



A TECHNICAL ASSESSMENT OF THE LEGAL PROVISIONS AND PRACTICES OF GUARDIANSHIP, FOSTER CARE AND ADOPTION OF CHILDREN IN KENYA



Department of Children's Services
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and Social Development

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ACRONYMS

AC	Adoption Committee	KRC	Kenya Red Cross
AAC	Area Advisory Council	Kshs	Kenya shillings
AIDS	Acquired Immune Deficiency Syndrome	LAC	Locational Advisory Council
ART	Anti-Retroviral Therapy	LAN	Little Angels Network (adoption society)
ARV	Anti-Retroviral	MoE	Ministry of Education
CA	The Children Act, 2001	MoGCS D	Ministry of Gender, Children and Social Development
CBS	Central Bureau of Statistics	MoGSCSS	Ministry of Gender, Sports, Culture and Social Services
CBO	Community Based Organisation	MoH	Ministry of Health
CCI	Charitable Children's Institution	MoHA	Ministry of Home Affairs
CJ	Chief Justice	MoLG	Ministry of Local Government
C&YPA	Children and Young Persons Act	NACC	National Aids Control Council
CHH	Child Headed-Household	NCCS	National Council of Children's Services
CO	Children Officer	NCCK	National Council of Churches in Kenya
CPU	Child Protection Unit (in police stations)	NGO	Non Governmental Organisation
CWSK	Child Welfare Society of Kenya (adoption society)	NPA	National Plan of Action
DCO	District Children Officer	OVC	Orphans and Vulnerable Children
DfID	Department of International Development (UK)	PCO	Provincial Children's Officer
DCS	Department of Children's Services	PEPFAR	President's (USA) Emergency Plan for AIDS Relief
DCO	District Children's Officer	RG	Registrar-General
ECD	Early Childhood Development	SC	Save the Children
ESARO	East and Southern Africa Office of UNICEF	SGBV	Sexual and gender Based Violence
FBO	Faith Based Organisations	STI	Sexually Transmitted Diseases