in these procedures.

The Alternative Care Committee will support DCS to coordinate and supervise the pre-placement assessment and screening of the child and the foster family.

The DCS may, in consultation, agree to delegate the responsibilities of pre-placement assessment and screening of the child and the foster parents to an organisation, such as an NGO, FBO or CBO, that has the capacity and expertise to do so.

Before placing a child in foster care, the DCS in consultation with other stakeholders, should conduct a thorough assessment of the child and, whenever applicable, of his/her family and ascertain that all possible efforts have been made to support the family or the extended family to keep the child. Only when the level of care provided by the family is deemed insufficient or not appropriate, shall foster care be considered and planned.

All documentation of the child's physical and mental health, education and family history should be gathered and reviewed during the assessment process.

The DCS shall compile a case file for each child to establish eligibility and care planning. The case file shall include, if available, the following:

- a) General background information, including: i) two recent photographs of the child; ii) the child's first name and nickname (if applicable), father's and mother's name, siblings' names, grandparents' names, and other relevant extended family names; iii) the child's age, date of birth, sex, ethnic group, language, religion; iv) the child's physical and emotional health, nutritional, and educational status; v) family history;
- b) Chronological history of care placement(s) to date, if the child has a history of alternative care or he/she does not have traceable family background;
- c) A list of the child's needs, including emotional, educational, medical, social, cultural religious and any special needs (physical and mental). This will help to ensure that the most appropriate placement option for the child can be made during matching;
- d) A list of recommendations by the multidisciplinary professional experts working with the DCS

regarding foster placement options.

Steps for foster care placement

The steps below outline the prerequisite action before foster care placement is undertaken.

Step 1: Recruitment of foster parents

The recruitment process of foster parents is carried out continuously to ensure that there is a pool of foster parents at any one given time. The DCS, in collaboration with partners in alternative care, will carry out ongoing foster care awareness and sensitisation in communities about the importance of alternative family-based care in order to recruit interested foster parents, who will then be recommended for the assessment process.

Step 2: Assessment/screening of foster parents

The DCS, with partners, will hold assessment sessions with potential foster parents to establish their suitability. These will establish that the potential foster parent(s) have:

- i. Police clearance and a certificate of good conduct showing that the person does not have a criminal record
- ii. A letter from the local Chief to establish the prospective foster parents' good standing in the community
- iii. A medical assessment by a certified medical practitioner
- iv. Finalisation of the screening process by the children's officers and social workers involved. If the prospective foster parents are deemed suitable, they are recommended for training.

Step 3: Training of foster parents/foster carers

The DCS, in collaboration with stakeholders, will ensure that prospective foster parents are trained in parenting skills. All first time foster parents must participate in training before a child is placed with them.

Foster families shall be provided with specific training such as parenting skills and what is expected of them as foster parents. They will also be provided with counselling services, prior and during placement.

Step 4: Entering a foster parent/carer into database

All successful foster parents/carers are put on a database which shall include their name, sex, age, locality and contact details. The database should be accessible to other local child protection actors for their use in identifying potential foster parents for a child in that locality. However, administration of the database shall be restricted to one agency for the purposes of maintaining confidentiality.

Step 5: Matching and Selecting Foster Parent(s)

The child's needs and best interests are paramount and should guide the matching and selection process. The needs and interests of the prospective foster family should not determine the placement. Foster families should be selected in accordance with the Guidelines criteria and from the pool of foster parents available in each Sub-county register or database.

- i. Determining factors for selection of a foster parent should include: the cultural, religious and ethnic background of the prospective foster parents and the child; the age, income and marital status of the foster parents; geographic proximity to the child's biological family and siblings (when applicable); the number, age and gender of other children and adults already living in foster home; the safety and caring environment of the foster home; and the educational needs of the child.
- ii. Every attempt should be made to place the child with families of their own linguistic, cultural, ethnic and/or religious heritage.
- iii. Siblings should not be separated by foster care placement unless there is a clear risk of abuse or another justification which should be in the best interests of the children.
- iv. Prior to placement, the Children's Officer, in collaboration with relevant partner, shall visit the foster home to assess conditions in the home, the suitability of other household members and to check that members of the family have consented to the decision.
- v. The selection and training of foster parent(s) will be coordinated by the DCS. It is recommended that the DCS consults with community leaders during the selection process. Upon completion of the foster parent selection, the Children Officer is responsible for writing a comprehensive report.

Step 6: Preparation for Placement of Child

The child's introduction into foster care should proceed with care and the DCS and the partner working on specific child case should take the following steps:

- a) To facilitate the adjustment process, arrange pre-placement meetings between the prospective foster child(ren) and foster parent(s). The child shall be prepared beforehand and provided with information regarding the foster care family.
- b) The DCS and partner, in consultation with the foster parents and child, shall decide the length of an introductory period, which can last from few days to a few weeks depending on the situation of the child and the family.
- c) The prospective foster child and foster parent(s) shall be provided with counselling to prepare them psychologically as a mitigation measure to avoid disruptions after placement.
- d) The DCS and partner shall work with the foster parents to protect the child's emotional health by providing the child with a "life book" or "memory book" soon after being placed in the foster care.

Step 7: Provision of Foster Care Certificate

Before the child is placed with the foster family, a written agreement shall be developed and agreed upon by all parties.

Step 8: Support during placement

The DCS and partners should provide the following support services:

- (a) Holistic support to foster families, including trainings and referral to other services such as health, education and legal
- (b) Regular recreational activities for fostered children and foster families
- (c) In the case of reunification with the child's family, counselling and other support services for foster parents to prepare them psychologically and emotionally prior to the child's removal from the foster family.

(d) State grants and other social protection grants as required.

Duration of foster placement

A foster parent's registration certificate lasts for 12 months and then has to be assessed by a Children's Officer before being renewed for an additional 12 months. The foster care certificate can be renewed three times. The length of fostering will depend on the time needed for family reunification, or placement in permanent alternative care to take place.

A child may also be placed in emergency foster care with a pre-selected, vetted and qualified emergency foster parent for a few days, weeks or months. This can occur while a lost or separated child's family is being traced or during emergency situations. (For more information regarding provision of foster care during an emergency situation, refer to Chapter 16.)

In case of an emergency foster placement, the DCS shall receive the foster parent(s)' written consent to accepting the child under emergency circumstances. If the foster parent had not been vetted and pre-selected, the parent must produce all the necessary information listed in Section 10 of this chapter within two weeks following the emergency placement. If the foster parent(s) are unable to produce the documentation within this timeframe, the DCS has the right to reclaim custody of the child on the grounds of illegibility of the foster parent(s). DCS and partner shall support the foster parent in acquiring these documentations.

Refer to Chapter 16 for more information on emergency placement, including the fostering of refugee children, in particular among the refugee population.

Monitoring of foster care placement

The DCS shall monitor and assess the care placement process and may delegate responsibilities to Alternative Care Committee members.

Continued monitoring and assessment of the child's placement should take place at regular intervals to determine whether necessary and appropriate services are being provided to eliminate or reduce obstacles that prevent the child's safe return home and, if reunification is not possible, placement into a permanent care arrangement.

It is recommended that authorised officers visit the foster home once a month in the first three months of placement and quarterly thereafter. The Children's Officer shall also organise impromptu visits to the foster home. A standardised monitoring form shall be completed after each visit and filed by the DCS and the agency supporting the DCS in this work.

Children's Officers, in collaboration with supporting partners, shall use the following indicators, among others, to assess the foster child during the monitoring visits:

- a) Child's physical appearance
- b) Child's attitude/behaviour
- c) Child's relationship with foster family, community members and the Children's Officer

The Child Status Index Tool in Annex J can be used to assess the child's well-being.

The monitoring team may get their information through

- Discussions with the fostered child depending on age and evolving capacity
- Discussion with foster parents and family members
- Feedback from school

- Feedback from Chiefs, religious leaders or other community actors.

Reporting and Responding to Cases of Abuse, Neglect and Death of a child in foster care

Reports of neglect, exploitation and abuse of the fostered child by the foster parents or others shall be immediately investigated by the DCS and police in compliance with existing Government of Kenya statutes. The child should receive immediate emotional and physical health care. While investigations are ongoing, the child should be withdrawn from the foster care home and placed in another alternative care arrangement, as deemed appropriate by the Children's Officer in consultation with other stakeholders as necessary.

In case the child runs away from home, is injured or dies while in foster care, foster parents shall immediately inform the DCS, which shall report the situation to the police, Chief and parents or caregivers. A review shall be immediately carried out to determine appropriate action. The Children's Officer will respond to the needs of the foster family.

In case of death or incapacitation of a foster parent, the DCS shall take immediate action to report the death to appropriate authorities. The child shall receive immediate emotional and psychological counselling and be placed in another alternative placement, as deemed appropriate by the Children's Officer.

The DCS should take appropriate action when concerns are raised regarding the care and protection of fostered children, including revoking the foster care placement and removing the child if deemed to be in the best interests of the child.

Children's Officers should maintain a record of all abuse and deaths of children in foster care in each sub-county and share these with appropriate duty-bearers.

15. Recording-Keeping

To properly monitor foster care placements, the DCS shall collect information on the development of the child and prepare quarterly and annual reports. The reports shall be in line with Schedule 4 of the Children Act or as will be provided in the foster care manual. These reports, along with each foster child's case file, shall be kept in a secure location in the DCS Office or in an agency office that have received authority to support government in foster care activities.

To ensure that all duty-bearers are held accountable, the DCS shall record the number of foster care placements in each sub-county and keep track of all children in foster care on the national DCS database. The following information, among other, shall be included in the reports:

- Date of admission and committal to the institution, if applicable
- Date of placement in foster care
- Reason for foster placement
- Name, age and sex of child
- Name, age, and sex of foster parent(s)
- Kin relationship of the child, if known
- Any special needs of the child
- Location of the foster placement
- Number of renewals of foster care placement

- Records of children in the sub-county who have exited foster care through reintegration with family, placement in other alternative care options or removal.

16. Models of Promising Practice

Foster care for children living and working on the streets in Uganda and Ethiopia

Retrak, an international NGO working in Uganda, Ethiopia and Kenya, enables children living and working on the streets to have a permanent alternative.

In Uganda, Retrak has been administering a foster care programme for children living on the streets since 2004. The programme is registered with the Government of Uganda and works in partnership with government authorities. The objectives of the programme are to: (i) recruit and develop a pool of approved, trained foster families to be ready to take in children in need of care and support at any given time; (ii) provide quality support services to the foster child and the foster family to ensure quality care for the fostered child; and (iii) facilitate implementation of the most appropriate permanent place for each child.

Retrak recruits foster families through individual recommendations, community groups, churches, existing foster carers, NGOs, Retrak staff and media. Each foster family undergoes an extensive assessment to determine their suitability. Once foster parents have passed the selection process, they are carefully matched with a foster child who has been living on the streets.

The preparation for placement is a crucial stage in the foster placement process. During this stage, both the foster family and the child are prepared. Retrak offers ongoing trainings to foster parents to enable them to provide good quality care to fostered children. Training and guidance in lifeskills is also offered to fostered children. To support the families, Retrak provides health, transportation and foster family support services. The programme has successfully placed 88 children with 48 foster families.

In Ethiopia, Retrak is currently rolling out foster care by building the capacity of civil society partners and recruiting a database of potential foster parents. For more information visit: www.retrak.org

Foster Care in South Africa

Give a Child a Family (GCF), a registered South African NGO, provides foster care services for children in the GCF Interim Shelter and other children's institutions in the Kwazulu Natal region. GCF recruits, screens, trains and supports foster families. Approximately 75 new families enter the programme each year as prospective foster parents. Foster families are recruited from community churches and women's groups and a stringent assessment and screening process ensures that only secure families are approved. This process involves at least seven visits to the family home, interviews with neighbours and other community members and police clearance.

Successful families who have passed the criteria undergo a five-day Foster Care Training Programme. A database with the details of available foster parents is maintained at GCF. A panel matches a child with a foster family based on information regarding the child and his/her best interests. GCF is responsible for legal matters regarding the placement and submits reports to the Department of Welfare every second year. Foster families are provided with support services following placement and undergo regular monitoring visits by GCF social workers.

As a prevention and early intervention strategy, foster families are strengthened through support groups, training in parenting skills and support to build their socio-economic resilience. An informal child protection system is provided through child support groups. For more information visit: http://www.givengain.com/cgi-bin/giga.cgi?cmd=cause_dir_cause&cause_id=1280





CHAPTER 9: PLACES OF SAFETY AND TEMPORARY SHELTER

1. Objective

The objective of this chapter is to provide guidelines for the short-term placement of children in distress into places of safety or temporary shelter as they await reunification with the family or placement into a more long-term care arrangement.

2. Definition of Temporary Shelter

A temporary shelter is a safe family-like environment where children in distress are placed for a short time (from a couple of hours to a maximum of six months), while arrangements for family reunification or placement in alternative care are made. It includes: halfway homes, safe havens and rescue centres.

While the care is temporary, the child should be cared for in a stable, nurturing and safe environment.

3. Current Legal and Policy Framework and Situation

Currently in Kenya there is neither comprehensive government policy nor a legal framework in regard to the rescue and temporary shelter of vulnerable children. CCIs are often used as temporary shelters. However, there is need for centres specifically designated as temporary shelters.

The Children Act, 2001 defines a “place of safety” as any institution, hospital or other suitable place where the occupier is willing to take on the temporary care of a child. This presupposes a temporary shelter arrangement. The other indirect reference to temporary shelter is found in Section 46 of the Act, which provides as follows:

“Any local authority, whether an appointed local authority or not, and any District Commissioner may incur expenditure in or about the temporary care of any child in need of care including his maintenance in a place of safety or in the return of any such child to his parent or guardian or to the area of the appointed local authority, if any, notwithstanding that in the case of an appointed local authority such a child has not been committed to its care under the provisions of this Act”.

Temporary shelter or care may also be ordered by a court under Section 120(5) of the Children Act in respect of children who are in need of care and protection. The court may make an interim order for the temporary accommodation of the child in a place of safety or for his/her temporary committal to the care of a fit person as the case of the child is being considered.

It is expected that under the Constitution of Kenya, 2010, there will be more attention given to the matter of temporary shelters set up by county governments. This is due to the specific assignment of the function to provide childcare facilities as set out in Section 9 of Fourth Schedule of the Constitution.

Despite these provisions, the current situation of temporary shelter is of concern. There are very few temporary shelters readily available, leading to many rescued children being placed in police stations, CCIs or remand homes. The few shelters that are available do not have adequate facilities, qualified child protection staff or resources. Provision of temporary shelters is critical in rescue procedures and tracing/reintegration processes.

4. Recommendations to Improve Care and Protection in Temporary Shelters

A. Governance and Operations

- a) Every county shall establish a temporary shelter.
- b) The temporary shelter shall be registered and understood as a temporary place of safety for children, while arrangements for family reunification or alternative care are made. Shelters are *not* remand homes or CCIs.
- c) Children shall be placed in temporary shelter for a couple of hours and not more than six months. All efforts should be made to ensure that children are placed in the shelter for the shortest period of time possible. Shelters should not hold a child for an indefinite or extended period of time. The DCS shall monitor temporary shelters to ensure that children are only held in these shelters for the shortest time possible and never for more than six months.
- d) Each child should be registered upon admission and an individual care plan developed, with the involvement of the child depending on his/her age and evolving capacity, and facilitating a timely and efficient exit. A copy of the care plan and a photo of the child should be sent to the DCS.
- e) If a child is kept at the shelter for more than seven days, a committal order should be sought from the Children's Court.
- f) Staff should communicate all procedures and the child's care plan with each individual child, if of appropriate age and evolving capacity, and update him/her regularly on progress being made to reunite him/her with his/her family or place him/her in alternative care.
- g) Shelters should be as close as possible to the child's community of origin so that he/she can remain close to his/her family and community. Staff should encourage community engagement and participation in the shelter's activities and vice versa, with a view to strengthening placement and referral opportunities.
- h) Due to the circumstances surrounding placement in a shelter, security of the child and location of the shelter is a priority.
- i) Each shelter should develop and uphold child protection and safeguarding protocols to ensure that children are not direct victims of conflict or exposed to harm.
- j) It is recommended that national and county governments, as well as donors, allocate shelter providers with adequate funds to ensure high standards are maintained.
- k) The DCS and partners should facilitate networking and information exchange with other service providers in order to support service delivery and a referral system.

B. Staff

Staff must have appropriate skills and qualifications, be from multi-disciplinary fields and hold a certificate of good conduct.

C. Accommodation and Quality of Services in Shelter

- a) The shelter must be operational 24 hours a day, 7 days a week, with designated staff and security wardens.
- b) Shelters should be family-like and child-friendly, with appropriate décor and activities.
- c) The ratio of caregivers to children must be no lower than 1:6 in order to ensure individualised and

family-like care. Children with special needs will need more individualised attention and support.

- d) Shelters should be safe and secure, with personnel or a warden available and present at all times. Shelter should resemble a home as much as possible.
- e) Facilities should have a separate, designated area for sleeping, eating, education, recreation, play, health care and first aid.
- f) Facilities should be clean, well maintained and serviced regularly.
- g) Each child should have her/his own bed or sleeping space – a “one child per one bed” rule must apply.
- h) Sleeping spaces should be separated according to the sex and age of children.
- i) Each child should have his/her own personal space and privacy, with a lockable storage unit or cupboard where he/she can store personal belongings.
- j) Shelter structures should be disability-friendly and take into account the specific needs of children with special needs.
- k) Shelters should provide all appropriate services to the children in a safe environment. These services include: legal, education, health care, food and nutrition, basic hygiene, water and sanitation, recreation, and spiritual and psychosocial support.

D. Family Reunification and Alternative Care Placement

- a) Upon a child's admission to the shelter, all procedures should be in place to prioritise family reintegration, if in the best interests of the child. Shelter staff should work with the DCS and other partners to facilitate reintegration efforts.
- b) Upon a child's admission to a temporary shelter, and if reunification with his/her biological parents is not an option, staff should identify more long-term family-based alternative care options by working with the DCS, service providers and other partner agencies.
- c) Emergency foster placements, of pre-approved, pre-screened and registered foster parents, should be encouraged.
- d) The shelter should allow visits from prospective foster parent(s) during the child's placement, when these alternative care arrangements are being made for the child.
- e) In order to ensure smooth transition from the temporary shelter to the child's family or an alternative care placement, shelter staff should prepare the child through counselling and family meetings and visits.
- f) Follow-up visits after reunification with the child's family or his/her placement with another alternative care option should be carried out regularly.

E. Awareness Raising

Awareness should be increased among the DCS, police, social workers in hospitals and the general public regarding temporary shelters and the importance of placing children in these shelters while tracing and reintegration efforts are under way or another permanent solution is being sought for the child.

F. Monitoring and Evaluation

Each child's progress, needs and general well-being should be regularly reviewed by shelter staff and adjustments made in order to best protect and serve the child.

It is recommended that upon admission to the shelter, social workers shall conduct daily observations, carry out weekly assessments for the first two months and slowly transition to every other week and then to monthly.

5. Models of Promising Practice

Interim Care Centre for Rehabilitating Children Living on the Streets

Action for Children in Conflict (AfCiC) Interim Care Centre (ICC) in Thika district serves as a temporary shelter for a day to six months for children living on the streets. While at the ICC, children are provided with medical care, shelter and basic necessities including counselling and artistic-oriented education aimed at inspiring their interest in education. At the same time, a team of social workers works on tracing the children's families, relatives and guardians.

Once parents are traced, meetings with their children are organised fortnightly in order to resolve the conflict that led the child to live on the streets, encourage bonding and prepare the children for reintegration. Parents are also provided with training on parenting skills, reproductive health and small business management. During the six months that the child is at the centre, he or she stays with his/her family for seven days to assess the level of understanding between him and his guardians. In the meantime, AfCiC social workers together with the parents/guardians of a child, work on securing a place in school for the child. Eventually the child is placed back with the family and starts attending identified school. Monitoring visits are conducted quarterly in the first 12 months and half yearly thereafter with subsequent follow up visits being done through the respective school heads, teachers and parent groups meetings.

Half-Way House for Rehabilitating Children Living on the Streets

Tumaini Kwa Watoto (Children of Hope) (TKW) operates a family-based outreach and empowerment programme for children living on the streets. Those who cannot go home, TKW places in a halfway house. Each halfway house is run by a couple and can accommodate up to six children for a maximum of six months.

TKW works closely with the SCO, Chiefs and police. While the child is at the temporary shelter, TKW traces the family, assesses the child and family, establishes what led the child to go onto the streets, and gauges his/her willingness to be reunited with his/her family.

TKW provides the child with education, life skills and health services. It also provides family group meetings, family mediation, conflict resolution and counselling services to help the family reintegration process. Following family reintegration, TKW social workers conduct follow-up and monitoring visits – the first two weeks following reunification, then monthly and then quarterly.





CHAPTER 10: GUARDIANSHIP

1. Objective

The objectives of this chapter are to:

- Outline steps to appropriately administer guardianship orders, as outlined in the Children Act, 2001.
- Build the capacity of the respective authorities (the Children’s Court and DCS) as well as guardians to appropriately protect and promote the well-being of children placed in the care and protection of guardians.
- Encourage the institutions and people involved in guardianship arrangements to adopt the best practices for the promotion and protection of the best interests of the child.

2. Definition of Guardian

According to The Children Act, 2001, Section 102 sub-section 1, a “guardian” is defined as *“a person appointed by the will or deed by a parent of the child or by an order of the court to assume parental responsibility for the child upon the death of the parent of the child either alone or in conjunction with the surviving parent of the child or the father of a child born out of wedlock who has acquired parental responsibility of the child in accordance with the provisions of this Act.”* However, it is important to note that the Constitution of Kenya 2010 provides for equal parental responsibility of both the mother and the father of the child, regardless of marital status.

Guardianship is a family-based alternative care solution. Appropriate provision of guardianship is fundamental for the concrete application of the best interests of the child and is central to establishing appropriate care and protection for children outside of their family care.

Guardianship as a term is used in three different senses:

- i. It can be used as a legal device for conferring parental rights and responsibilities to adults who are not the biological parents of the child
- ii. It can refer to an informal relationship whereby one or more adults assume responsibility for the care of the child
- iii. It is sometimes a temporary arrangement whereby a child who is the subject of judicial proceedings is granted a guardian to look after his/her interests.

Difference between guardianship and foster care

According to the Children Act, 2001, guardianship is distinct from foster care in that the parent has relinquished his/her parental responsibility, due to death or incapacity, to the guardian on a long-term basis until the child turns 18. The guardian is appointed either by the parent or Children’s Court, while in foster care the appointment is made by the DCS, CCI or Rehabilitation School Manager. A guardian may administer the estate, unlike in foster care.

Differences between guardianship and adoption

A guardianship order differs from adoption in that a child, under guardianship, retains his/her name and does not become a legal member of the guardian’s family. In adoption, an adopted child gains all rights

as if he/she were a biological child of the adoptive parents. Guardianship is reversible while adoption is irreversible.

3. Roles and Responsibilities of Biological Parents

According to the Children Act, 2001 (S. 104), either parent may by will or deed appoint any person to be the guardian of the child after that parent's death. The guardian is appointed for the child's care and/or custody, or over the child's estate, or both. A guardianship appointment will take effect only if:

- (a) In case of appointment via a deed, the deed is dated and signed by parent(s).
- (b) In case of appointment via a written will, the will is executed in accordance with the provisions of Section 11 of the Law of Succession Act.
- (c) In case of an appointment via an oral will, the will is executed in accordance with Section 9 of the Law of Succession Act.
- (d) Throughout this process, the biological parents have the right to consult with the legal system to receive guidance on administering the will or deed.

According to The Children Act, 2001 (S. 103) the rights of biological parents are:

- (a) In case of death of the father, the mother if surviving shall take full responsibility for the care and protection of the child. If the father does not appoint a guardian, the court may appoint a guardian to take joint responsibility for the child.
- (b) In case of death of the mother, the father if surviving shall take full responsibility for the care and protection of the child. If the mother does not appoint a guardian, the court may appoint another guardian to take joint responsibility for the child;
- (c) The court and relevant authorities shall respect and uphold the ascertainable wishes of the parent(s).

4. Roles and Responsibilities of Guardianship Authorities

It is recommended that the Government of Kenya, specifically the DCS, the Judiciary, legal practitioners and the Law Society of Kenya should adopt similar procedures and practices generally across the board in order to harmonise the guardianship system and practice throughout the country.

Roles and Responsibilities of the Children's Court:

The Children's Court should become involved in the appointment of the guardian when there is:

- a) A dispute between the surviving parent and guardian(s)
- b) The appointed guardian has died or is unable to provide care and protection for the child
- c) Parent(s) have made no guardianship provisions in form of deed or will
- d) Parent(s) have made no guardianship provisions and an individual applies to be the child's guardian
- e) When the appointed guardian refuses to act as expected.

An application for guardianship before the Children's Court should be supported by the following documents:

- i. Affidavits which provide information about applicant(s) and their fitness to be a guardian
- ii. Birth or baptismal certificate of the child and guardian

- iii. Death certificate of parent(s)
- iv. If the applicants are seeking responsibility to look after the child's estate, an affidavit indicating how much land, funds and other assets the child has or will inherit
- v. Proof of incapacitation.

The court may appoint a guardian in the absence of a parent's will or deed, based on the following:

- (a) A report, assessment and recommendations of the Children's Officer
- (b) Testimony of the child, according to age and evolving capacities
- (c) Appropriate documentation by the guardian applicant
- (d) The applicant's ability to appropriately care, protect and ensure the well-being of the child
- (e) A consent document from the interested parties.

The Children's Court shall issue a certificate of guardianship to each guardian upon request.

The Ministry responsible for Justice, through its legal aid programmes, should provide support services in the preparation of written wills or deeds by parents, and in preparation for appointing guardians. These services include legal aid and pro-bono legal services.

Roles and Responsibilities of the Department of Children's Services:

The Children's Court shall work with the DCS to ensure that a guardianship will or deed by the parent is honoured.

The roles of the DCS in the court proceedings are:

- (a) To interview a prospective guardian and report to the court his/her concerns and recommendations
- (b) To interview the child and report to the court his/her concerns and recommendations
- (c) To conduct an assessment of the child and the family situation
- (d) To write a comprehensive social inquiry report on the child, guardian and family situation
- (e) To involve relevant parties from the start of the process.

It is recommended that the DCS, in conjunction with the Attorney General office, works on the process of seconding legal officers to support the guardianship process.

Capacity-Building for the Children's Court and Department of Children's Services

All children's courts and DCS staff shall undergo continuous training to appropriately administer and monitor guardianship orders. These trainings will include sessions on all Kenyan statutes (The Children Act, 2001, Succession Law, Constitution) and the provision of child-friendly services.

5. Roles and Responsibilities of Guardians

The roles and responsibilities of a guardian are to:

- (a) Advocate for all decisions to be taken in the best interests of the child
- (b) Protect the safety and well-being of the child at all times
- (c) Treat the child with respect and dignity

- (d) Bring matters to court, when required
- (e) Uphold the child's views, expectations and needs, in every decision
- (f) Maintain contact with the Children's Office, Judiciary and other officials following placement
- (g) Inform the court, or other appropriate authorities, of any changes and concerns that may have an impact on the child
- (h) Inform the court, or Children's Office, of instances of abuse, exploitation or neglect of the child
- (i) Keep the court informed about the well-being of the child and the status of the child's estate through annual reports.

According to The Children Act, 2001 (Section 102(5), where the guardian is appointed only in respect of the estate of the child, he or she need not have actual custody but he/she shall have:

- (a) The power and responsibility to administer the estate of the child and in particular to receive and invest the property of the child in the guardian's own name in trust for and for the benefit of the child
- (b) The duty to take all reasonable steps to safeguard the estate of the child from loss or damage
- (c) The duty to produce and avail accounts in respect of the child's estate to the parent or custodian of the child or to such other person as the court may direct, or to the court, as the case may be, on every anniversary of the date of his/her appointment
- (d) The duty to produce an account or inventory in respect of the child's estate, whenever required to do so by the court.

Qualifications of the guardian

As handed down by the Children's Court, guardians should have sufficient authority to perform their functions and act in the best interests of the child, while taking the views of the child into account.

6. Recommendations to Ensure that Children's Rights are Protected During the Guardianship Process

The child's opinion and participation in the guardianship process is crucial and instrumental to ensuring that the best interests of the child are guaranteed.

- a) The child should give his or her opinion where applicable during the process.
- b) Every child should be assigned an advocate, Children's Officer and guardian *ad litem* to ensure that the child's best interests are upheld during the process.
- c) The child should collaborate and share information with the lawyer, Children's Officer and the prospective guardian, as needed.
- d) The child is to appear in court, where applicable and in his/her best interests, to discuss the guardianship application.
- e) Guardianship orders should be communicated to the DCS for purposes of monitoring.
- f) The child in the care of a guardian should be provided with a Children's Officer, or other appropriate person, who has the necessary training and capacity to understand him/her and his/her situation.
- g) A multidisciplinary team should be established as a sub-committee of the AAC.
- h) Court Users' Committees should be utilised to monitor the welfare of the child.

7. Monitoring

The DCS, jointly with the Children's Court, should establish a national database to record the number of guardianship orders in each sub-county. The national database should be in both soft and hard copies.

The DCS, in partnership with civil society, Chiefs and community partners, should monitor and assess the guardianship orders and child's placement quarterly, to determine whether necessary and appropriate services are being provided to ensure the proper well-being, care and protection of the child. The DCS should collect information on the development of the child and prepare quarterly and annual reports.

Reports of neglect, exploitation, violence and abuse of the child by the guardian should be investigated immediately by the DCS and police department in compliance with the existing laws of Kenya. The child should receive immediate emotional, physical and health care and be placed in alternative care, as deemed appropriate.

In instances in which the Children's Court has reason to believe that there is risk of potential abuse of the child's property and inheritance, the Children's Court may direct the guardian to produce and avail accounts in respect of the estate held in trust for the previous 12 months or annually. The Children's Court may request the support of the DCS and local administration in monitoring the guardian's management of the estate.

It is recommended that before a guardianship order is granted, the guardian must register the child's property and inheritance with the Children's Court. If the guardian wishes to sell the property, he or she must apply to the court.

8. Community Awareness

In order to raise community understanding, the DCS and civil society should conduct sensitization campaigns to educate the public about guardianship and the differences between guardianship, foster care and adoption.



CHAPTER 11: ADOPTION

1. Objective

The objective of this chapter is to provide quick practical guidance to help those placing children in adoption. (For detailed guidance refer to: Part XII of the Children Act, 2001; the Children (Adoption) Regulations, 2005; and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993.)

2. Definition of Adoption

Adoption is the complete severance of the legal relationship between a child and his/her biological parent(s) and birth family, and the establishment of a new legal relationship between the child and his/her adoptive parent(s). Adoption is a permanent care solution and because of its permanent nature is not considered as an alternative care but a permanent solution for a child who cannot be with his/her biological parents. Adoption should only be considered after reasonable efforts have been made to determine that a child cannot remain within his or her family of origin, or cannot be cared for by members of the family.

- i. *Domestic (national) adoption* refers to adoption by adopters who are Kenyan and where the child they are adopting is resident in Kenya. Applications for domestic adoption are initiated through a duly registered local adoption society.
- ii. *Foreign resident adoption* refers to adoption by adopters who are not Kenyan nationals, but have lived in Kenya for over three years and who adopt a child who is Kenyan.
- iii. *Intercountry (international) adoption* refers to adoption of a Kenyan child by adopters who are not Kenyan and live outside Kenya. Intercountry adoptions are processed through an approved foreign adoption agency in conjunction with a Kenyan adoption society registered to make international adoption arrangements. Applications must be approved by the National Adoption Committee before a child is placed with an international applicant.
- iv. *Kinship or family adoption* refers to adoption by adopters who are kin or relatives within the extended family of the child. Applications for kinship adoption are similar to domestic adoption. A bonding period is necessary where the child has not been living with the prospective adopter.

Once it is determined that a child cannot be raised within his/her family of origin, adoption should be considered as a permanent, legally binding care option. Adoption should only be explored after all family tracing and reintegration efforts have been properly exhausted and a thorough assessment of the child's situation has been conducted. The assessment should include whether efforts were made to support the biological family (parents or extended) in caring for the child. The principle of the best interests of the child, as stated in Article 21 of the UNCRC, should be the primary consideration during the adoption determination process. International adoption should only be considered when domestic solutions have been properly explored and deemed not possible or are not in the best interests of the child.

3. Current Situation of Adoption in Kenya

The numbers of adoption in Kenya are low and adoption is under-utilised due to the process being perceived as long, complex and expensive. These expenses are mainly in the form of legal fees paid to lawyers and other fees that are paid to the court, adoption societies, among others. There is stigma

attached to adoption as a form of 'buying a child' and fears related to acceptance by both immediate and extended family especially as it relates to inheritance rights of an adopted child. There is also low awareness level among communities on adoption.

The Government of Kenya acceded to *The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* in 2007. It is therefore still in the initial stages of domesticating and implementing the Convention principles.

4. International and National Legal Framework

International

International law is clear in regards to adoption. The UNCRC, Article 21, asserts that the national adoption system should secure the best interests of the child. *The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* also clearly stipulates the procedures for intercountry adoption.

Article 24 of the ACRWC provides that States Parties shall establish competent authorities to determine matters of adoption. States must ensure that the adoption is permissible in view of the child's status concerning parents, relatives and guardians, and ensure that the child affected by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption. States are also required to establish a machinery to monitor the well-being of the adopted child.

In respecting the subsidiarity principle highlighted in Article 21 of the UNCRC, Article 24 of the ACRWC, and Article 4 of the Hague Convention on InterCountry Adoption, and in the light of the child's best interests, as a matter of principle, efforts should be made to place the child in the country of birth before opting for intercountry adoption. Intercountry adoption should be a measure of last resort. This also means that priority must be given to adoption by relatives in the country of origin. Where this is not an option, preference should be given to other suitable options such as adoption within the community from which the child came or at least within his or her own culture.

As outlined in the ACRWC and Hague Convention, the following principles should be adhered to when conducting adoption:

- i) The "*best interests of the child*" – which refers to systematically considering the needs and interests of the child in all decisions that affect him or her
- j) The child's *right to non-discrimination*, with special protection granted to the most vulnerable children, including children living with or affected by HIV and AIDS, children with disabilities, and children deprived of their family environment
- k) The child's *right to dignity*, which ensures that the child is treated with care, sensitivity, fairness and respect
- l) The child's *right to survival and development*, as provided for in Article 5(2) of the UNCRC, to the maximum extent possible.
- m) The child's *right to be heard* in accordance with his/her age and maturity.

National

In Kenya, adoption is guided by Part XII of the Children Act, 2001 and the Children (Adoption) Regulations, 2005 which substantively provide for the procedure of adoption, including the different roles of the institutions responsible for adoption.

5. Roles and Responsibilities of Adoption Duty-Bearers

Roles and responsibilities of duty-bearers are detailed in Part XII of the Children Act, 2001 and in the Children (Adoption) Regulations, 2005 and include the following:

a) Judiciary – High Court

- Domestic adoption is conducted in any children's court
- Intercountry adoption is conducted only in the High Courts of Nairobi and Mombasa
- All matters are held in chambers and in confidentiality

b) The Adoption Committee

The Committee guides and oversees adoptions in Kenya. Its responsibilities include, among others, as outlined:

- Formulating the governing policy in matters of adoption
- Effecting liaison between adoption societies, government and NGOs
- Considering and proposing names of officers who may serve as guardians *ad litem*
- Monitoring adoption activities in Kenya
- Registering adoption societies
- Regulating fees for registration of adoption societies
- Coordinating international adoptions and approving foreign agencies wishing to conduct adoption in Kenya.

c) Department of Children's Services

- Provides a Secretariat to the Adoption Committee
- The DCS Director provides an independent children's officers' report (Section 78, Children Act, 2001), when ordered by the High Court.

d) Adoption societies

Adoption societies are licensed to operate by the National Adoption Committee and renew their licences annually. The main role of adoption societies is to support people who have applied to adopt a child throughout the process by:

- Assessing if the applicants (prospective adoptive parent) are suitable to adopt.
- If suitable, matching them with a child who has been declared free for adoption.
- Establishing that the child is indeed free for adoption.
- Placing the identified child with prospective adoptive parents(s) for a mandatory three month bonding period.
- Monitoring the bonding progress between the child and the prospective adoptive parent(s) for three months prior to filing the application in court.
- Accompanying the prospective parent through the court process.

e) Other key adoption stakeholders:

- The Registrar General issues adoption certificates after an adoption order has been granted and maintains the adopted children's register (Section 169, Children Act, 2001).

- The Law Society of Kenya appoints a representative to sit on the National Adoption Committee and also supports the Chief Justice in developing adoption court rules.
- The Ministry of Immigration and Register of Persons provides travel documents for adopted children, especially in the case of international adoption.
- CCIs support the tracing of a child's family, provide all background information of the child known to them, and collaborate in the adoption of the child.
- Police officers issue first and final police letters for abandoned and lost children and also support tracing efforts for the child's parents and family.
- Adoptive parents support the adoption process as required by law, including providing accurate information about themselves and taking parental responsibility during the bonding period with the child and after the adoption orders are granted.
- Depending on the child's age and maturity, the child may be required to provide consent if he/she agrees to be adopted by the prospective adoptive parents.

6. Adoption Eligibility, Criteria and Consent

a) Children who may be declared free for adoption

Since adoption is permanent and irreversible, it is important to be cautious when deciding to declare a child free for adoption. Children who should be considered for adoption include:

- An abandoned child where it has been ascertained that his/her parent(s) or extended family cannot be traced. Six months must lapse between the time the child is found abandoned and the time when the child is declared free for adoption. This period is used to carry out comprehensive family tracing efforts.
- A lost child, where it has been established that all efforts to trace his/her parents and family have failed after at least six months of comprehensive family tracing efforts.
- An orphaned child where both mother and father are deceased and there is no possibility for the child to be raised by relatives.

Adoption should not be imposed on relatives; it must be their choice. If relatives opt to adopt a child, they will undergo all procedures as prescribed by law for local adoptions but may be granted a shortened period of mandatory bonding if the child has been residing with them for no fewer than three months.

Important to note is that the international recommended best practice for an orphaned child is to be raised within the extended family if that is possible, even if in informal kinship care. Only when this is not possible can the child be declared free for adoption by non-relatives.

- A child given out for adoption by his or her birth parent(s). Such parents must be educated on the legal and permanency implications of adoption. Formal consent to giving out the child for adoption is required from the parent(s). A child given out for adoption by its biological parents must be at least six weeks old.

b) Children who should not be declared free for adoption

- A child whose biological parent(s) are still alive unless it has been firmly established that staying with the parents is not in the best interests of the child. In such instances, short-term family-based alternative care should be arranged for the child – for example, kinship care, foster care,

guardianship – while the parents are either supported to improve the family environment for the child's reintegration or to decide to give informed consent for the child to be freed for adoption.

- A child whose parent(s) have been jailed. Such a child should be put in alternative family-based care such as kinship care, foster care or guardianship as they await their parent(s) release from jail.
- A child who is separated from his/her parent(s), or primary care giver or guardian due to man-made or natural disaster. It is recommended that such a child may be declared free for adoption only after two years have lapsed since the separation and after ascertaining that all efforts to trace the child's family or any legal guardian or extended family have totally failed.
- An abandoned child, lost child or separated child where no comprehensive efforts have been made to trace the child's immediate or extended family.

Important to note is that:

- i) Poverty of the parents and family of the child should never be used as a sole reason to declare the child free for adoption. Such families should be supported by government and civil society to keep their child.
- ii) A child should not be declared free for adoption before ascertaining that comprehensive family tracing and reunification efforts have failed.

c) People who are eligible to adopt a child

Under Section 158 (1) of the Children Act, 2001, the following individuals are eligible to adopt a child:

- A sole applicant or a married couple where each or one of them is at least 25 years old, is not over 65 years old, and is at least 21 years older than the child
- Couples who have been married for at least three years
- A relative of the child
- The mother or father of the child.

This is in a situation where a couple wants to marry and one of them is a biological parent of a child and the other one is not. For the child to be considered legally a child of the partner who is not the biological parent, he/she must be adopted by this partner. In such cases, both the biological parent and the partner must adopt the child jointly so that the biological parent does not lose the parental rights to the child.

Under Section 158(2) of the Children Act, 2001, the following may adopt only if the court is satisfied that there are special circumstances to allow them to adopt:

- A sole male applicant in respect of a female child
- A sole female applicant in respect of a male child
- A sole foreign female
- An applicant or joint applicants who has or have both attained 65 years of age.

d) People not eligible to adopt

Under Section 158(3) of the Children Act, 2001, the following individuals are not eligible:

- A person who is not of sound mind
- A person who has been charged or convicted previously of a child abuse offense or has criminal

history

- A homosexual
- Joint applicants who are not married to each other
- A sole foreign male applicant.

e) Consents required in adoption

Before any adoption is effected, consent should be obtained as follows:

- From parents, guardians or any person having parental responsibility over the child to be adopted
- For people not resident in Kenya, the consent of their courts or competent authority
- From a child who is to be adopted if he/she has attained the age 14
- If an application is by one spouse, the consent of the other spouse
- Consent by relatives if it is a kinship/family adoption.

Consent by parents or guardians can be dispensed with in cases where they have abandoned or neglected their children or cannot be found or are unnecessarily withholding consent, or spouses who are divorced and are living apart and such separation is likely to be permanent.

7. Main Steps in Processing Adoptions

- a) Prospective adoptive parent(s) applies to an adoption society with their intention to adopt a child.
- b) The adoption society undertakes assessment of prospective adoptive parents to determine their suitability to adopt. In cases of international adoption, this assessment will have been done by the foreign adoption agency where the prospective adoptive parent comes from.
- c) Once the parent is found to be suitable to adopt, the adoption society identifies a child who has been declared free for adoption to match with the prospective adoptive parent(s). Identifying a child who has been declared free for adoption can either be from the adoption society's database or that of another adoption society.

Alternatively, the adoption society may liaise with a CCI to find out if there is a child in their custody whom they think is free for adoption. In such a case, the adoption society must ascertain that all efforts have been made to reunify the child with his/her biological parents or extended family if their whereabouts are known and, if not, that enough efforts have been made to trace them. Only when all efforts to reintegrate the child with her or his family have been duly exhausted without success shall a child be deemed available for adoption.

In instances where the adoption society has identified a child from a CCI, and after a thorough assessment ascertaining that the child's immediate and extended family cannot be found, the adoption society declares the child free for adoption (Section 156, Children Act, 2001). Such a declaration should only be made after at least six months from the date the child was abandoned or found lost.

A child can also be declared free for adoption if the child's parent(s) has offered the child for adoption. In such instances, the parent will have been assessed and educated on the implications of offering their child for adoption. The parent must sign a consent form offering the child for adoption. The child offered for adoption by his/her parent(s) should be at least six weeks old.

It is important to note that at the time of writing these guidelines, there were discussions on whether

to transfer the mandate for declaring a child free for adoption from an adoption society to another entity. There were also discussions about the need for a central database for all children who have been declared free for adoption. Once a decision is reached, the Government will communicate this to adoption societies and other stakeholders.

- d) After successfully matching a child with the prospective adoptive parent(s), the child is placed with those parents by an adoption society to begin a three month mandatory bonding period. Exceptions are made on the duration of the bonding period for a kinship/family adoption in which the child has been living with the family for a long period of time. For international adoption, applicants must stay with the child for the three months bonding period within the Republic of Kenya prior to filing the matter before court.

The adoption society monitors the bonding of the child with the prospective adoptive parents and must make three visits to monitor this.

In cases where the child does not bond well with the applicants, the child is withdrawn by the adoption society or DCS and placed in other alternative care or returned to the CCI where he/she resided before the placement.

- e) If the three-month bonding period has been successful, the adoption application is filed and heard before the High Court for international adoption and in the Children's Court for local adoptions.
- f) The court issues an adoption order for successful applications.
- g) Once the adoption order has been issued by the court, the Registrar General issues a birth certificate for the adopted child. The Registrar General also maintains the adopted children's register (Section 169, Children Act, 2001);

8. Recommended Interventions to Improve Adoption Procedures

In order to strengthen adoption processes in Kenya, the following interventions and procedures are recommended.

Determining the Adoptability of the Child

Children should become available for adoption only when:

- a) The DCS, and/or adoption society officer, conducts legal and social assessment of the child establishing eligibility for adoption.
- b) Tracing and reunification of the child with his/her biological parents or extended family has failed. There must be documentation to show that thorough tracing was conducted and failed. Under such circumstances, a child can be placed as a first option with a foster family or in a CCI as a last resort for up to six months before adoption processes can be explored. During this period, further efforts should be made to reintegrate the child with her or his biological or extended family.
- c) Placement with the child's biological parents and extended family have been deemed not to be in the best interests of the child due to child protection risks. Detailed child and family assessment by a DCS or adoption society officer must show that indeed the child is at risk of harm in his/her family. Poverty should never be a criteria for determining ineligibility of a family member to care for a child. All efforts must be made to support families so that they can take care of their children by, for example, linking them to existing social protection programmes.
- d) A child's biological parents and/or extended family have consented to the child being adopted, as per the Children Act, 2001. Parents and/or extended family must be clearly informed of the

implications of adoption especially as regards their relationship with the child.

Determining the Eligibility of Prospective Adoptive Parent(s):

- a) The Children Act, 2001 and the Adoption Regulations establish that only registered adoption societies may vet prospective adoptive parent(s).
- b) An adoption society should conduct a thorough assessment of prospective adoptive parent(s), based on standardised criteria, home studies and multi-disciplinary case committees.
- c) If prospective adoptive parent(s) are deemed eligible, they should be included in a database of prospective adoptive parents.
- d) Prospective adoptive parent(s) should be prepared, trained and provided with pre-adoption support and counselling as needed.
- e) Time should be allocated in allowing the prospective family to meet and bond with the child in order to ensure that there is proper attachment prior to taking the child home.
- f) In determining which family meets the needs of the child eligible for adoption, the guiding principle should be that family selection and matching are in the best interests of the child and not to meet the needs and demands of the prospective adopters.
- g) Priority should be given to kinship/family adoption.
- h) Throughout the process, the views and opinions of the child, if of appropriate age and evolving capacity, should be taken into consideration in the decision-making.

9. Key Interventions to Improve Adoption Services and Societies

Awareness-Raising and Education

- a) It is imperative that the general population is empowered with the relevant information regarding the process of adoption, eligibility and other requirements on prospective adoptive parent(s) and children. They should also be made aware of the legal and practical effects of an adoption order on the biological parents, adoptive parents and the child.
- b) Awareness campaigns should be carried out to increase public understanding, acceptance and knowledge of adoption and the differences between guardianship, foster care, kinship care and adoption. These campaigns can dispel myths around adoption such as that it is a non-Kenyan practice, not culturally acceptable, only for rich families and that the children are 'bought'.
- c) Community leaders and adoptive parent(s) should be engaged to raise public awareness and build community capacity on adoption steps and procedures as well as supporting prospective adoptive parents. In counties where there are best practices, these should be benchmarked in order to raise awareness in other counties in which adoption rates are low.

Adoption Practice by the DCS and the Courts

- a) The DCS should establish a national database of people who have been assessed and who qualify to be prospective adoptive parent(s) and children who have been declared free for adoption.
- b) The National Adoption Committee, NCCS, DCS, social workers (including those in hospitals), adoption societies, CCIs, judges and other key stakeholders should work together to facilitate networking initiatives to ensure an increase in and prioritisation of adoption by Kenyan families

before placement of a child for international adoption.

The principle of subsidiarity as enshrined in the UNCRC and in the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* should be the hallmark of all adoption placements, meaning that all efforts for an adoption placement in a Kenyan family should be exhausted before resorting to international adoption. There should be mechanisms to establish that this is the case for any child proposed for international adoption.

- c) In order to support low-income Kenyan families to adopt children and mitigate against the high cost of some adoption services, the government should i) have legal aid measures in place, such as secondment of legal officers in the family division of the High Court and holding legal aid clinics; ii) strictly enforce adoption regulations on the adoption societies and iii) subsidising adoption fees for Kenyan applicants, especially low-income Kenyans, wishing to adopt a Kenyan child. Adoption societies should also consider subsidising fees for domestic adoption services.
- d) The DCS, government officials, the National Adoption Committee and adoption societies should work together to implement the provisions of the *Hague Convention on Intercountry Adoption*. This will include amending the *Children Act, 2001* to recognize The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and subsequently the amendment of Adoption Regulations, among other amendments.
- e) The DCS, National Adoption Committee, adoption societies and CCIs should work together closely to ensure that adoption is an option for children housed in CCIs across Kenya, if in their best interests and only when they cannot be reunified with their families..
- f) The DCS and adoption societies should ensure that prospective adoptive parents formalise adoption. Prospective adoptive parents must ensure that they start the legal process after the three months bonding period and complete the court process in nine months. Currently, the majority of Kenyan prospective parents do not complete the adoption process after the child is placed for bonding.
- g) The roles and responsibilities of the National Adoption Society, DCS, judges and adoption societies should be clearly delineated, harmonised and understood by all responsible parties.
- h) Judicial practices should be streamlined and harmonised nationally and all judges should uphold similar practices and be trained in the *Children Act, 2001*, the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, the *Adoption Regulations*, amended *Adoption Rules* and these Guidelines.
- i) Adoption societies should make the process easier for prospective adoptive parents by expanding their services outside of Nairobi. A formal process for the provision of post-adoption services should be established between the DCS and adoption societies.

Quality of Care and Protection for Prospective and Adopted Children

- a) Adopted children should be protected and afforded the same rights as all children.
- b) Child protection risks, such as child trafficking and abuse, should be mitigated by clear oversight and monitoring of the adoption services by the National Adoption Committee and DCS.
- c) Adoption should be available for children of all age groups, not just infants and toddlers.
- d) Adoption should be a viable and promoted option for children with special needs.
- j) Siblings should be kept together, except where it is not in their best interests.
- k) A child's information should be treated with confidentiality.



CHAPTER 12: RECOGNISING AND SUPPORTING CHILD-HEADED HOUSEHOLDS

1. Objective

The objective of this chapter is to provide a brief overview of the situation of child-headed households (CHHs) in Kenya and to make general recommendations for monitoring and supporting these informal family groups. The intention is not to formalise this informal care mechanism but to provide guidance to government and community authorities to support and monitor them.

2. Definition of Child-Headed Households

A child-headed household is one in which a child or children assumes the primary responsibility for the day-to-day running of the household, providing and caring for those within the household. The children in the household may or may not be related.¹⁹

A supported child-headed household is a form of family-based care in which children are looked after by another child, with support offered by the local community and/or by external agents.²⁰

In Kenya, it is recommended that a child heading a child-headed household should be more than fourteen years old. Children in a CHH headed by a child who is less than fourteen years old should be rescued and placed in another form of family-based care where there is an adult.

3. International and National Legal Framework

International

The UNCRC does not provide specific guidance on the recognition or support of CHHs. However, in recent years other international instruments have paid more attention to them and have recognized that they are in need of additional support. The Committee on the Rights of the Child's General Comment No. 3 on HIV/AIDS and the rights of the child (2003) recognized that "special attention" must be given to CHHs.²¹ The Committee stressed the importance of sibling groups remaining together and encouraged governments "to provide support, financial and otherwise, when necessary, to child-headed households".²² The UN Guidelines go a step further by formally recognising CHHs and the need to provide the household with additional assistance to ensure that they remain together, if they chose to.²³

National

At present, the Kenyan legal framework, specifically the Children Act, 2001, does not acknowledge, define or reference CHHs and there are no formal regulations on the same. However, the National Social Protection Policy (2012) recognizes this category as a vulnerable group for the purposes of social protection. The legislation to implement the proposals in the policy document was under consideration at the time of preparing these guidelines. (*Social Assistance Bill, 2012*)

¹⁹ *BCN Toolkit, Glossary of Key Terms*, <http://www.crin.org/BCN/Toolkit/Glossary/index.asp#c>

²⁰ *Ibid.*

²¹ Committee on the Rights of the Child, General Comment No. 3, (2003), 32nd Session, HIV/AIDS and the rights of the child, para. 28

²² *Ibid.*, para. 31

²³ *Guidelines for the Alternative Care of Children (UN 2010)*, para. 37.

4. Overview of Child-Headed Households in Kenya

Surveys have estimated that up to 0.05% of Kenyan households are child-headed at any given time.²⁴ In recent years, Kenyan children have been left alone due to the death of their parents as a result of the AIDS pandemic, the 2007–2008 post-election violence, recent droughts or the general diminished capacity of families to care for their children (as discussed in the Kinship Care and Prevention and Support chapters). In the face of crisis, hardship and grief, children have shown resilience and positive coping strategies by staying together. Following the death of, or abandonment by, their parents, many siblings and/or groups of children have chosen to stay together, allowing them to continue their familial and community relations, remain in school and stay in their family home. In a number of participatory surveys, children have expressed their preference for remaining together rather than being separated or placed in institutional care or another alternative care placement.

Studies have also shown that CHHs face a number of challenges: social isolation and stigmatisation; food insecurity; extreme poverty; psychosocial distress due to parental loss and recent traumatic experiences; lack of access to basic services; physical and sexual exploitation and abuse; and lack of legal protection, in particular in relation to property and inheritance rights.²⁵

As stipulated in the UN Guidelines and CRC Committee comments, there is need for the Government of Kenya, in partnership with community and civil society partners, to provide social, economic and legal support for these households in which the older children are able to provide adequate care for one another.

5. Key Recommendations to Support Child-Headed Households

Similar to kinship care, CHHs are an informal care arrangement that needs more formalised interventions and monitoring. Below are some recommendations to ensure proper care and protection of CHHs.

The age of the primary responsible child (head) shall not be less than 14 years and may be up to 18 years but an extension can be granted until 21 years taking into consideration the evolving capacities of different ages.

One of the biggest challenges in supporting CHHs is identifying them and assessing their needs. They are often the “invisible” family group in many communities. It is therefore vital for the DCS to strengthen community structures to help identify and register CHHs. The registry of CHHs can be recorded and held in the Chiefs office. Community structures shall include: OVC committees, Chiefs, VCOs, CHWs, clan-based structures and community-based organisations.

The DCS, in collaboration with community leaders, Chiefs and civil society partners, shall work together to make services available and to strengthen community capacity to protect and support these non-traditional family groups.

Strengthen Communities to Identify and Support Child-Headed Households

- a) Build the capacity of DCS staff to understand CHHs and ways in which they can work with community-based mechanisms to monitor and support them.
- b) Strengthen the capacity of the community to provide targeted support to CHHs within the existing community resources and structures.
- c) Community structures shall identify households in need of specific support and help determine what type of support is needed and how it shall be provided.
- d) The DCS, in partnership with community and civil society partners, shall scale up targeted

²⁴ UNICEF, *Caring for Children Affected by HIV*, 2006, p.16

²⁵ Laura May Ward and Carola Eyber, *Resiliency of children in child-headed households in Rwanda: implications for community based psychosocial interventions*, 2012.

programmes to enhance the care and protection of CHHs.

- e) The DCS shall establish and maintain a comprehensive database on all children for the purposes of planning, follow up and other important initiatives in the best interests of children.
- f) The DCS shall utilise and train Community Health workers (CHW) and other community-based volunteers to serve as adult mentors for the CHHs.
- g) The DCS, county governments and other partners including media shall initiate awareness-raising campaigns to reduce the stigma and isolation associated with CHHs and call for support of children in CHHs.
- h) Throughout all decision-making processes, the DCS and partners shall consult, empower and involve the children of the household.

Legal Protection

- a) The DCS in collaboration with the Attorney General office shall appoint a legal guardian, a recognized adult or public body to act as a guardian to the household. This, in turn, will help protect the household from all forms of abuse, violence, exploitation and neglect.
- b) The children's property and inheritance rights shall be protected by building the capacity of DCS officers and partners on legal instruments and processes in protecting inheritance and property for children in CHHs.
- c) Children living in CHHs shall be given the right to education, and access to health care and other basic services.
- d) The DCS and partners shall support CHHs to access proper legal documentation for all members of the household as needed: birth registration, school registration, deeds, wills and any other relevant documents.
- e) An awareness-raising initiative shall be in place to advocate for the protection of children's rights, in particular inheritance rights.
- f) Support systems for CHHs shall be strengthened and enhanced across Kenya.

Education and Vocational Training

The DCS, in collaboration with county governments, civil society and community partners, shall:

- a) ensure that children, in particular the head of the household, are attending school by supporting school attendance costs and fees
- b) Provide community-based childcare for younger children so older children can attend school
- c) Work with schoolteachers to raise awareness around the educational needs of children from CHHs and their need for psychological support while in school.
- d) Build the capacity of older children via trainings in literacy, household management, agriculture and small business development.
- e) Provide older children with vocational training and support from community mentors in local apprenticeships.
- f) Prepare children to lead healthy lifestyles via trainings in: children's rights, peace building, healthy living, nutrition, family relations, hygiene, reproductive health, HIV prevention and so forth.

Health and Nutritional Support

The DCS, in collaboration with county governments, community and civil society partners, shall ensure that CHHs have access to all available support services by referring families and children or directly providing necessary services. These services include:

- a. Healthcare: treatment, prevention and rehabilitation services
- b. HIV counselling and treatment
- c. Food assistance and nutritional support
- d. Day care and respite care
- e. Community outreach programmes.

Psychosocial support

- a) The DCS, in collaboration with county governments, community and civil society partners, shall support the provision of counselling and therapy for CHHs.
- b) CHHs can be matched with community mentors and role models to provide them with psychosocial support.
- c) Peer support should be facilitated via religious groups, cultural and recreational activities and community awareness-raising activities.
- d) The DCS, in collaboration with county governments, civil society partners and community, shall support the creation of an Association of Child-Headed Households or Family Groups to meet on a regular basis to provide group support and help minimise the social isolation and stigma experienced by children in CHHs.
- e) Older children in the community who have proved resilient in overcoming the hardships of heading a household can serve as mentors to other children.

Economic Strengthening

The DCS, in collaboration with County governments, community and civil society partners, shall:

- a) Ensure that CHHs have access to economic strengthening and social protection services, such as financial assistance, income-generating programming, vouchers, micro loans, vocational training, etc. (Refer to Chapter 3 for additional information regarding these programmes.)
- b) Foster community mentorship and tap into community leaders and entrepreneurs to mentor and teach children in CHHs trades and skills.
- c) CHH associations can mobilise income-generating activities such as handicrafts, welding, farming and trade.

6. Models of Promising Practice

Community Mentorship in Rwanda

In order to respond to the increasing number of CHHs in Rwanda as a result of the genocide and AIDS pandemic, CARE initiated the Nkundabana model. The model mobilises community-based volunteers to serve as adult mentors, teachers, counsellors and role models for children living in CHHs.

Trained and supported by CARE in active listening, counselling and life skills, these community volunteers provide the guidance and support that is missing from the lives of these children. Selected by the children themselves, the volunteers all live near the CHHs, make regular visits to the households, motivate the children to attend school and seek medical or other basic services, and provide a psychological outlet for the children. Within the larger community, they sensitise the community to CHH issues: inheritance rights, stigma and isolation.

The model provides a foundation for establishing social, economic and legal protection for these children and has potential long-term sustainability since it is strengthening the available resources in the community.

(Source: CARE, A Model for Community-Based Care for Children: Nkundabana)

Isibindi Model of Care for Vulnerable Children and Youth in South Africa

The Isibindi Model deploys trained community-based child and youth care workers in communities to provide developmental support to children and families rendered vulnerable as a result of the HIV/AIDS pandemic. The overall goal is to create safe and caring communities for vulnerable children and youth. Child-headed households are a priority for the programme.

In this model, children and youth are the centre of services in the context of the extended family and community with the service provider acting as a protective mechanism. Trained child and youth care workers work with the children to promote a sense of belonging and independence via group processes, individual contacts, life space work, referrals, support, counselling, and assessment and planning. The intervention is expected to enable children and young people to acquire skills that will increase their competency in their living environment. The intervention will also facilitate emotional support to children as they are prepared to adjust to a living situation in which one or both parents are absent.

(Source: <http://www.hciproject.org/sites/default/files/isibindi.pdf>)



CHAPTER 13: SUPPORTED INDEPENDENT LIVING

1. Objective

The objective of this chapter is to provide guidance on how to support young people transitioning from out-of-home care or living on the streets to adulthood by implementing supported independent living interventions.

2. Definition of Supported Independent Living

Supported independent living refers to arrangements in which a young person is supported in her/his own home, a group home, hostel, or other form of accommodation, to become independent. Support/ social workers are available as needed and at planned intervals to offer assistance and support but not to provide supervision. Assistance may include time-keeping, budgeting, cooking, job seeking, counselling, vocational training and parenting. Supported independent living programmes aim to better prepare and support the young person in making a smooth transition from out-of-home care, living and working on the streets or being outside of family care to independence and adulthood. (Source: *BCN Toolkit, Glossary of Key Terms*)

3. Overview of Supported Independent Living

Young people who have grown up in out-of-home care, on the streets or in other situations outside of their family face a number of challenges and obstacles. These young people are more likely to experience poorer education outcomes, poverty, unemployment, health problems, risky or dangerous behaviour and societal and interpersonal relationship issues. Many of these young people, in particular those who are unable to be reunified with their families, adopted or placed with extended family members, need additional support (such as supported independent living) so that they can become well-adjusted members of the community. Supported independent living can prevent homelessness and delinquency and improve the young person's social, health, education and economic outcomes.

4. Categories of children or young people in need of supported independent living

The following groups of children are particularly vulnerable and may be in need of supported independent living arrangements:

- a) Children living and working on the streets
- b) Children affected by armed conflict
- c) Children on the move (child migrants and child labourers)
- d) Children living in institutional care, rehabilitation centres or borstal institutions (in particular children who have lived in these places for long period of time or experienced multiple placements)
- e) Victims of child trafficking
- f) Refugee and internally-displaced children
- g) Children with special needs, e.g., those with mental or physical disabilities
- h) Child mothers.

5. Roles and Responsibilities of Authorities and Partners

It is recommended that supported independent living interventions shall fall under the auspices of the DCS, in collaboration with civil society partners. DCS shall make arrangements for the accommodation and support services and draw on their staff to offer support, assistance, capacity-building and mentorship, as needed. Community members, such as CHWs, VCOs, OVC committee members, the AAC and local business leaders can provide monitoring, supervision and peer support for the children and young people.

6. When Supported Independent Living is to be considered

A multi-disciplinary team shall conduct an assessment to assess the situation and needs of the child, with full participation and involvement of the child. The assessment shall cover issues related to family relations, education, health and the psychological well-being of the child. Following the assessment, an individual care plan for the child shall be in place.

Supported independent living is appropriate in situations, as determined by the assessment, for a child who:

- a) Is between 15-21 years of age
- b) Is unable or no longer eligible to live in a CCI, foster care or other out-of-home placement and where reunification, adoption, *kafaalah*, guardianship or placement with extended family members is not an option
- c) Is living on the streets and placement in alternative care and reunification, adoption, guardianship, *kafaalah* or kinship care is not an option
- d) Wishes to live independently and does not want to be in a family environment
- e) Was placed in a family environment (i.e., kinship or foster care) but was unable to cope with the living arrangement
- f) Because of recent or past trauma, separation and distress is unable to live within a family environment (e.g., child soldiers, children living on the streets, children on the move, child labourers, etc.)
- g) Does not express or display psychological or physical disturbances which make independent living dangerous to themselves and others
- h) Has demonstrated a level of maturity, making an independent living arrangement possible.

7. Assistance and Support Services

For a maximum period of 24-36 months, the DCS, in collaboration with alternative care providers and civil society partners, shall make the following support arrangements for the young person:

- a) A Children's Officer or partner organisation social worker shall assess the young person to determine his/her needs and appropriate package of services.
- b) Facilitate access to a Children's Officer or partner organisation social worker for a period of up to 36 months.
- c) CCIs and other alternative care providers shall realign their resources to facilitate supporting independent living arrangements.
- d) Provide stable accommodation by making living arrangements in a group home, residential

treatment centres, boarding homes or hostels, shelters, semi-supervised apartments or other forms of accommodation.

- e) Place children in safe independent living situations which are culturally appropriate and safety plans shall be developed to reduce the risk of sexual abuse and exploitation
- f) Where appropriate, reintegrate the young person into his/her family, community and other social networks by creating peer support schemes. (For example, a network of young adults or community leaders in the young person's wider community may be selected to act as volunteer peer support.)
- g) Based on the assessment and child's situation, facilitate the development of skills and networking that the young person needs in order to successfully live independently by arranging:
 - i. Courses in independent living, such as financial budgeting, household chores, time management, hygiene and healthy lifestyles
 - ii. Courses in vocational training and literacy
 - iii. Micro-loans, business development and employment assistance
 - iv. Apprenticeships, attachments or internships
 - v. Physical and sexual reproductive health services
 - vi. Premarital counselling and parenting skills
 - vii. Nutritional support
 - viii. Counselling, family therapy, mediation and crisis management
 - ix. Recreational and cultural activities
 - x. Support services for children with special needs
 - xi. Assistance in attaining legal documentation
 - xii. Links to employment and information resource centres
 - xiii. In collaboration with the Association of CCI in Kenya, facilitate the referral of care leavers to the Kenya Society of Care Leavers.

8. Monitoring

The DCS, in collaboration with county governments and other stakeholders, shall visit the young person at least quarterly to monitor his/her progress, ensure that he/she is accessing needed support services, and is making positive progress towards full independence.

A registry of supported independent living arrangements and children who have successfully transitioned out of supported independent living shall be maintained in each Sub-county Children's Office.

9. Model of Promising Practice

Apprenticeship Programme in Sierra Leone

In Sierra Leone, the Christian Brothers NGO fostered the tradition of apprenticeships by arranging for a group of young people to live with and be trained by an artisan.

A group of eight boys lived with a carpenter and his family for 18 months. They were given a small stipend, and trained in carpentry and literacy. The Christian Brothers assisted the boys in buying tools so that they could set up their own businesses. The programme provided the boys with a family environment, peer support and daily structure. Since there was a potential risk of the boys being exploited through child labour, the programme included regular monitoring and oversight.





CHAPTER 14: INSTITUTIONAL CARE (CHARITABLE CHILDREN'S INSTITUTIONS)

1. Objective

The objective of this chapter is to provide quick practical guidance to help those working with children in charitable children's institutions (CCIs). For detailed guidance the reader should refer to: the Children Act, 2001; The Charitable Children's Institutions Regulations, 2005; National Standards for Best Practices in Charitable Children's Institutions, 2013; and Training Manual for Charitable Children's Institutions, 2013.

2. Overview of Institutional Care in Kenya

CCIs are the most widely utilised alternative care option for children outside of parental care in Kenya. The alternative care system in Kenya is grounded and centred on CCIs. CCIs continue to be the first resort rather than last resort and the most accessible option in "rescuing" children from abandonment, orphanhood, family poverty, family disintegration, disability or displacement. According to DCS September 2012 data, there are over 700 CCIs in Kenya, housing approximately 43,000 children. Out of these 700 institutions, 591 are legally registered. However, the exact number of CCIs and children housed in CCIs is unknown, and many believe that the figures are much higher, since many CCIs are unregistered and unregulated and not all children have court committal orders.

It is internationally recognized that children outside of parental care should be placed within a family-based care environment and if institutional care is used that it should be temporary and only after all other measures have been exhausted. Experts have recognized that institutional care may be appropriate for a limited number of children, if administered appropriately, in a family-like setting, and with the best interests of the child at the centre of care provision. These Guidelines, and accompanying policy and legal framework, will help to ensure that CCIs are administered properly and that interventions are in place to improve the care and protection of children in CCIs.

Deinstitutionalisation

De-institutionalisation is the process of moving children from large institutional care settings into family- and community-based alternatives. A deinstitutionalisation strategy should include: preventive measures (preventing or at least reducing the number of new placements of children in CCIs); monitoring and evaluation of existing CCIs; development of resourced alternative family-based care options (foster care, kinship care, adoption, guardianship); and the development of an individualised care plan for each child residing in a CCI. The emphasis should be on the importance of individualised and small-group care.

These Guidelines acknowledge that residential care facilities may be necessary for a limited number of children. However, it is recommended that the alternative care system be reformed to reduce over-reliance on institutional care, in particular large institutions. Alternatives to institutional care should be developed in the context of an overall deinstitutionalisation strategy, with precise goals and objectives.

3. Definition of Charitable Children's Institution/Institutional Care

According to Section 58 of the Children Act 2001 a CCI refers to a home or institution established by a

person, corporate or non-corporate, a religious organisation or non-governmental organization, which has been granted approval by the NCCS to manage a programme for the care, protection, rehabilitation or control of children.

A CCI shall not include rehabilitation schools established by the ministry in charge of children's affairs, a remand home, a school within the meaning of the Education Act, a borstal institution, any health institution, a children's day care centre, a nursery or other similar establishment.

The definition applies to privately run children's homes that have been granted approval by the NCCS to manage a programme for the care and support of orphans and other vulnerable children, and includes institutions offering accommodation for any child overnight or on a longer-term basis.

4. International and National Legal Framework

International

International legal instruments are clear on the limited role that institutional care should play in communities. The UNCRC and UN Guidelines both emphasise the importance of children being raised in a family environment. (Refer to Chapter 2 for detailed information about CRC and the UN Guidelines position on institutional care.)

National

The Kenyan legal and policy framework provides regulatory guidelines and standards in administering CCIs. The framework is made up of:

- a) *Children Act, 2001, Sections 68-72*: provides basic regulatory framework for CCIs
- b) *CCI Regulations, 2005*: supplement the Children Act by setting out how CCIs should register and the minimum standards they should adhere to
- c) *National Standards for Best Practices in Charitable Children's Institutions, 2013*: assist CCIs to enhance their capacity for determining which children need to be admitted into CCIs; how to provide adequate care and protection to the children; and how to plan the eventual exit and return of the children back to their families and communities
- d) *Training Manual for Charitable Institutions, 2013*: used to train CCI stakeholders to strengthen their capacity to manage and operate CCIs.

5. Roles and Responsibilities of Government Authorities and Partners

The DCS will work with AAC and shall ensure implementation of the Children (Charitable Children Institutions) Regulations, 2005, and institute measures for quality assurance through regular inspections in CCIs. Further to this, DCS shall initiate a forum for sharing experiences across the children's sector, in partnership with the NCCS Secretariat and specific AAC. The forum shall also promote replication of best practices in working with children.

Role of the DCS in CCIs

- Regulate registrations of CCIs
- Develop CCI manuals
- Coordinate with partners in capacity-building of CCI service providers

- Monitor implementation of CCI regulations
- Develop a national children's database for CCIs
- Review CCI Regulations as necessary
- Monitor and support CCIs

In ensuring that children are cared for appropriately in CCIs, government authorities should work in partnership with various stakeholders including:

- a) Civil society organisations, including international and national NGOs, CBOs, FBOs, the private sector and other non-state actors working with children
- b) Area Advisory Councils (AACs)
- c) Adoption societies
- d) OVC committees
- e) Specific programme beneficiary welfare committees
- f) Community elders and religious leaders
- g) Probation case committees
- h) Child protection committees
- i) Care leavers' committees/associations
- j) Children's Assembly
- k) Child Protection Units in police stations
- l) Child protection centres
- m) Court Users' committees (Judiciary)
- n) Special needs offenders committees

6. Roles and Responsibilities of CCIs

As per CCI Regulations, it is mandatory for CCIs to be in constant contact with government authorities from ministries and line departments working with children. These include officers from the ministry in charge of children's affairs through the DCS, health, education, judiciary and probation departments among others. CCIs should comply with all the legal requirements.

A CCI shall:

- a) Seek and secure registration by the NCCS through the DCS and specific AAC before it admits any child into its facilities
- b) Get approval from the ministry in charge of children affairs through the NCCS and AAC for its programmes
- c) Obtain all the necessary documents as per the CCI regulations
- d) Obtain a court committal order for every child under its care
- e) Comply with labour laws, including remittance of staff statutory contributions such as to the National Social Security Fund(NSSF), National Health Insurance Fund (NHIF) and taxes
- f) Comply with Ministry of Education requirements, if the CCI is running a school

- g) Comply with Ministry of Health requirements if the CCI is running health facilities
- h) Comply with Article 53 (1)(e) of the Constitution and the Section 6(1) of the Children Act, 2001 by supporting the reunification of the child with his/her family
- i) Work with adoption societies and CSOs to ensure provision of community- and family-based alternative care options for the child, when appropriate and in the best interests of the child, where re-unification with the child's parents is not possible.

8. Recommended Good Practices for Admitting Children to CCIs

CCIs should have proper gatekeeping measures in place to ensure that children are not unnecessarily placed in CCIs. CCIs and government authorities should be very thorough in their assessment and placement procedures to ensure that only eligible children are admitted and, upon admission, that simultaneous efforts are being made for reintegration and family-based care.

Poverty or lack of access to basic services (e.g., health, education) should never be justification for separating a child from his/her family and placing him/her in a CCI. Instead it should be seen as a sign for the need to provide additional family support services and efforts should be made to link CCIs to social protection schemes. CCIs should also design and implement programmes at family level that address poverty-related issues.

Global evidence-based research has shown that children under the age of three years should not be placed in institutional or residential care facilities, except under exceptional circumstances. All efforts should be made to place babies and young children in family-based settings.²⁶

Children in need of care and protection only should be housed separately from children in conflict with the law.

9. Key Interventions to Improve the Care and Protection of Children in CCIs

Numerous assessments of alternative care practices in Kenya have shown that while some CCIs uphold good practices, many CCIs lack: proper admission processes; individual care plans for children; proper documentation and information management; professional management; clear exit strategies; thoroughly monitored tracing and reintegration; and referral procedures.²⁷ The following interventions are therefore recommended to improve the care of children in CCIs. (For further detailed information, refer to the National Standards for Best Practices in CCIs and CCI Regulations.)

A. Registration and establishment of CCIs

- 1) The DCS and NCCS should establish clear, enforceable registration and licensure processes for CCIs to ensure that all CCIs are registered and are under government authority.
- 2) The DCS, in collaboration with the NCCS and partners, should maintain an up-to-date CCI registry in a centrally located database.
- 3) The DCS, in partnership with the NCCS and partners, should closely monitor all CCIs upon registration.
- 4) Before beginning the process to establish a CCI, individuals, organisations, religious bodies, the private sector and any other agencies should first carry out a community-based assessment on the needs of children, and on existing interventions within families and communities. The assessment should first explore other family-based support options before a CCI is set up. The decision to open a CCI should only be out of absolute necessity, appropriate and constructive for the children

²⁶ Guidelines for the Alternative Care of Children. See also, 'The Development and Care of Institutionally Reared Children: The Leiden Conference on the Development and Care of Children without Permanent Parents', *Child Development Perspectives*, Volume 6, Number 2, 2012, p 174-180.

²⁷ 2008 Technical Report; 2012 Field Assessment Report; 2002 UNICEF Report.

concerned, and in their best interests.

- 5) An organisation or individuals interested in opening a CCI should first get approval from the ministry in charge of children affairs through the NCCS and AAC and follow the provisions stipulated in CCI Regulations.
- 6) Each CCI should clearly document and record its admission process.
- 7) CCIs should never be established with the primary purpose of enhancing the religious, cultural, political or economic goals of the providers or founders.

B. Organisational governance and management of CCIs

CCIs shall:

- 1) Have a clear mission, vision and function
- 2) Be designed to be small, individualised and family-like, and integrated within the community, in line with UN Guidelines, principles and best practice
- 3) Adhere to CCI Regulations and National Standards for Best Practice (NSBP) in CCIs. The SCO and AAC should support CCIs in their adherence to regulations and best practice standards via capacity building and supervision.
- 4) Have a Board of Trustees to serve as the administrating authority and proprietors of the CCI. The selection and roles and responsibilities of the Board should be through an open process, going beyond the founders, and in line with provisions outlined in the CCI Regulations and NSBP in CCIs.
- 5) Have a Management Board, responsible for the day-to-day operation of the CCI. The roles and responsibilities of the Board should be in line with protocols outlined in the CCI Regulations and NSBP in CCIs.
- 6) Have an accountable, transparent financial management system in place, with clear record keeping
- 7) Have a child protection policy and written procedures in place, in line with the CCI Regulations and NSBP in CCIs
- 8) Ensure that all children's information and records are kept confidential and released to the child when needed
- 9) Have a Court Committal Order for all children under their care and, thus, a legal guardian to support and protect his/her rights. (Refer to Section 63-64 of the Children Act and NSBP in CCIs for additional information about the committal order process.)

C. Staff

- 1) CCIs should have adequate staff to appropriately respond to all children's needs as outlined in the National Standards for Best Practices (NSBP) in CCIs.
- 2) The care staff ratio to the number of children should not exceed 1:10 (i.e., one staff member for every 10 children), as stipulated in the NSBP in CCIs and dependent on the age and special needs of the children.
- 3) Staff should be screened to ensure that they are trained, qualified and professional, and hold a certificate of good conduct and no criminal record.
- 4) CCI staff should have adequate working conditions and benefit packages, as outlined in the NSBP in CCIs.

- 5) CCI staff should treat all children with dignity and respect.
- 6) CCIs, with support from the DCS, AAC and civil society partners, should provide continued in-service training and supportive supervision for all staff and volunteers.
- 7) Trainings and capacity-building should focus on: attachment; child development; family tracing and reintegration; and family-based care.
- 8) Each CCI should have a staff code of conduct, rules and a child protection policy with clear disciplinary actions and complaint mechanisms to ensure appropriate prevention of and response to violations and abuse.

D. Decision-making and admission processes

- 1) CCIs should have clear and enforced admission policies.
- 2) CCIs should have proper gatekeeping measures in place to ensure that placement in institutional care is in the best interests of the child and a last resort. CCI social workers should counsel parents or legal guardians wishing to relinquish a child permanently or for a temporary period. The care providers should establish linkages with interdisciplinary social services to address the reasons for the child being abandoned. If it is determined to be in the best interests of the child to separate him/her from the parents/family, the social/care worker should first look for other family members to place the child with. If that is not possible, the child should be placed in a CCI temporarily, for the shortest period possible and a permanent family placement found within a reasonable period, preferably not more than three years as recommended in the NSBP in CCIs.
- 3) A child's identity (name, next of kin, religion) should not be interfered with by the CCI. Where a child's name is not given, the CCI shall provide a name which promotes the child's dignity and respects their socio-cultural context and well-being. A CCI should not name any child after staff, directors or sponsors of the CCI.
- 4) Frequent placement changes should be avoided as far as is possible since these have been shown to be detrimental to the child's health and development.
- 5) The family and child should be empowered and at the centre of the decision-making process and informed of all decisions made by judicial and administrative bodies before placement takes place.
- 6) The child should be placed in a CCI as close as possible to his/her usual place of residence, in order to facilitate continuous contact and possible reintegration with his/her family and reduce education and cultural disruption.
- 7) Siblings should be cared for together and placed in the same CCI, except where it is not in their best interests.
- 8) Transition into a CCI should be well prepared and implemented carefully, with the child's needs and well-being at the centre of the entire process.
- 9) Apart from emergency admissions, the child and family situation should be thoroughly assessed by a qualified trained professional and, where possible, by a multi-disciplinary team before admission. The assessment should include causes of family separation, the child's situation, the needs of the child and family, actions needed to safeguard the child, and timescales, among others. (Detailed assessment guidance is provided for in the NSBP in CCIs.)
- 10) The admission process should be guided by an individual care plan. The care plan should be developed by the CCI staff, the DCS, the parent(s) and the child during the decision-making process and further elaborated after admission. The plan guides the overall development of the

child as well as his/her exit strategy. (Detailed care planning steps are provided for in the NSBP in CCIs.)

- 11) The CCI and respective authorities should monitor and review the placement every three months to ensure that the care is appropriate to the child's needs and that enough efforts are made to exit the child from the CCI to family-based care.

E. Care and living conditions in CCIs

CCIs should:

- 1) Promote and safeguard all the rights of the child, as outlined in the UNCRC, the Constitution and the Children Act, 2001, by ensuring access and protecting his/her right to education, health, identity, language, inheritance rights, and freedom of religion.
- 2) Provide appropriate living conditions to promote the proper development and safety of the child.
- 3) Recognize the diverse needs of children and, accordingly, establish integrated, holistic interventions including health, psychosocial, rehabilitative and preventive services.
- 4) Provide services to children, in line with their assessment and individual care plan, such as: education, vocational training, physical and emotional health care, nutrition, recreation, healthy lifestyles, etc.
- 5) Ensure the safety and well-being of all children by making sure that the CCI infrastructure is in a safe condition, with adequate water and sanitation, and fire safety precautions in place.
- 6) Ensure that children have safe, clean sleeping arrangements, which are appropriate to their age, gender and specific needs.
- 7) Provide children with special needs with appropriate services.
- 8) Ensure that the child maintains continuous contact with his/her family throughout the duration of the placement.
- 9) Provide children with an accessible internal, external and safe complaint mechanism to report any concerns regarding behaviour management, conditions and treatment in the CCI.

F. Engagement with community

CCIs should:

- 1) Ensure linkages and engagement with the community by: placing the CCI within the community and facilitating community contact.
- 2) Facilitate community and child contact by: allowing children to attend community recreational and cultural events; enrolling children in schools within the community; organising open forums for family and community members to facilitate community engagement with the CCI; organising holiday visits with family members and community members.
- 3) Utilise community resources and develop community-based responses such as: school feedings; community health outreach, and so forth.
- 4) Organise community awareness activities on the dangers of institutionalisation.

G. Exit strategy: family reintegration and family-based care

- 1) An exit strategy is the systematic and detailed plan describing how a child will eventually leave the care of a CCI. It is developed at the time of creating the individual care plan and initial assessment. The child should be kept in the CCI for the shortest time possible. The CCI management is responsible for careful planning, support and monitoring to ensure proper exit and reintegration back into the family and community. The child and family should be properly informed and engaged throughout the process.
- 2) Children should stay in a CCI for the shortest time possible and not for more than three years. Under very special circumstances, a CCI may apply for an extension of stay before a court of law.
- 3) CCIs should not use education as a reason for admitting or extending a child's stay, since education can be supported while the child is in a family set up.
4. Methods of exiting include: family tracing and reintegration; foster care; kinship care; supported independent living; guardianship; adoption; and *kafaalah*. (Refer to specific sections of the NSBP in CCIs and specific chapters in these guidelines for more details.)
5. CCIs should build the capacity of their staff to understand and support clear exit strategies for all children.
6. Government authorities and CCIs should redirect resources to support exit strategies and family- and community-based responses.
7. Individual child sponsorship in CCIs should be discouraged in order to enhance appropriate exit.

H. Aftercare services

Once a child is ready for exit, he/she should be supported with aftercare services provided by DCS in collaboration with partners. (Refer to Chapter 15 for additional information about aftercare services.)

9. Monitoring and Data Collection

The DCS and AAC should regularly monitor and inspect CCIs using CCI Regulations and NSBP in CCIs as monitoring tools. The inspections should be both planned and impromptu. Trainings and capacity-building for the CCI care workers are needed to ensure proper care and protection, ongoing monitoring, and follow-up.

Each CCI should have its own monitoring mechanisms in place and submit monthly, quarterly and annual reports to the DCS as stipulated in the NSBP in CCIs.

All CCIs should have a data collection and information management system in place. The data should be disaggregated by age, sex, religion, ethnicity, parental status and disability status, and reported to the DCS. The data should be kept in files and reported to the DCS which shall maintain data on all CCIs.

10. Closure of CCIs

A CCI shall be closed if:

- a) It is unfit for the care, protection and control of children due to child rights violations, poor public health, sanitation and nutritional standards
- b) Children admitted into the institution are suffering, or are likely to suffer, harm
- c) The manager of the institution has contravened any of the regulations made under the Children Act,

2001 and the CCI Regulations, 2005

d) It is not recognized by the AAC and is not registered by the NCCS

Upon cancellation, the Director of Children's Services will protect the children by:

- i. Removing them from the CCI
- ii. Procuring the closure of the CCI
- iii. Instituting disciplinary measures against the proprietors and manager of the CCI
- iv. Taking other actions as may be deemed necessary for the protection of the children.

11. Models of Promising Practice

Nyumbani Children's Home

Nyumbani Children's Home provides holistic care for over 100 HIV+ children. Conditions in the home are of high quality, with appropriate caretaker to child ratios, small, family-like facilities, and comfortable, clean rooms. Children are provided with health services (including ARV treatment), education and nutritional support.

Children are placed in the home with the hope that they will either be reintegrated with their family or placed in a family-based care alternative. In order to expedite the exit strategy, all the children have a three-year court committal order. When a child is admitted to Nyumbani, two social workers are assigned to trace the child's family and work to reintegrate him or her back with the family. When the child is reunified with his/her family, Nyumbani provides the family with in-kind reunification kitty to last six months and continuous medical support such as provision of ARV to the family. Continuous monitoring is also done after reunification.

In 2004, Nyumbani began working with the Little Angels Network and the DCS to facilitate temporary foster care placement. By end of 2013, twenty five children had been placed with foster parents. Through its community-based program, the Lea Toto, Nyumbani supports kinship care arrangements through informal agreements with families. The children's home provides school fees and monitors the family placement every month for the first three months and through sporadic visits thereafter.

In order to encourage reintegration, foster care and adoption, in 2004 Nyumbani started an "open day" for family members to come to the home to meet the children and reduce the stigma around HIV+ children. Via community-based care support known as Lea Toto, Nyumbani also provides medical, nutritional and counselling support to 3,600 HIV+ children living with families and extended families in various informal settlements around Nairobi. This programme enables children to remain with their families instead of coming to live at the children's home.

Macheo Children's Centre, Madaraka, Thika

Macheo Children's Centre (Macheo) has a children's home and a community outreach programme. The family cottage type children's home houses 56 children.

Recently, Macheo has shifted its focus towards family reintegration and family-based care, having learned that it is easier for a child to leave the home and reintegrate with his/her family if tracing and reintegration discussions are initiated at the time of admission. Macheo holds monthly meetings between the parents (or guardian) and child, where the parent visits the centre, meets with the child, and participates in group sessions. In addition, each child has a holistic, individual development plan, which has the child's best interests as its core objective. The plan guides staff in supporting the child

while he or she is in the home and for eventual exit to his/her family. Social workers work closely with the family, empower the child, and conduct reintegration via the SCO. As a result, out of 65 children admitted in 2012, 11 were reintegrated with their families and two placed in domestic adoption by the beginning of 2013.

In addition to the children's home, Macheo has a community outreach programme which provides nutritional, psychosocial and livelihood support to 8,000 children in schools in the slums of Thika. This approach prevents children from being separated from their families because it helps family meet the basic needs of the children and other psychosocial problems at home.

Schools are an entry point for the programme and the social workers work closely with teachers to identify children in need. Programme staff monitor the children and ensure that they remain with their families. Before Macheo outreach programme, many of the children in the programme were living on the streets or in CCIs. Now they are living with their families.





CHAPTER 15: PREPARATION AND FOLLOW-UP AFTERCARE

Objectives

The objectives of this chapter is to provide recommendations that support children when they leave care by ensuring that:

- I. There is a system for children leaving alternative care and transiting into independence to achieve best outcomes through consistent aftercare support services
- II. Children reunified with their family adjust and settle well, ensuring their retention in the family and community
- III. Children moving from one form of alternative care to another adjust and settle into the new care
- IV. There are fewer psychosocial, emotional and financial challenges for children leaving alternative care.

Definition

Aftercare support is a process whereby a variety of services are offered to children after they leave alternative care and move on into independent living or get reunified with their families.

Overview

Aftercare support services for children leaving alternative care in Kenya are inconsistent and provided in an ad hoc manner. There is little or no data about the numbers of children receiving aftercare support services and there is no information on outcomes for children after they leave alternative care. There is no provision in the Children Act, 2001 for aftercare services. Hence intervention is highly varied. Receiving a service often depends on the agency; some children receive support when they leave care while others receive no service at all.

Preparation should begin prior to exiting alternative care. However, the reality on the ground is that there are still children leaving care in an unplanned way, and the majority end up struggling to cope socially, emotionally and psychologically. Children exiting care are less likely to have a safety net of family and community supports than their peers in the general population. As a result, there is a responsibility on the Government and other stakeholders to provide a range of practical support to those leaving care, including: financial support, accommodation, training and education, and advice and information.

The process of transition from care to aftercare should take into consideration the child's gender, age, maturity and particular circumstances. Children with special needs, such as disabilities, should benefit from appropriate aftercare support services. Children also need to have access to emotional support, mentoring, and a caring adult who will keep in touch with them. Aftercare support should be regarded as an integral part of individual care planning. The planning should be determined by a comprehensive needs assessment to determine what support the child needs to make a smooth transition from alternative care. This preparation, done in conjunction with the child, should inform the written aftercare plan. This plan should be reviewed regularly based on the needs of the individual child.

Why Aftercare Support?

Aftercare support aims to improve outcomes for children and young people leaving care by:

- Ensuring that they learn life and social skills that enable them to integrate well in society
- Ensuring that they are resilient and acquire positive coping skills
- Encouraging young people to engage in vocational training or further education
- Ensuring that they have friends and other people to rely on
- Ensuring that they adjust and settle in their new environment.

Once a child/young person exits from an alternative care placement, he/she should be supported with aftercare services provided by the Government of Kenya, in collaboration with partners. He/she should be supported and encouraged to acquire appropriate skills in preparation for independent living.

The following interventions are recommended:

- 1) Alternative care agencies and facilities should have clear aftercare policies and follow-up procedures after the child leaves their care.
- 2) Aftercare planning should begin as early as possible and before the child leaves the care setting.
- 3) As part of the child's individual care plan, the transition period to aftercare should be planned in accordance with the child's age, evolving capacity, gender and specific needs. Children should be encouraged to take part in the aftercare planning.
- 4) Children with special needs should be given appropriate support services in order to minimise the risk of further institutionalisation.
- 5) If possible, each child should be given a mentor or specialised person to support him/her during the aftercare process.
- 6) The alternative care placement should support the child to acquire appropriate skills in preparation for independent living.
- 7) Prior to the child's exit from alternative care, plans should be made to provide the child or young person with a network of services that will assist during the transition period and which will last from one to six years. These services include:
 - (a) Referral services
 - (b) Financial services
 - (c) Counselling and support services
 - (d) Extended care benefits
 - (e) Educational scholarships
 - (f) Job preparation and vocational training programmes
 - (g) Health services
 - (h) Drug and alcohol treatment programmes
 - (i) Finance management training
 - (j) Housing services
 - (k) Legal services
 - (l) Recreational and community opportunities.





CHAPTER 16: CARE OF CHILDREN IN EMERGENCY SITUATIONS

1. Objective

The objective of this chapter is to provide guidelines for government agencies, and local and international organisations working in the field of child protection on how to provide family-based care for children in the event of natural or human-made emergency situations.

2. Guiding Principles during an Emergency Situation

During an emergency situation, government and non-governmental partners should ensure that the following key principles are upheld:

- 1) All decisions should be based on the best interests of the child and his/her ascertainable wishes should be taken into account in the decision-making process.
- 2) Primary responsibility of the care and protection of children lies with their families and communities. Thus, all efforts should promote and preserve family unity and ensure that families are kept together during an emergency.
- 3) Family tracing and reunification/reintegration is the first priority for children who become separated from their families during an emergency.
- 4) Throughout the response efforts, government and partners should work in an integrated manner and strengthen available community mechanisms and resources.
- 5) Care should be taken to ensure that the basic rights of children, as outlined in the UNCRC, the Constitution and Children Act 2001, are upheld. These include the right to: physical and legal protection; not to be separated from his/her parents; provisions for basic services; care and assistance appropriate to the child's age and development needs; and participation and decision-making.
- 6) Development of temporary care should be prioritised, and where long-term care is necessary, family and community-based care should be prioritised.
- 7) Institutional care should only be used as a last resort and for the shortest time possible, until a family-based care option can be found for the child.
- 8) Establishment of new CCIs, which provide care for large groups of children on a long-term and permanent basis, should be prohibited during an emergency.
- 9) Cross-border movement and displacement of children such as overseas adoption, evacuation and placement in CCIs far from the usual place of residence of the child and family should be prevented.
- 10) Efforts should be made to ensure that each child's care placement is registered, monitored and reviewed by the respective authorities.
- 11) Continuous documentation is key throughout an emergency.

3. International and National Legal Framework

International

Policies in regard to the care and protection of separated children should also be guided and in line with the provisions of the following international instruments:

- UNCRC and its two Optional Protocols (2000)
- Four Geneva Conventions (1949) and their two Additional Protocols (1977)
- Convention relating to the Status of Refugees (1951) and its Protocols (1967)
- Hague Convention on Protection of Children and Co-Operation in Respect of Inter-Country Adoption (1993)
- UN Guidelines for the Alternative Care of Children (UN, 2010)
- Interagency Guidelines on Unaccompanied and Separated Children (ICRC, 2004).

National

The provision of care and protection for children in emergency situations is guided by a national legal framework, which includes, but is not limited to: Children Act, 2001, Refugee Act 2006, IDP Policy 2012 and Counter Trafficking in Persons Act, 2010.

The Children Act, 2001 Part X Sec. 119 (1 (p)) includes in its definition of children in need of care and protection a child: “who is displaced as a consequence of war, civil disturbances or natural disasters”. This category of children, according to the Children Act, 2001, Part X Sec.119 (2) : “shall be placed in separate facilities from child offenders’ facilities” and that any child in need of care and protection may take refuge in a place of safety. The Act in Part X Sec.120 (3) states that “any authorised officer may take to a place of safety any child who is about to be brought before a court as being in need of care and protection, and a child so taken to a place of safety, or who has taken refuge in a place of safety, may be accommodated there until he can be brought before a court”. The Children Act, 2001, Part IV Sec. 32 (2) h), empowers and requires the NCCS to “ensure the enhancement of the best interests of children among displaced or unaccompanied children held in care, whether in refugee, IDP camps or in any other institution”.

The Counter Trafficking in Persons Act, 2010 protects children from the danger of being trafficked by pretence of adoption, foster care or guardianship. These may be more prevalent in emergency situations.

For refugee children, the Refugee Act, 2006 provides guidance. Under Section 23 of the Act, the responsibility for the care and protection of refugee children lies with the Commissioner for Refugee Affairs. The Commissioner is required to:

- Ensure that specific measures are taken to ensure the safety of refugee women and children in designated areas.
- Ensure that a child who is in need of refugee status or who is considered a refugee shall, whether unaccompanied or accompanied by his/her parents or by any other person, receives appropriate protection and assistance.
- As far as possible, assist such a child to trace the parents or other members of his/her family in order to obtain information necessary for the reunification of the child with the family.
- Where the parents of the child or other members of the child’s family cannot be found, provide the

child with the same protection as any other child permanently or temporarily deprived of his/her family.

IDP policy enables a more responsive and effective resettlement and other interventions for internally displaced persons, with a special focus on children.

There is a draft National Policy for Disaster Management, 2009, which seeks to provide for appropriate consideration and resolutions of pertinent cross-cutting issues, such as special considerations for women and children, among others.²⁸

4. Roles and Responsibilities of Government Agencies and Partners

The DCS shall work in close collaboration with the ministry in charge of emergency affairs and the relevant government ministries, agencies and bodies to ensure the care and protection of children during an emergency.

The DCS shall ensure that all programmes, policies and efforts of international and national organisations concerning the care and protection of children affected by the emergency, especially those who are separated from and unaccompanied by their families, are coordinated and that there are appropriate dialogue and coordination mechanisms in place. Accordingly, each organisation should have specific roles and responsibilities in line with its particular expertise, resources and skills, and have sufficient capacity to appropriately carry out its responsibilities and activities.

5. Preventing Family Separation

During natural disasters, armed conflict, political violence or any other cause which leads to mass population displacements, children are at risk of being separated from their families or caregivers and communities. Extra precautions need to be in place in order to minimise this separation, which can be *voluntary, involuntary or secondary separation*.

Involuntary (accidental) separation is when a child is separated from his/her family or caregivers during the confusion of an emergency or crisis. For example, the parents may die or become injured, family members may be arrested or captured, or families may have to flee from their homes without warning leading to children unexpectedly being left behind.

Voluntary (deliberate) separation is when families willingly leave a child behind, and/or place him/her with other family members, neighbours or in institutional care.

Secondary separation is when children are separated not during the immediate crisis and emergency but during the aftermath when the reality of the crisis and hardship sets in.

All children are at risk of separation. Children with disabilities are particularly vulnerable. Separation is distressing for all children and has a long-term negative impact, in particular on children under the age of five.

The DCS and partners shall take appropriate measures to prevent unnecessary family separation. During times of crisis when child welfare systems and coping mechanisms have broken down, the family unit acts as the most important protective unit and all efforts should be put in place to preserve the family unity.

The following actions are recommended:

- 1) Strengthen community mechanisms and structures, for example OVC committees, the AAC, women's associations, faith-based organisations and religious institutions, schools, parent teacher association (PTA) and student associations to respond rapidly and prevent family separation during

²⁸ Draft National Policy for Disaster Management in Kenya, Government of Kenya, Ministry of State for Special Programmes Office of the President, 2009, p. 20.

the onset of an emergency. These groups can be trained to work with communities to prepare them in case of an emergency by designating safe places where family members can meet during an emergency.

- 2) Sensitise communities about the causes of separation and ways to minimise the risk of separation, including parents giving children their contact information in case they become lost. Such information should include the parents' telephone number(s), the names of the nearest land marks (e.g., primary and secondary schools, places of worship) and the locality name, such as sub-county and sub-location and location names.
- 3) Raise awareness and strengthen systems to ensure that all children are registered at birth and have legal documentation.
- 4) Since children with special needs are often left behind during an emergency, separate activities should be in place to mitigate the risks of these children being separated (voluntary and involuntary).
- 5) The DCS and partners shall ensure that their actions do not accidentally promote family separation. For instance, providing services to children alone rather than to the family and wider community may lead to separation.
- 6) Health, food aid, education, sanitation and other services should be reviewed to ensure that the procedures and services provided by different sectors do not cause family separation. Service provision should be child-friendly and centred around the child's and family's needs.
- 7) During mass evacuation and population displacement, efforts should be in place to minimise separation by ensuring that families travel together and that children are accompanied by an adult at all times.
- 8) Management of IDP and refugee services shall ensure that their evacuation and reception procedures do not lead to unintentional separation by: displaying prevention of separation messages at the point of arrival; using megaphones to remind families to stay and move together; identifying visible locations for parents and children to report separation cases; deploying child protection officers throughout the camp; and making sure that camp facilities do not lead to involuntary separation.
- 9) During emergencies, the DCS and NCCS shall curtail the opening of new CCIs. If need be, placement in existing CCIs or temporary shelters shall be as a last resort and for the shortest time possible. Where the situation has ceased to be an emergency, placement in a CCI will not be for more than six months.
- 10) Continuously raise awareness among community members of the possible separation of children from family during emergencies, the dangers of institutional care, and existing alternative care options and services, such as emergency foster care and temporary shelters.
- 11) Put in place preparedness plans by identifying potential emergency foster families in case of an emergency, to minimise the use of institutional care and facilitate family reintegration.
- 12) Prevent secondary separation by warning parents to keep their children with them at all times and providing material assistance and services as quickly as possible to communities in need.

6. Tracing and Family Reunification during Emergencies

j) Non-spontaneous Reunification

In all emergency situations, countless children are separated from their families either voluntarily or involuntarily. For example, in Kenya, during the 2007/8 post-election violence and crisis, about 8,000 children were identified and registered as separated from their parents. About 7,000 of these were reunified with their parents or relatives through a partnership programme between the DCS, the Child Welfare Society of Kenya and the Kenya Red Cross. The DCS and partners should work together to ensure that families are traced and that children are safely reunified with their families. While tracing efforts are under way, these children should be provided with temporary care and protection. During an emergency situation it is vital that tracing and reintegration is initiated as quickly and as efficiently as possible.

Tracing and reintegration steps are outlined in detail in Chapter 5. All these steps apply in an emergency context. (Refer to Chapter 5 for detailed guidance.)

Key tracing and reunification steps include the following:²⁹

Step 1 - Assessment: At the onset of an emergency, an assessment should be conducted to establish the extent of family separation and the situation of children and families in the affected area.

Step 2 - Identification: Process of establishing which children have been separated from their families/ caregivers and where they might be located.

Step 3 - Registration: Recording of key information on the child, such as: full name; date and place of birth; father, mother and siblings' names; and former address and present location. Clearly state the relationship between the child and the person accompanying him/her or the caregiver. This information is collected for the purpose of establishing the identity of the child, for protection and to facilitate tracing.

Step 4 - Documentation: Process of recording further information in order to meet the specific needs of the child and to make plans for his or her future. This is a continuation of the registration process and not a separate undertaking.

Step 5 - Family tracing: Process of trying to find the parents or family members of the child based on the documented information. In an emergency situation, it is vital to initiate the family-tracing process as quickly as possible.

Step 6 - Verification: Process of verifying the relationship between the child and family members, and validating the child's willingness for eventual reunification.

Step 7 - Reunification/reintegration: Reuniting the child with his/her family via family mediation and provision of a reintegration kit and other services, depending on the situation of the child and family.

Step 8 - Monitoring and Follow-Up: Actions and support services following reunification to ensure that the child successfully reintegrates with his/her family.

All of the above activities should be conducted under the supervision of the DCS and/or mandated agencies, and within a coordinated system, using standardised forms and procedures. All information gathered during this process should be preserved in a confidential, secure manner and should only be shared with mandated agencies for the purposes of tracing and family reintegration. The child and his/her family interests and rights should be protected and safeguarded throughout the process. Throughout the process, no actions should be undertaken that might hinder eventual family reintegration, such as adoption, change of name of the child, or movement of the child to a place far from the family's location.

²⁹ These steps are based on the ICRC's *Inter-agency Guiding Principles on Unaccompanied and Separated Children*.

During the tracing and reintegration process, which can take from a few days to a few months or even years, and if the child is not in the care of an adult, the child can first be placed with extended family members or a foster family. If these are not available, the child can be placed in a temporary shelter, either within a camp or community, for the shortest time within six months.

ii) Spontaneous or Emergency Reunification

Spontaneous or emergency reunification occurs when family members come to a documentation centre or the place where the child has been found and there is no need for tracing. During this type of reunification, authorities/aid workers should observe the reactions of the child to the adult and be aware of resistance or hesitation from the child. For younger children, the authorities/aid workers should ask the family member to state any particular features (e.g., birthmark or scar) to identify the child. The family member should provide identification documents (e.g., national ID card, birth certificates, etc.) It is crucial to document the name and contact information of the family member. If the reunification is conducted with an extended family member, a follow-up visit should be scheduled.

7. Interim Care Arrangements

In emergencies, children should be placed in an interim care arrangement, preferably a family-type setting within his/her community, until he/she is reunified with the family and, if that is not possible, until a more permanent alternative care solution is found. The provision of interim care should be based on the principles of the best interests of the child, with a focus on temporary care until the child can be reunified with his/her family. Communities should be supported to play a key role in monitoring and responding to the care and protection of separated and vulnerable children during an emergency.

Communities have their own traditional methods of caring for separated children and these practices, if deemed in the best interests of the child, should not be disrupted but encouraged and monitored. Unless considered necessary due to health or safety reasons, children should be kept in the same location as their family to facilitate family tracing and reunification efforts. Only when family reintegration is determined to be impossible, or not appropriate for the child, should more permanent solutions be explored.

The following interim care arrangements are recommended during an emergency while tracing is being carried out to find the child's immediate family:³⁰

- *Kinship Care*: Communities have traditionally turned to kinship care as a way of caring for separated or vulnerable children during times of crisis. This should be encouraged and supported with additional support services and monitoring. Placement in the extended family is less disruptive and less traumatic for the child since it allows the child to stay in a familiar setting and close to family.
- *Foster Care during emergencies*: Experience in Kenya has shown that the majority of separated children are spontaneously taken in by neighbours or extended family without prior discussion or third party intervention. It is important to record the details of these families and children within two weeks and provide assistance and monitoring, as needed.
- *Foster Care*: As part of emergency preparedness, the DCS and partners are encouraged to prepare a network of potential foster care parents to take in children on a temporary basis during times of emergency. Communities should be prepared and sensitised on fostering for all categories of children. These formal arrangements should be monitored and linked to tracing and reunification efforts.
- *Child-Headed Households*: If in the best interests of the children, assistance and protection should be provided to support these households.

³⁰ These steps are based on the Interagency Guiding Principles on Unaccompanied and Separated Children.

- *Guardianship*: In Kenya, particularly in refugee camps, guardianship orders are used. (Refer to Models of Promising Practice at the end of this chapter for additional guidance.)
- **** Note of Caution:** Guardianship should not be misused and should be provided for families when tracing and reintegration efforts have been exhausted and there is no possibility of reunification with the child's biological parents or extended family.
- *Supported Independent Living*: For some groups of older children, independent living arrangements may be needed.
- *Institutional Care*: Institutional care during the early stages of an emergency is not recommended and should only be used as a measure of last resort. However, there are certain situations in which it is the best possible interim care solution for the child. If this is the case, children should be placed in CCIs that are family-like, within the same community as the child's family, and for the shortest period of time possible.

All care arrangements should be closely monitored and specific support services (health care, nutrition, education, psychosocial) should be given to caregivers in order to minimise the risk of abuse and exploitation of separated and unaccompanied children.

Adoption (domestic and intercountry) should not be considered during an emergency. Adoption can only be explored after tracing and reunification efforts have been exhausted and a lengthy period of time has elapsed. It is recommended that the principle of a two-year period lapse before any adoption is considered be enforced.

8. Care and Protection of Children in Refugee Situations

Overview

Some children in refugee situations may be separated or unaccompanied and therefore in need of care and protection. The following specific issues need to be carefully considered when dealing with children who are refugees:

- Children in a refugee situation should be given the same level of protection as all other children in Kenya.
- Article 189 of the UN's Principles of the Refugee Convention (1951), to which Kenya is a signatory, should be upheld. This is in addition to provisions of Article 22 of the UNCRC which requires special protection for refugee children or a child seeking refuge.
- Refugee communities and stakeholders shall be sensitised on the importance and procedures of alternative family-based care arrangements.

Foster Care for Children in Refugee Situations

The following are recommended steps in administering emergency foster care and guardianship placements for refugee children living in refugee camps and within the community.

Step 1: Identification and registration

- The Department for Refugee Affairs (DRA) is mandated to identify and register all refugees coming into the country during which time they also identify unaccompanied and separated minors.
- After registration with the DRA, all refugees are placed in a temporary shelter or with foster care families by respective agencies. If the child is under a security threat, he/she is taken to a safe house (Refer to Glossary of Key Terms.)

- A social assessment is conducted to determine the child's needs.

Step 2: Recruitment of foster parents

- The refugee community is sensitised on the need to provide foster care for separated and unaccompanied children and requested to volunteer for the same.
- Those who volunteer are screened/vetted for suitability.
- Those who qualify are trained on the care and protection of separated and unaccompanied minors.

Step 3: Placement of children with foster parents

- A best interests assessment (BIA) is conducted on the child.
- Matching of the child with a potential foster parent based on the child's need is carried out.
- The child is placed with a suitable foster parent within the shortest time possible.

Step 4: Support to foster families

- Immediately after the placement of the child, the DCS, UNHCR and relevant implementing agencies support the family depending on the needs identified during the assessment.

Step 5: Registration of the emergency foster care

Depending on the situation of the refugees, foster care can be formal or informal. Whatever the case, all fostered children must be registered and monitored.

If the foster care is informal

- The UNHCR should work together with the DCS and implementing agencies to keep a foster care register of children in informal foster care.

If the foster care is formal

- The relevant agencies apply for formalisation of the process through the DCS (Refer to the Schedule 4 under the Children Act, 2001 and Chapter 9 of these guidelines for steps in formal foster care.)

Guardianship for children in refugee situations

After a period of not less than two years, a foster parent may apply for guardianship of the child to the Children's Court through the DCS or UNHCR. The two-year period is given to allow for time to exhaust tracing of the child's parent.

The value of guardianship to a refugee child includes i) getting a chance to benefit from the resettlement of their foster parent and ii) being in a more permanent family arrangement.

Steps for guardianship

Step 1: The DCS and/or UNHCR requests the implementing agency working with the child to conduct a best interests determination (BID) and a report is presented to the BID panel.

Step 2: After review, and if determined to be in the best interests of the child, the BID panel recommends to the children's court for guardianship orders to be issued to the foster parent.

Step 3: The DCS submits the application in court on behalf of the foster parent.

Step 4: If the court finds the foster parent fit for guardianship of the child, a guardianship order is granted.

A foster parent may also apply for guardianship orders through the DCS directly.

The DCS conducts a social inquiry/assessment and prepares a report. Then step 3 and 4 are followed.

Monitoring and follow-up for refugee children in foster care and guardianship

- As stated above, a record of all children in formal and informal foster care and guardianship should be maintained by the UNHCR/implementing agency and DCS.
- The register is used to i) keep track of refugee children who are separated and establish trends and monitor progress in tracing and reintegration efforts ii) monitor all children in foster families and guardianship continuously and iii) act as a basis for reaching decisions regarding separated children.
- The monitoring should be on a case-by-case basis.

Supported Child-Headed Households and Independent Living

Most children in refugee situations, in particular those affected by armed conflict, migration and other trauma, are unable to live in a family environment. Other alternative arrangements therefore need to be explored. Before any alternative care arrangements are explored, a BID assessment should be conducted. If it is deemed in the best interest of the child, he/she should be placed in supported child-headed households or independent living arrangement. (Refer to Chapters 12 and 13 for more information.)

9. Models of Promising Practice

Foster Care in Dadaab Refugee Camps

Save the Children is supporting 400 foster care placements for Somali refugee children in Dadaab refugee camp, which houses 500,000 Somali refugees. While most foster care is informal/spontaneous, Save the Children, in partnership with the Dadaab SCO, formally arranges approximately 30% using a number of pre-vetted stand-by foster parents. Community leaders help vet and identify foster parents.

Save the Children uses the Children Act Schedule 4 documentation to register the foster families and the UNHCR BID procedures to assess and make sure that a placement is in the best interests of the child. The BID panel includes Save the Children, UNHCR, UNICEF and the SCCO, with the SCCO providing legally mandated support and Save the Children providing technical support, especially in case management.

Save the Children provides the following services to foster parents: non-food basic items to all foster families; income-generating grants to selected foster families; foster parent trainings; formula feeding for infants; fresh food vouchers; and supports the establishment of foster parent support groups. Infants are monitored three times per month and older children once per month, using the foster parent support groups as a monitoring mechanism.

Foster Care and Guardianship in Kakuma Refugee Camp

Another positive example of emergency foster care for separated and unaccompanied children is by the DCS, UNCHR and Lutheran World Federation (LWF) in the Kakuma Refugee Camp in Turkana county, which houses over 110,000 Sudanese, Somali, Ethiopian, Burundian, Congolese, Eritrean and Ugandan refugees.

There are no CCIs or adoption societies in the refugee camps. Separated and unaccompanied children are first registered with the Department of Refugee Affairs and placed in a reception centre (a UNHCR temporary shelter) for a period of 15 days, during which time a best interests assessment is conducted and a foster family identified. The foster family is provided with non-food basic services. In order to provide a durable solution for the fostered child and/or facilitate resettlement, LWF, in collaboration with the DCS conducts a BID assessment of the foster family and refers the case to the BID panel. If the panel recommends that the foster family should care for the foster child on a more permanent basis and when the child has lived with the foster family for a minimum of two years, the case is taken to court and the foster parents are granted a guardianship order if the court finds them fit.

Lessons Learned: CCIs During An Emergency Situation

Following the post-election violence in the Rift Valley in 2008, a number of new CCIs opened up housing thousands of children. The immediate response to help children with the challenges they were facing during the crisis was to separate them from their families and communities and place them in a CCI. CCIs were seen as providing better security, shelter, food, clothing and education. This kind of response led to unnecessary, and often permanent, family separation and trauma for children and their families.

From the post-election violence experience, the DCS and partners learned that more mechanisms needed to be in place to prevent the institutionalisation of children and unnecessary family separation during emergencies. As a result, the DCS, in partnership with UNICEF, the Child Welfare Society of Kenya and other partners, began working to trace and reintegrate thousands of children and strengthen community resources to care for these children in a family-based setting. This partnership programme covered nine most-affected sub-counties in Kenya. The programme identified 5,928 separated children who had been left alone in child-headed households and 1,082 separated children who had been placed in CCIs. Of the 5,928 children in CHHs, 4,951 were reunified with their families. Of the 1,082 children in CCIs, 818 were reunified with their families. This experience shows that separated children, even during a national emergency, can be properly traced and reintegrated with their own families and that, if that is not possible, living relatives or community members are often willing and able to care for them. CCIs should therefore never be used as a first resort but as a last resort during a national emergency.



SECTION IV

THE WAY FORWARD



CHAPTER 17: IMPLEMENTATION OF THE GUIDELINES

The DCS is the lead government agency responsible for the wide dissemination and implementation of these Guidelines. The DCS shall work closely with government MDAs, civil society partners, community leaders, alternative care providers and the private sector to ensure that the Guidelines are successfully disseminated and implemented.

Alternative care is a complex area, which requires strong coordination, collaboration and cooperation across sectors, government and civil society. It is interlinked with social protection, health and education, and requires partnership across all sectors.

The implementation of the Guidelines and effective alternative care service provision rests on the overarching drive to strengthen the child protection system in Kenya, specifically: increasing human and financial resources and institutional capacity; reinforcing the Kenyan legal and regulatory framework; and building the national preventive and referral mechanisms.

The following approaches are recommended to facilitate the timely implementation of the Guidelines:

1. Strengthening the legal framework for alternative care

During the development of the Guidelines, and based on experience of alternative care providers, gaps were identified in the Children Act, 2001 and a list of recommendations for inclusion in the amendment of the Children (Amendment) Bill were developed. The DCS, in collaboration with stakeholders, shall ensure that these recommendations are incorporated in the Children Act, 2001.

The DCS, in collaboration with partners, shall identify and develop additional regulations and standards as well as amendments to other existing laws that are required to effectively implement these Guidelines and strengthen alternative service provision in Kenya.

2. Resourcing the Guidelines

- a) The DCS, in collaboration with other relevant government MDA and stakeholders, shall cost the implementation of these Guidelines.
- b) The DCS and its partners shall advocate to Treasury to increase budgetary allocation to support the provision of alternative care and protective services for children. It is recommended that specific financial resources are allocated for i) family tracing and reintegration activities; ii) family support and prevention services; iii) support to families with children with special needs; and iv) family-based care service provision, in particular for foster care and local adoption.
- c) The ministry in charge of children affairs and DCS shall work with donors, the private sector and civil society to garner additional financial and technical support.
- d) The DCS shall explore and link these Guidelines with other government and non-governmental initiatives in order to share financial and technical resources.
- e) The DCS shall monitor the finances directed towards alternative care to ensure that both public and private alternative care providers use resources appropriately.

3. Dissemination and Awareness-Raising

- a) The DCS shall work with the Alternative Care Technical Working Group to develop a training package and carry out a structured, time-bound and targeted dissemination plan that includes all

key partners and covers all counties and sub-counties.

- b) The DCS, in collaboration with stakeholders, shall disseminate copies of the Guidelines to all responsible parties and institutions.
- c) The DCS and partners shall organise a nationwide awareness-raising campaign to sensitise the key duty-bearers and community members on the Guidelines and the importance of family-based care. It is recommended that this campaign be carried out in partnership with media, high profile public figures and community leaders. The DCS, in collaboration with partners, shall develop posters highlighting key messages from the Guidelines and place them in government offices, adoption society offices, CCIs, hospitals, police stations, schools, refugee/IDP camps and other community gathering focal points.
- d) Awareness-raising campaigns will address public misperceptions, misunderstandings and lack of knowledge on tracing and reintegration, foster care, adoption, guardianship, *kafaalah* and CCIs. In particular, the campaigns should increase the public's understanding and knowledge of the difference between guardianship, foster care, adoption and *kafaalah*, and also the impact of institutionalisation on children.
- e) The DCS and partners shall raise awareness among children and their families so that they are aware of their rights and are able to participate in the Guidelines' implementation process.

4. Capacity-Building

- a) The DCS, in collaboration with partners, shall endeavor to undertake a full-scale capacity-building initiative to train all child care practitioners and duty-bearers in the principles of the Guidelines.

Duty-bearers that need to be trained include: DCS staff; social workers; judicial officers, advocates, police and probation officers; CCI managers and staff; adoption society staff; OVC committee members; Chiefs; religious leaders; schools; and community health workers, among others.

Key capacity-building partners include: the AAC; international and national civil society organisations; research institutions; and universities.

Training topics should include: child development; children's rights; tracing and reintegration; and provision of family-based care, among others.

- b) The ministry in charge of children affair and DCS lobby for prioritization of the expansion of its workforce at national and county levels, in particular staff with child welfare and social protection expertise. Strategies for expansion include the following:
 - Increasing the number of children's officers in each sub-county
 - Expanding and empowering VCOs in their roles and responsibilities
 - Creating a cadre of specialised DCS field staff, in the areas of family support, foster care, guardianship, adoption, support to child-headed households, and in the monitoring of CCIs. Staff in each county would be responsible for raising awareness and managing these alternative care areas.
 - Engaging qualified care leavers who grew up in a CCI or other alternative care placement.
 - Employing social workers and child care workers with alternative care expertise.
- c) In order to fill the workforce gaps, the DCS will strive to partner with civil society organisations, community-based structures, universities and other partners. Strategies include:
 - Working with universities and colleges to align their curriculum to service delivery.

- Partnering with NGOs, CBOs, FBOs, Chiefs, OVC committees, religious leaders, CHWs and other community structures so that they have wider reach in the communities to effectively implement and monitor family reintegration and family-based care.
- d) The DCS shall initiate and support the establishment of an Alternative Care Committee in each county and sub-county to effectively implement these Guidelines and ensure that all children are appropriately protected and cared for. Experience has shown that when strong networks are in place at the sub-county level, more children are reintegrated with their families or potentially placed in family-based care. It is recommended that representatives from government MDAs and non-governmental partners working for children be included since alternative care is inter-sectoral and cross-cutting.
 - e) In order to build the DCS' and partners' understanding of needs, issues and challenges surrounding alternative care, the Government of Kenya and partners should continue to collect national child protection data and conduct studies on the causes of family separation and placement in alternative care.

5. Planning and Monitoring

- a) The DCS, in collaboration with partners, shall develop an implementation work plan, aligned with different government bodies' plans and policy and legislative frameworks. This should include the ministries responsible for health, education and planning.
- b) The implementation of the Guidelines should be assessed and monitored by the DCS on a quarterly basis to ensure that they are being implemented effectively, to note any challenges and issues, and to make appropriate amendments to the Guidelines, implementation strategy and work plan.
- c) These Guidelines are subject to review and revision as needed.

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SECTION V

ANNEXES

ANNEX A: GLOSSARY OF KEY ALTERNATIVE CARE TERMS

Abandoned child	A child who is not under the care and protection in a safe place and left alone, unattended or intentionally cast-away by his/her parents or guardian.
Adoption	The legal transfer of parental rights and responsibilities for a child which is permanent (Source: <i>BCN Toolkit</i>).
Aftercare support	A process whereby a variety of services are offered to children after they leave alternative care and move on to independent living or get reunified with their families.
Agency (agencies)	A public or private body that offers services that organise alternative care for children (Source: <i>National Standards for Best Practice in CCI; UN Guidelines for the Alternative Care of Children</i>).
Alternative care	A formal or informal arrangement whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his/her parent(s) or primary caregivers, or spontaneously by a care provider in the absence of parents (Source: <i>UN Guidelines for the Alternative Care of Children</i>).
Alternative Care Committee	The Alternative Care Committee (ACC) at sub-county level is a sub-committee of the Area Advisory Committee (AAC) and therefore reports to the AAC. Its overall objective is to coordinate and strengthen family and alternative care services within the sub-county. Members include specialised professionals providing family strengthening and alternative care services in the sub-county. The AAC may co-opt people who are not members of ACC to provide expertise.
Assessment	The process of building an understanding of the problems, needs and rights of a child and his/her family in the wider context of the community. It should cover the physical, intellectual, emotional and social needs and development of the child. There are various types of assessment, e.g. rapid, initial, risk, comprehensive. etc. (Source: <i>BCN Toolkit and National Standards for Best Practice in CCI</i>)
Best interests assessment	An assessment of what would be in the child's best interests
Best interests determination (BID)	A formal process with specific procedural safeguards and documentation requirements conducted for certain children of concern to UNHCR, whereby a decision-maker is required to weigh and balance all the relevant factors of a particular case, giving appropriate weight to the rights and obligations recognized in the UNCRC and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of children. (Source: <i>BCN Toolkit</i>)
Biological parents	The birth family into which a child is born. It can mean both parents if they are together, or the mother, or the father. (Source: <i>BCN Toolkit</i>)

Caregiver/carer	A parent or guardian who is charged with the responsibility for a child's welfare (Source: <i>National Plan of Action for OVC</i>)
Care leaver	A young person, typically over 18 years of age, who is leaving or has left a formal alternative care placement. He or she may be entitled to assistance with education, finances, psychosocial support and accommodation in preparation for independent living. (Source: <i>BCN Toolkit, National Standards for Best Practice in CCI</i>)
Case committee	A committee of multidisciplinary professionals set up to ensure that decisions made in regard to a child are in his/her best interests. The committee discusses risk factors, the care and protection needs of the child, and required supervision and support interventions. The committee works with the child, family, alternative caregivers and other involved professionals.
Case management	The process of ensuring that an identified child has his or her needs for care, protection and support met. This is usually the responsibility of an allocated social worker who meets with the child, the family, any other caregivers and professionals involved with the child in order to assess, plan, deliver or refer the child and/or family for services, and monitor and review progress. (Source: <i>BCN Toolkit</i>)
Cash transfers	A government or NGO programme whereby low-income families are provided with cash to support the care of vulnerable children. Such transfers can be either conditional or unconditional, depending on whether recipients are required to engage in specific behaviours in order to receive cash. (Source: <i>BCN Toolkit</i>)
Charitable children's institution	A home or institution established by a person, corporate or non-corporate, religious organisation or NGO, which has been granted approval by the NCCS to manage a programme for the care, protection, rehabilitation or control of children (Source: <i>Children Act, 2001</i>)
Child	Any human being under the age of 18 years (Source: <i>Children Act, 2001</i>)
Child abuse	<p>Child abuse consists of anything individuals, institutions or processes do or fail to do which directly harms children or damages their prospects of safe and healthy development into adulthood. (Source: National Commission, UK 1996) The Children Act, 2001 defines child abuse as anything that causes physical, sexual, psychological or mental injury to a child.</p> <p>There are four types of child abuse: physical abuse, neglect, sexual abuse, and emotional maltreatment. All four are more typically found in combination than alone. (Source: <i>Prevent child abuse in America www.preventchildabuse.org</i>)</p>
Child-headed household	A household in which a child or children (typically an older sibling), assumes the primary responsibility for the day-to-day running of the household, providing and caring for those within the household. The children in the household may or may not be related.

Child living and working on the streets	Children who spend most of their time on the streets. They may be engaged in some kind of economic activity such as begging or vending. They may go home at the end of the day and contribute their earnings to their family or they may live on the street, with or without other family members. The term 'children living and working on the street' is preferred to 'street children' (Source: <i>BCN Toolkit</i>)
Child Protection Centre (CPC)	A 'one-stop shop' which has two mandates: to respond to violence, exploitation, abuse and neglect; and to raise awareness about children's rights in order to establish a protective environment throughout the community. These 'one-stop shops' offer counselling and referral for various services, including medical care and legal support. (UNICEF KCO: <i>Malindi CPC case-study document</i>)
Child protection system	A comprehensive system of laws, policies, procedures and practices designed to ensure the protection of children and to facilitate an effective response to allegations of child abuse, neglect, exploitation and violence. (Source: <i>UNICEF</i>)
Child sexual exploitation and abuse	This can take the form of harassment, touching, incest, rape or exploitation in prostitution or pornography. It can happen in the home, school, care and justice institutions, the workplace, in travel and tourism facilities, and within communities at large, in both the development and emergency context. (Source: <i>UNICEF Website</i>)
Children without parental care	All children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances (Source: <i>UN Guidelines for the Alternative Care of Children</i>)
Community-based care	A range of approaches designed to enable children to remain with their own (or extended) family and prevent the need for separation, or to be placed with an alternative family within his or her community (Source: <i>David Tolfree</i>)
Day care	Care of a child during the day by a person other than the child's parent(s) or legal guardian. It is an ongoing service during specific periods of time, such as the time when parents are at work. It can be provided in nurseries, crèches or childcare provider caring for a child(ren) in their own home.
Domestic (national) adoption	Adoption by adopters who are Kenyan and where the child they are adopting is resident in Kenya. Applications for domestic adoption are initiated through a registered local adoption society.
Double orphan	A child who has lost both biological/birth parents.
Duty-bearer	Any person or institution, including the State, with responsibility for the welfare of a child.
Emergency	A large-scale crisis that threatens the lives, property and well-being of large numbers of a population. Extraordinary action is required

to ensure the survival, care and protection of those affected. An emergency situation can be a result of: natural disaster (e.g., floods, droughts, fires, earthquakes), political or ethnic conflict, armed conflict or violence, and mass population displacement and evacuations

Emergency placement	A situation where a child who is separated from his/her parents or other legal caregivers is placed in alternative care without going through the legal processes required in normal circumstances. The placement can either be with a family or a children's institution.
Exit strategy	A strategy put in place when a child enters alternative care to ensure that he/she is either reintegrated with his/her family or placed in permanent alternative care.
Facilities	Individual, public or private establishments that provide residential care for children. (Source: <i>UN Guidelines for the Alternative Care of Children</i>)
Family-based care	Short-term or long-term placement of a child in a family environment with one consistent caregiver and a nurturing environment where the child is part of a supportive family and the community
Family mediation	Resolution by a third party of a dispute within a family so as to resolve a problem affecting the child in the family (Source: <i>National Standards for Best Practice in CCI</i>)
Family support services	A range of measures to ensure the support of children and families – similar to community-based support but may be provided by external agents such as social workers and provide services such as counselling, parent education, day-care facilities, material support, etc. (Source: <i>BCN Toolkit</i>)
Family reintegration	The process by which a child is reunited and is able to reintegrate with his/her biological parents or extended family. During this process, activities are undertaken to equip the child and the family with the necessary skills and resources for proper reintegration and readjustment.
Family tracing	Activities undertaken by authorities, community members, relatives or other agencies for the purpose of gathering information and locating the parents or extended family of the separated or lost child
Foreign resident adoption	Adoption by adopters who are not Kenyan nationals, but have lived in Kenya for over three years and adopt a child who is Kenyan
Formal care	All care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures (Source: <i>UN Guidelines for the Alternative Care of Children</i>)
Foster care	Placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child (Source: <i>Children Act, 2001</i>)
Foster parent	A parent registered under the Children Act to receive and retain a child

	for the purpose of caring for and maintaining the child apart from the child's parents, guardian or relative (Source: <i>Children Act, 2001</i>)
Gatekeeping	The prevention of inappropriate placement of a child in formal care. Placement should be preceded by some form of assessment of the child's physical, emotional, intellectual and social needs, matched to whether the placement can meet these needs based on its functions and objectives. (Source: <i>BCN Toolkit</i>)
Guardian	A person appointed by the will or deed of a parent or by an order of the court to assume parental responsibility for a child upon the death of the child's parent either alone or in conjunction with the surviving parent or the father of a child born out of wedlock who has acquired parental responsibility of the child in accordance with the provisions of the Children Act (Source: <i>Children Act, 2001</i>)
Guardianship	A term used in three different ways: <ul style="list-style-type: none"> (1) A legal device for conferring parental rights and responsibilities to adults who are not parents (2) An informal relationship whereby one or more adults assume responsibility for the care of a child (3) A temporary arrangement whereby a child who is the subject of judicial proceedings is granted a guardian to look after his/her interests. (Source: <i>BCN Toolkit</i>)
Individual child care plan	A written document that outlines how, when and who by a child's developmental needs will be met. (Source: <i>National Standards for Best Practice in CCI</i>)
Informal care	Any private arrangement provided in a family environment whereby a child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person(s) without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body. (Source: <i>UN Guidelines for the Alternative Care of Children</i>)
Inspection	The physical review of care facilities against a set of approved standards. (Source: <i>BCN Toolkit</i>)
Intercountry adoption	Adoption of a Kenyan child by adopters who are not Kenyan and who live outside Kenya. Intercountry adoptions are processed through an approved foreign adoption agency in conjunction with a Kenyan adoption society registered to make international adoption arrangements. Applications must be approved by the adoption committee before applicants can adopt a child.
Interim care	Care arranged for a child on a temporary basis (e.g. while his/her family is being traced where accidental separation has occurred). (Source: <i>BCN Toolkit</i>)
Internally displaced person	A persons who has been obliged to flee his/her home, in particular as a result of or in order to avoid the effects of armed conflict, generalised

violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

Involuntary separation

Where a child is separated from his/her family or caregivers during the confusion of an emergency or crisis. For example, the parents may die or become injured, family members may be arrested or captured, or families may have to flee their homes without warning leading to children unexpectedly being left behind and alone.

Kafaalah

According to Islamic law, the commitment by a person or family to voluntarily sponsor and care for an orphaned or abandoned child. The individual or family sponsors the child to meet his/her basic needs for health, education, protection and maintenance.

Kafiil

Refers to an individual who is providing *kafaalah* to a child as defined above. Normally, the *kafiil* is a Muslim.

Kinship care (informal)

A private arrangement within an extended family whereby a child is looked after on a temporary or long-term basis by his/her maternal or paternal extended family, without it being ordered by an administrative or judicial authority. Family members include grandparents, aunts, uncles and older siblings.

Kinship care (formal)

An arrangement, ordered by an external administrative or judicial authority, whereby a child is looked after on a temporary or long-term basis by his/her maternal or paternal extended family. Family members include: grandparents, aunts, uncles and older siblings.

Kinship or family adoption

Adoption by adopters who are kin or relatives within the extended family of the child. Applications for kinship adoption are similar to domestic adoption. A bonding period is necessary where the child has not been living with the prospective adopter.

Leaving care plan

A plan outlining appropriate aftercare services and follow-up for the child once he/she leaves an alternative care setting

Life book (or memory box)

The process through which a worker helps a child to learn about events in the past, present and future in order to make sense of his/her care placement. It involves a series of individual sessions with the child and a trusted worker, where they discuss negative and positive events in the child's life and collate factual information relating to the placement into care (Source: *BCN Toolkit*)

Multidisciplinary teams

A small group of professionals and non-professionals who oversee and recommend activities conducted on behalf of each child from the time of intake through to integration. The team is usually made up of medical (including physical and psychosocial care), legal and social welfare professionals. The team should include all those involved in the care and protection of the child. (Source: *BCN Toolkit*)

Orphan

A child who has lost one or both parents (as a result of death)

Orphan, maternal

A child who has lost his/her biological mother (as a result of death)

Orphan, paternal

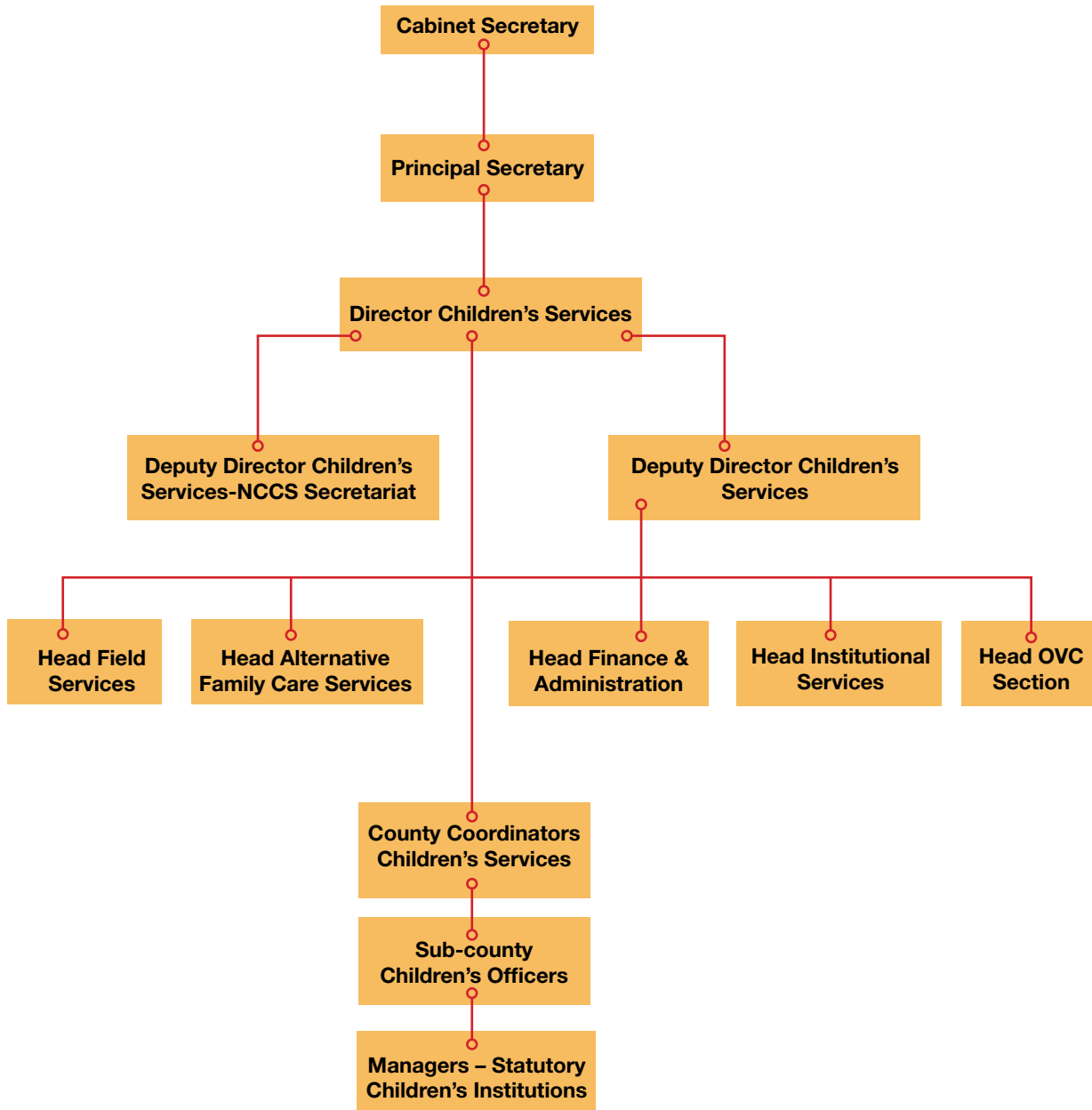
A child who has lost his/her biological father (as a result of

	death)
Out-of-home care	Child care, foster care or institutional care provided by persons, organisations or institutions to children who are placed outside of their family
Parental responsibility	All the duties, rights, powers, responsibilities and authority that by law the parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child. The responsibility of the mother and father to provide for the child is equal, whether they are married to each other or not. (Source: <i>Constitution of Kenya, 2010, Art.53 (1)(b) and Children Act, 2001 Section 23(1)</i>)
Permanency	Family connections and placement options for a child that provide a lifetime of commitment, continuity of care, a sense of belonging and a legal and social status that goes beyond the child's temporary placement (Source: <i>BCN Toolkit</i>)
Permanency planning	An array of social work and legal efforts directed toward securing safe, nurturing, life-long families for children in alternative care. (Source: <i>BCN Toolkit</i>)
Placement	A social work term for the arranged out-of-home accommodation provided for a child or young person on a short- or long-term basis. (Source: <i>BCN Toolkit</i>)
Prevention	A variety of approaches that support family life and help to diminish the need for a child to be separated from her/his immediate or extended family or other caregiver and be placed in alternative care. (Source: <i>BCN Toolkit</i>)
Refugee	Someone who is outside of his or her country of origin and has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. States in Africa and Latin America have expanded this definition to include persons fleeing their country of origin for reasons of civil disturbance, war, or massive human rights violations.
Respite care	Planned, short-term (usually foster or residential) care of a child to give the family a break from caring for the child. (Source: <i>BCN Toolkit</i>)
Safe house	Facilities designed to provide a secure, often "closed", care environment for children deemed to require more specific protection from outsiders, such as victims of trafficking or separated children who risk being drawn into exploitation or criminal activity. (Source: <i>BCN Toolkit</i>)
Secondary separation	Children separated during the aftermath of a crisis or emergency when the reality of the crisis and hardship sets in
Separated child	A child separated from a previous legal or customary primary caregiver, but who may nevertheless be accompanied by another relative. (Source: <i>UN Guidelines for the Alternative Care of Children</i>)
Service provider	An individual employed or attached to a formal institution that provides professional care or services. (Source: <i>NPA OVC</i>)

Statutory children's institution	In Kenya, these are children institutions established by the Government of Kenya for the purpose of i) rescuing children who are in need of care and protection (rescue homes), ii) for the confinement of children in conflict with the law while their cases are being handled in court (remand homes) and iii) for the rehabilitation of children who have been in conflict with the law (rehabilitation school). The court commits a child into one of these institutions as appropriate.
Succession planning	Mechanisms for parents to give instructions on economic, legal, emotional and practical matters that affect the lives of their children (Source: <i>NPA OVC</i>)
Supported independent living	Where a young person is supported in her/his own home, a group home, hostel, or other form of accommodation, to become independent. Support/social workers are available as needed and at planned intervals to offer assistance and support but not to provide supervision. Assistance may include timekeeping, budgeting, cooking, job seeking, counselling, vocational training and parenting. (Source: <i>BCN Toolkit, Glossary of Key Terms</i>)
Temporary shelter	A safe family-like environment where children in distress are placed for a short time (from a couple of hours to a maximum of six months), while arrangements for family reunification or placement in alternative care are made. Also referred to as places of safety, halfway homes or rescue centres.
Unaccompanied minor	A child not cared for by another relative or an adult who by law or custom is responsible for doing so (Source: <i>UN Guidelines for the Alternative Care of Children</i>)
Violence against children	Includes emotional and physical abuse, neglect or negligent treatment, and sexual exploitation and abuse. It occurs in homes and families, schools, care and justice systems, workplaces and communities. Perpetrators include parents, family members, teachers, caretakers, law enforcement authorities and other children. Evidence is clear that violence can affect children's physical and mental health, impair their ability to learn and socialise, and undermine their development as functional adults and good parents later in life. In the most severe cases, violence against children leads to death. (Source: <i>UNICEF Website</i>)
Voluntary separation	When a family willingly leaves a child behind and places him/her with other family members or neighbours or in institutional care
Vulnerable child	A child whose safety, well-being and development are, for various reasons, threatened, including children who are emotionally deprived or traumatised. (Source: <i>NPA OVC</i>)

ANNEX B: DEPARTMENT OF CHILDREN’S SERVICES ORGANOGRAM

ORGANISATIONAL STRUCTURE



ANNEX C: TYPES OF ALTERNATIVE CARE PLACEMENTS IN KENYA

Type of Alternative Care Placement	Definition	Length of Placement	Key Duty-bearer(s)	Prevalence
Kinship care (informal)	A private arrangement within an extended family whereby a child is looked after on a temporary or long-term basis by his/her maternal or paternal extended family, without it being ordered by an administrative or judicial authority.	Temporary and Permanent	Extended families, Chiefs, religious and community leaders	Practised widely in all communities
Kinship care (formal)	An arrangement, ordered by an external administrative or judicial authority, whereby the child is looked after on a temporary or long-term basis by his/her maternal or paternal extended family.	Temporary and Permanent	DCS, CCIs, civil society, extended families, Chiefs, religious and community leaders	Very limited (families rarely legally practise formal kinship care)
Child-headed household (informal)	A household in which a child or children (typically an older sibling), assumes the primary responsibility for the day-to-day running of the household, providing and caring for those within the household. The children in the household may or may not be related.	Temporary and Permanent	Sibling groups, Chiefs, religious and community leaders, civil society	Estimated 0.05% of households are CHHs. Prevalent increases following emergency situations
Foster care (formal)	Placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child. Conducted via CCI, SCO or Court.	Temporary and Permanent	DCS, foster family, biological parents, CCI, court, civil society	Limited
Foster care (informal)	Informal placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child. In most instances, the foster parent takes in the child and no placement process is undertaken.	Temporary and permanent	Foster family, biological parents, civil society, Chiefs and community leaders	Practised widely in all communities
Foster care (emergency)	Placement of a child with a pre-selected, vetted and qualified emergency foster parent for a few days, weeks or months.	Temporary	Foster family, foster children, Chiefs and community leaders, civil society, UNHCR, DCS	Limited to refugee camps and a few NGOs

Community-based foster care homes	Placement of group of children, whose parents are untraceable, orphaned or in need of specific support, in rented houses in the community and cared for by a house mother/caretaker recruited by the organisation supporting the foster care	Temporary	Civil society, Foster parent, DCS	Limited to a few NGOs
Temporary shelter (places of safety, halfway homes or rescue centres)	A safe family-like environment where children in distress are placed for a short time (from a couple of hours to a maximum of six months), while arrangements for family reunification or placement in alternative care are made. While the care is temporary, the child should be cared for in a stable, nurturing and safe environment.	Temporary	DCS, ,Police, Children's Courts, civil society	Limited
Charitable Children's Institution (CCI)	A home or institution established by a person, corporate or non-corporate, religious organisation or NGO which has been granted approval by the NCCS to manage a programme for the care, protection, rehabilitation or control of	Temporary and permanent	CCI, DCS, Children Court, Police, NCCS/AAC, civil society	Highly prevalent with 591 registered CCI by NCCS and resident to estimated 40,230 children by Oct 2012
Specialised, therapeutic residential care facilities	Small residential care facility with limited number of beds for the care and protection of children with special needs	Temporary and permanent	DCS, Children's Court, AAC, hospitals, civil society	Very limited
Supported independent living	A young person is supported in her/his own home, a group home, hostel, or other form of accommodation to become independent. Support/social workers are available as needed and at planned intervals to offer assistance and support but not to provide supervision.	Temporary	Civil society, DCS, Chiefs and community leaders	Very limited
Guardianship	Person appointed by will or deed by a parent of the child or by an order of the court to assume parental responsibility for the child upon the death of the parent of the child either alone or in conjunction with the surviving parent of the child or the father of a child born out of wedlock who has acquired parental responsibility of the child in accordance with the provisions of the Children Act, 2011	Permanent (until the child is 18)	Children Court, DCS, Chief	Limited

<i>Kafaalah</i> (Islamic practice)	Commitment by a person or family to voluntarily sponsor and care for an orphaned or abandoned child	Temporary and permanent	Chief, DCS, Khadhi Court, local Imam, extended family and community	Yes
Adoption (domestic or national)	Adoption by adopters who are Kenyan and the child they are adopting is a resident in Kenya	Permanent	DCS, High Court, Adoption Society, CCI, social workers, Chiefs and community leaders, adoptive parents	Limited
Adoption (foreign resident)	Adoption by foreign residents who are not Kenyan nationals, but have lived in Kenya for over three years and adopt a child who is Kenyan	Permanent	DCS, High Court, Adoption Society, CCI, social workers, Chiefs and community leaders, adoptive parents	Limited
Adoption (intercountry or international)	Adoption of a Kenyan child by adopters who are not Kenyan and live outside Kenya	Permanent	DCS, High Court in Nairobi, Adoption Society, CCI, social workers, Chiefs and community leaders, adoptive parents	Limited
Adoption (kinship or family)	Adoption by adopters who are kin or relatives within the extended family of the child. Applications for kinship adoption are similar to domestic adoption.	Permanent	DCS, High Court, Adoption Society, CCI, hospital social workers, Chiefs and community leaders, adoptive parents	Limited

ANNEX D: FROM PREVENTION OF SEPARATION TO PROVISION OF ALTERNATIVE CARE SERVICES CHART

Family Support and Prevention

The first response is to support families to care for their children and prevent unnecessary family separation and removal of a child from his/her family.

Provision of family support services

Preventing family separation

Emergency and Rescue Procedures

If family separation or abandonment occurs, the child should be placed in a place of safety (either in a temporary shelter, kinship care or foster care) and tracing and reintegration should be initiated immediately

PLACES OF SAFETY

Temporary shelter
Kinship care
Foster care

Family tracing and reintegration

Provision of range of alternative care Services

Kinship care

Foster care

Guardianship

Kafaalah

Adoption

Supported child-headed households

Supported independent living

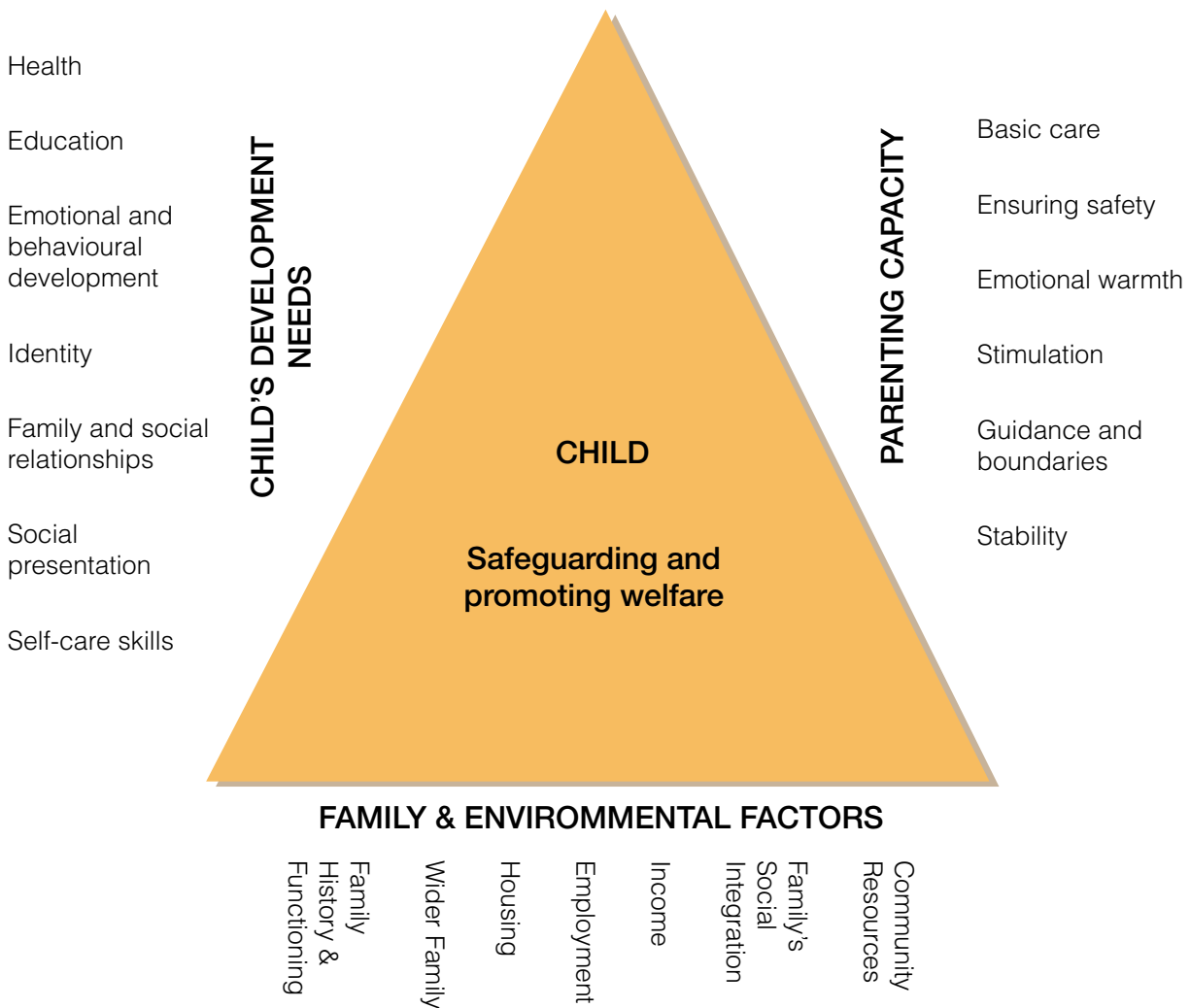
Charitable children's institutions as a last resort

Alternative care provision should be guided by an **assessment** and **individual care plan**. The goal is to reunify the child with his/her family, if it is in the child's best interests and is appropriate. If reunification is not possible, then an alternative care placement should be selected based on the individual needs of the child. Aftercare services should be provided for children leaving alternative care.

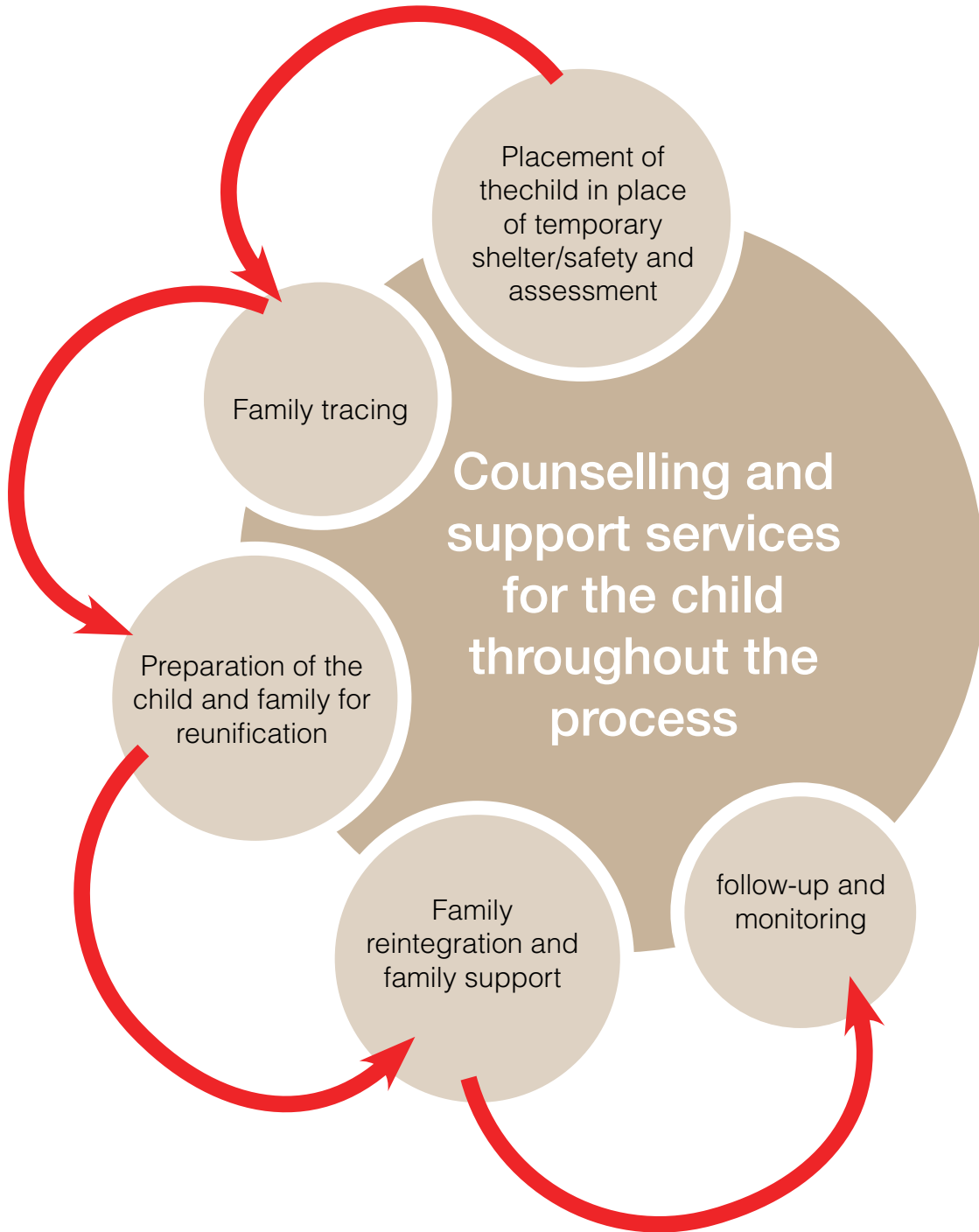
ANNEX E: FRAMEWORK FOR THE ASSESSMENT OF A CHILD IN NEED

The Figure below shows the different areas that need to be assessed at the individual, family and community levels in order to understand the needs of the child and issues concerning him/her. An assessment requires an understanding of: (1) the developmental needs of children; (2) the capacities of parents or caregivers to respond appropriately to those needs; and (3) the impact of wider family and environmental factors on parenting capacity and children. The figure below describes three inter-related domains which need to be assessed, including their interaction with one another. The ultimate aim is to understand how they affect the child(ren) in the family. The following areas should be assessed prior to family tracing and reintegration or placement in alternative care.

Source: Framework for the Assessment of Children in Need of their Families: Family Pack of Questionnaires and Scales, Department of Health, Department of Education and Employment, Home Office UK, 2000



ANNEX F: FAMILY TRACING AND REINTEGRATION STEPS



ANNEX G: FAMILY TRACING METHODS

Obtaining information from the child: Some children are able to provide the names and contact information of their parents or other relatives, school, places of worship or the shopping centres nearest to their place of residence. Depending on the child's age, capacity or situation, the period of obtaining this information may vary.

Using information from the Sub-county Children's Officer Social Inquiry Report or Police Lost Child Report:

On receiving the report of a separated child the SCO completes a social inquiry report before placing the child in a CCI or other alternative care placement. For the police, when a case of a lost or abandoned child is reported to them, they enter the information in the police Occurrence Book (O.B) and are expected to undertake investigations/ inquiry and write a comprehensive report based on their findings. When the police cannot get the parents of the child, they hand them over to DCS. Both the Social Inquiry and police reports provide information such as the child's family; contact information; and where the child was found and all these can be used to trace the child's family.

Obtaining information from a Good Samaritan: If a case is reported by a 'Good Samaritan' as much information as possible should be sought from that person(s) about the child. The person receiving the child from the Good Samaritan should obtain a photocopy of their ID and their contact information.

Use of media: The use of media (electronic and print) has proven to be an effective way to trace families of separated children in Kenya. Pro-bono or low-cost partnerships should be forged with local media to put on show photos of the child and/or his/her family. When media is used to trace a child's family, the media personnel involved should be trained on protection of lost/ abandoned children. For instance, the current address of the separated child should never be broadcast nor their medical or other personal information disclosed in the photo or advertisement.

Tracing between countries: In situations where the child's family is outside of Kenya, the Government of Kenya may work closely with respective governments, the ICRC, UNHCR and UNICEF to coordinate and cooperate to facilitate timely and safe tracing of a child's family.

Child-friendly information gathering technique

In many places, including Rwanda following the genocide, organisations have used child-friendly ways of gathering information from children as young as three. One method has been drawing, in which the child draws pictures of his/her family and community and through this exercise is able to provide information about his/her family's location. This is a simple method that makes the child feel safe and secure. (Source: *BCN Toolkit*)

ANNEX H: FAMILY REINTEGRATION STEPS

Step 1 – Family Assessment

A multidisciplinary team should conduct an assessment of the child's parents and/or extended family to evaluate their socio-economic, health and psychosocial status, and their ability to care for the child. The assessment will support family verification, evaluate the safety and appropriateness of the family environment and determine types of services that are needed for proper reintegration. During family assessment visits, the respective authorities should discuss with the family their obligations and responsibilities as parents/caregivers. The information, where appropriate, should be shared with the child in order to prepare him/her for the reunification process. If serious concerns arise following the family assessment, it may be necessary to involve local DCS staff and other community authorities to provide further support or action as needed.

(Refer to Annex E for more information regarding conducting assessments.)

Promising practice: Action for Children in Conflict (AfCiC) is an NGO which reintegrates children living and working on the streets in Thika sub-county. Prior to reintegration of the child, AfCiC social workers conduct a minimum of five home visits to assess the family and ensure that the reintegration would be in the best interests of the child.

Step 2 – Establishing Family and Child Contact

Consistent contact between the child and his or her family should be established, supported and monitored by staff of the agency responsible for the reintegration. If feasible, the child can visit the family prior to reintegration. Family group meetings can be arranged and facilitated by staff. During these meetings and visits, the parent(s) or family can be involved in life activities (e.g., meals, bedtime, school activities, doctor's appointments, etc.).

Promising practice: Macheo Children's Centre in Thika reintegrated 11 out of 65 children who had been placed in their home. Macheo learned that in order to properly reintegrate a child it is crucial that an exit strategy is discussed with both the child and family upon admission. Once per month, Macheo holds family group meetings at the home between the guardian and child. It also facilitates home visits. Social workers conduct evaluations of these meetings and home visits, which are included in the child's case file.

Step 3 – Providing Counselling and Other Services for the Child

Prior to reunification, the SCO and other tracing and reintegration agencies should provide the child with counselling services to address causes of separation, abuse and trauma that the child may have faced during his/her separation from the family as well as to avoid possible adjustment problems once the child is reintegrated with his/her family. The child must be prepared for the possibility that the family might reject him or her. He or she should be given contact numbers, such as those of the SCO or a staff member of the organisation working with him/her, in case a problem arises following reintegration.

Additionally, the child should be provided with medical, nutritional and educational support. Services should be tailored to the specific needs of the child and should take into account the length of separation. The SCO should work with NGOs/CBOs with specialised skills to provide this service.

Promising Practice: Mwangaza Rehabilitation Programme managed by the Catholic Diocese of Nakuru rehabilitates and reintegrates children living on the streets and child sex workers back with their

families. The children are provided with extensive education courses, and rehabilitation and counselling services. They are placed with trained foster parents so that they can receive proper emotional support until they can be reunified with their families.

Step 4 – Conducting Family Mediation

In instances when separation has been intentional, or, if accidental, the family knows where the child is but does not show any interest in taking him or her back, family mediation activities are needed. Family mediation, which is usually undertaken by a counsellor or social worker, is the process of helping the family and the child understand and agree that it is best for them to live together when there are reservations by either or both parties to do so. DCS staff should be equipped to undertake these activities.

Promising practice: In cases where staff have identified a problem, especially on the side of the parents or family, the Nairobi Children's Home formed a 'family decision-making group'. The group consists of the parent, the chief, a neighbour, a religious leader, a teacher and another member of the family. Membership may vary depending on the issue to be addressed. The group discusses the problems related to the child's reintegration and agrees to work together for a solution. For example, if the child has been running away from school, the teacher monitors attendance and alerts everyone. The group holds a meeting twice a month to agree and monitor each child's case.

Step 5 – Actual Child/Family Reunion

A CCI, the DCS or another childcare organisation facilitating the reintegration should use proper means of transportation, such as a car or bus. The child must be accompanied by at least one supervising adult, such as a DCS officer (including VCOs), a CCI social worker or a police officer who should remain with the child until the family has welcomed the child back home. Local SCO and community elders should be notified of the return of the child. Thereafter, a reunion agreement should be signed between the family, the organisation facilitating reintegration and the DCS.

Step 6 – Provision of Reintegration Kit

If deemed necessary, the child should be provided with a "Reintegration Kit". The kit can include materials such as bed sheets or a mat, a first aid kit, food and schoolbooks, etc. The materials should support the child and family during the readjustment period and should be similar to what is available in his/her home environment and community. It should not set the child apart from his/her siblings and other family members and should not be perceived as an ongoing donation.

Step 7 - Family-Focused Support and Follow-Up Services

A critical component of successful reintegration is continuous, targeted follow-up and support to the child and family. However these services should not create dependency by the family and the child and should take into account the needs of the community. The family assessments and home visits prior to reintegration can help determine the package of support services that the family should receive following reintegration. SCO can partner with NGOs with the specific skills and programmes to provide these services. Where feasible and possible, these services should be provided through local community structures and mechanisms.

(Refer to Chapter 4 for detailed information regarding these family support services.)

Support services include:

- *Psychosocial support:* Individual or family therapy and counselling
- *Parenting courses:* If deemed necessary and appropriate, these provide the parents or extended family with parenting skills, including caregiving, positive discipline, etc.
- *Education support:* This facilitates the child's enrolment in school upon reunification by providing tutorials prior to reintegration and supporting parents to buy school uniform and books and pay other fees.
- *Life skills training:* Provides training for the child and family on topics such as business and vocational development, sexual and reproductive health, communication, etc.
- *Referral network:* This links the family to other community services, such as early childhood development, health, and social protection schemes.
- *Economic empowerment:* During the family assessment, it may be determined that the family is economically disadvantaged and should be provided with financial or material support to ensure successful reintegration of the child. This support will enable the family to pay school and health care fees, which are often a deterrent to a family taking back a child. The type of economic support should be decided based on the findings of the family assessment and should be made through networking to harmonise resources from different agencies.

Step 8 - Sensitisation of staff and community

Throughout the process, staff of CCIs, alternative care providers, the DCS, the community and parents should be regularly sensitised about the purpose, importance and procedures of reintegration for children separated during emergency and non-emergency situations as well as for children currently residing in alternative care placements. One of the reasons why reintegration can fail is negative attitudes and misconceptions about reintegration by alternative care providers and community members. Staff should be appropriately trained and supervised for effective tracing, reunification and follow-up to ensure proper reintegration.

Promising practice: Samaritan Purse Kenya – Child Reintegration Program and Little Angels Network initiated a nationwide tracing and reintegration programme. An integral component of this programme is sensitising CCI managers and staff about their responsibility and roles and ensuring that there are proper exit strategies in place.

ANNEX I: ENVIRONMENT ADJUSTMENT TOOL/REPORT

(To be used to assess readiness of family to accept a child back into the family and the appropriateness of the family environment for reunification of the child)

1. Child personal details

Name of the child.....Nickname:

Date of Birth..... Years old..... Male/female.....

2. If a child is from a children institution,

Committal date.....

Expiration date.....

3. Details of the officer carrying out the assessment

Name:Agency/Organization name:.....

Title:..... Office telephone.....

personal telephone: Postal Address..... Email:

4. Address to which the child will be placed:

Administrative Address (sub-county, division, location)

Physical address (describe nearest features e.g. school, place of worship)

PostalAddress.....

5. Details of the person to be reunified with the child

OfficialName..... Nickname.....

ID No: Date of Birth..... Occupation.....

Relationship with the child

6. Whether the person/family/guardian is willing and ready to accept the child

Keen to Accept [.....]

Accept [.....]

Not Ready to Accept, but there is a possibility to Accept [.....]

Refuse to accept [.....]

Reasons for refusal to accept the child

7. Mode of transport for the child during the reunification

To be driven by the organization [.....]

To be picked from the institution if applicable [.....]

8. If child is in an institution,

Date of the adult to visit the institution to meet the child (be specific)

Date of reunifying the child with family.....

9. Home/house conditions

Such as availability of shelter, food

10. Family dynamics

Explain any dynamics of concern observed.....

11.Means of livelihood for the household

12.Relevant information about family/guardians/other relatives

Do any of the family members have the following;
Mental disease [], Deviant personality [], Alcohol and drug addiction [], criminal [] and any other
Explain further any of the above including name, relation with the child

13.Community attitude towards the family

For instance, do they have any reservations if the child was reunified/reintegrated with the family? You can talk to neighbours, chief, religious leaders among others

14.Availability of social services to meet the child's needs e.g.

School..... If child has special needs, such as disability, on special medications such as ARV, will they be met?

15.Remarks of the Officer in charge of the assessment

- i) What problems/concerns should be dealt with for the child to adjust when reunified?
- ii) What adjustment practices are recommended?
- iii) What problems remain unresolved and what is the long-term strategy to address them when the child is reunified?

16.Feedback from officer in charge of the children institution (where applicable)

- i) What issues should be dealt with at the institution to enable environmental adjustment for the child to be effective? What interventions are needed to address these issues and their timelines?

17.Remarks of officer doing the assessment

Whether or not the current environment is appropriate for the child to be reunified?

a) Appropriate [] b) Not Appropriate [] c) Pending []

Name of officer..... Date of Assessment.....

Sign.....

ANNEX J: CHILD STATUS INDEX TOOL

DOMAIN	1- FOOD AND NUTRITION		2- SHELTER AND CARE		3- PROTECTION	
	1A. Food Security	1B. Nutrition and Growth	2A. Shelter	2B. Care	3A. Abuse and Exploitation	3B. Legal protection
GOAL	<i>Child has sufficient food at all times of the year</i>	<i>Child is grow well compared to others of his/her age in the community.</i>	<i>Child has stable shelter that is adequate, dry and safe.</i>	<i>Child has at least one adult (age 18 or over) who provides consistent care, attention and support.</i>	<i>Child is safe from any abuse, neglect, or exploitation.</i>	<i>Child has access to legal protection services as needed.</i>
Good = 4	Child is well fed, eats regularly.	Child is well grown with good height, weight and energy level for his/her age.	Child lives in a place that is adequate, dry and safe.	Child has a primary adult caregiver who is involved in his/her life and who protects and nurtures him/her.	Child does not seem to be abused, neglected, do inappropriate work, or be exploited in other ways.	Child has access to legal protection as needed.
Fair = 3	Child has enough to eat some of the time, depending on season or food supply.	Child seems to be growing well but is less active compared to others of same age in community.	Child lives in a place that needs some repairs but is fairly adequate, dry, and safe.	Child has an adult that provides care but who is limited by illness, age, or seems indifferent to this child.	There is some suspicion that child may be neglected, over-worked, not treated well, or otherwise maltreated.	Child has no access to legal protection services, but no protection is needed at this time.
Bad = 2	Child frequently has less food to eat than needed, complains of hunger.	Child has low weight, looks shorter and/or is less energetic compared to others of same age in the community.	Child lives in a place that needs major repairs, is overcrowded, inadequate and/or does not protect him/her from weather.	Child has no consistent adult in his/her life that provides love, attention, and support.	Child is neglected, given inappropriate work for his or her age, or is clearly not treated well in household or institution.	Child has no access to any legal protection services and may be at risk of exploitation.
Very Bad=1	Child rarely has food to eat and goes to bed hungry most nights.	Child has very low weight (wasted) or is too short (stunted) for his/her age (malnourished).	Child has no stable, adequate, or safe place to live.	Child is completely without the care of an adult and must fend for him or herself or lives in a child-headed household.	Child is abused, sexually or physically, and/ or is being subjected to child labor or otherwise exploited.	Child has no access to legal protection services and is being legally exploited.

DOMAIN	4-HEALTH		5-PSYCHOSOCIAL		6-EDUCATION AND SKILLS TRAINING	
	4A. Wellness	4B. Health Care Services	5A. Emotional Health	5B. Social Behavior	6A. Performance	6B. Education and Work
GOAL	<i>Child is physically healthy.</i>	<i>Child can access health care services, including medical treatment when ill and preventive care.</i>	<i>Child is happy and content with a generally positive mood and hopeful outlook.</i>	<i>Child is cooperative and enjoys participating in activities with adults and other children.</i>	<i>Child is progressing well in acquiring knowledge and life skills and home, school job training or an age-appropriate productive activity.</i>	<i>Child is enrolled and attends school or skills training or is engaged in age-appropriate play, learning activity, or job.</i>
Good = 4	In the past month, child has been healthy and active, with no fever, diarrhoea, or other illnesses.	Child has received all or almost all necessary health care treatment and preventive services.	Child seems happy, hopeful and content.	Child likes to play with peers and participates in group or family activities.	Child is learning well, developing life skills, and progressing as expected by caregivers, teachers, or other leaders.	Child is enrolled in and attending school/training regularly. Infants or preschoolers play with caregiver. Older child has appropriate job.
Fair = 3	In the past month, child was ill and less active for a few days (1 to 3 days), but he/she participated in some activities.	Child received medical treatment when ill, but some health services (e.g. immunization) are not received.	Child is mostly happy but occasionally he/she is anxious, or withdrawn. Infant may be crying, irritable, or not sleeping well some of the time.	Child has minor problems getting along with others and argues or gets into fights sometimes.	Child is learning well and developing life skills moderately well, but caregivers, teachers, or other leaders have some concerns about progress.	Child enrolled in school/training but attends irregularly or shows up inconsistently for productive activity/job. Younger child played with sometimes but not daily.
Bad = 2	In past the month, child was often (more than 3 days) too ill for school, work or play.	Child only sometimes, or inconsistently receives needed health care services (treatment or preventive).	Child is often withdrawn, irritable, anxious, unhappy, or sad. Infant may cry frequently or often be inactive.	Child is disobedient to adults and frequently does not interact well with peers, guardian, or others at home or school.	Child is learning and gaining skills poorly or falling behind, Infant and preschool child is gaining skills more slowly than peers.	Child enrolled in school or has a job but he/she rarely attends. Infant of preschool child is rarely played with.
Very Bad= 1	In past the month, child has been ill most of the time (chronically ill).	Child rarely or never receives the necessary health care services.	Child seems hopeless, sad, withdrawn, wishes could die, or wants to be left alone. Infant may refuse to eat, sleep poorly, or cry a lot.	Child has behavioral problems, including stealing, early sexual activity, and / or other risky or disruptive behavior.	Child has serious problems with learning and performing in life or developmental skills.	Child is not enrolled, not attending training, or not involved in age appropriate productive activity or job. Infant or preschooler is not played with.

Public Domain: Developed with the support from the U.S President's Emergency Fund for AIDS Relief through USAID to MEASURE Evaluation and Duke University. O'Donnell K., Nyangara F., Murphy R., & Nyberg B., 2008

ANNEX K: LIST OF PARTICIPANTS FOR THE DEVELOPMENT OF THE ALTERNATIVE CARE GUIDELINES

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9.	GRACE MWANGI	TUMAINI KWA WATOTO
10.	BEATRICE OBUTU	DCS
11.	PROTUS LUMITI	NYUMBANI CHILDREN'S HOME
12.	STEPHEN UCEMBE	HIAS-KENYA
13.	IRENE WAGEMA	ZABIBU CENTRE
14.	EZEKIEL OMWANSA	DCS
15.	MARYGORRET MOGAKA	NCCS
16.	JUDY TUDA ODOUR	DCS
17.	JANE MUYANGA	DCS
18.	CARREN OGOTI	DCS
19.	JACINTA MWINZI	DCS
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21.	NATHAN KYULE	DCS
22.	SETH MASESE	STATE LAW OFFICE
23.	JOSEPHINE OGUYE	DCS
24.	MONGARE MWAMBI	DCS
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26.	CATHERINE KIMOTHO	UNICEF
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28.	MARIE de la SOUDIERE	UNICEF ADVISOR
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38.	NAOMI MBUGUA	DCS
39.	RACHAEL KARANJA NDEKEI	DCS
40.	MILDRED GIMONGE	DCS
41.	HARRIET KIHARA	DCS
42.	WANJAU NGUIKU	DCS
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47.	JOHN MUIRURI	ACTION FOR CHILDREN IN CONFLICT
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51.	FELISTERS MWIKALI	CWSK
52.	HELLEN ESHIUNWA	NYUMBANI CHILDREN'S HOME
53.	NAITORE GITUMA	SOS
54.	REV. STEPHEN NDUNGU	ACCIK
55.	LUCY MAINA	SAVE THE CHILDREN UK
56.	FAITH KAMAU	DCS
57.	MAURICE TSUMA	DCS
58.	RUTH OMOLO	DCS
59.	MERCY NDIRANGU	LITTLE ANGELS NETWORK
60.	CATHERINE SOLOMON	LITTLE ANGELS NETWORK
61.	GRACE AJULA	LITTLE ANGELS NETWORK
62.	PAULINE NKATHA	LUTHERAN WORLD FEDERATION
63.	GLORY M .WAUSI	SAMARITAN'S PURSE
64.	GHAZAL KESHAVARZIAN	INTERNATIONAL CONSULTANT
65.	GAD AWUONDA	NATIONAL CONSULTANT
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67.	MOHAMED SHIEKH ABDI	KCIU
68.	ABDINASIR H. HASSAN	MAJLIS ULAMAA
69.	ATHMAN ABDALLAH	KCIU
70.	HAIDAR ABEYD KAFI	KCIU
71.	MOHAME SWALIHU	KCIU
72.	AMANI JUMA	KCIU
73.	MUHDHAR HUSSEIN OMA	KCIU

74.	FATUMA HUSSEIN	SWACEDA
75.	SHEIKH JUMA AMIR	KCIU
76.	FATUMA ABDI	SWACEDA
77.	FATUMA MUHAMMED	SWACEDA
78.	ROSEMARY MGATIA	LIKONI REHABILITATION SCHOOL-DCS
79.	EPWLAIM M KAIGUGU	LIKONI REHABILITATION SCHOOL-DCS
80.	JEDIDY W. MUNFOKI	DCS
81.	CHARITY MUINDI	DCS
82.	CAROLINE ACHAMI	DCS
83.	JAMES CHEBON	DCS
84.	KENNETH MUTUMA	DCS
85.	DONALD WILI	CPC-MALINDI
86.	AGNES BAKALI	CPC-MALINDI
87.	AGNES	COAST GENERAL HOSPITAL
88.	CHRISTINE WALI	CWSK-MJI WA SALAMA MOMBASA
89.	PETER RIRI	CWSK-MJI WA SALAMA MOMBASA
90.	SUSAN KURIA	CWSK-MJI WA SALAMA MOMBASA
91.	SISTER FRANCESCA AME	MAHALI PA USALAMA MOMBASA
92.	MR. MUSEE	OCS- MOMBASA
93.	AGNES MALOU	SOLWODI -MOMBASA
94.	ERIC MICHIEKA	CHILDREN'S MAGISTRATE -MOMBASA
95.	MADAME ELVINA	CPC-TONONOKA
96.	GRACE NZIOKA	JUDGE MOMBASA HIGH COURT
97.	STEPHEN GITAU	DCS -KWALE
98.	ELIZABETH MACHARIA	PRINCIPAL MIGISTRATE -KWALE
99.	ISABELLA KARANJA	KARIBU CENTRE -THIKA
100.	LUKE KINKAID	KARIBU CENTRE -THIKA
101.	GRACE WANGUI GACHAGUA	MACHEO CHILDREN'S CENTRE -THIKA
102.	GEORGE NTHUKA	DCS
103.	RENOX NYONGO	KENYA RED CROSS -THIKA
104.	PERIS GATHU	ADVOCATE -THIKA
105.	TABITHA GUTHUNGU	THIKA GENERAL HOSPITAL
106.	ALICE WANDIA	THIKA GENERAL HOSPITAL
107.	DOUGLAS WAWIRE	DCS
108.	PAMELA OSANO	MUNICIPAL COUNCIL OF NAKURU
109.	GEOFFREY ESEBWE	NAKURU REFORMED GROUP
110.	BASID MUNYAO	CATHOLIC DIOCESE OF NAKURU
111.	CHARITY WAMWA	NAKURU REMAND HOME
112.	SANDRA ABUGA-NTABO	RIFT VALLEY LAW SOCIETY

113.	CLEMENT	VCO-MOLO
114.	JOHN MACHARIA	CWSK-MOLO
115.	CLEMENT N. GISORE	DCS
116.	DAVID K. NGETICH	ARISE & SHINE CHILDREN HOME -MOLO
117.	SONIA DONNA	MOLO STREET CHILDREN PROJECT
118.	ROSE NJOORA	MOLO STREET CHILDREN PROJECT
119.	SISTER MARY OWEN	NYUMBANI CHILDREN'S HOME
120.	FARIDA BASCHA	SAVE THE CHILDREN SWEDEN
121.	JOYCE KABURA MWANGI	SAVE THE CHILDREN SWEDEN
122.	RIAPER OMONDI	SAVE THE CHILDREN UK
123.	JUNE WAHOME	SAVE THE CHILDREN UK
124.	SARAH HILDREW	SAVE THE CHILDREN UK
125.	DENISE STUCKENBRUCK	SAVE THE CHILDREN
126.	JONES MUCHENDU	UNDUGU SOCIETY OF KENYA
127.	BENSON MBOLE	UNDUGU SOCIETY OF KENYA
128.	GERALD NGARUIYA	MAISHA POA
129.	GEORGE OMONDI OSEWE	LUTHERAN WORLD FEDERATION
130.	EDWIN OTIENO	LUTHERAN WORLD FEDERATION
131.	PRISILA NDUTA NGIGE	UNHCR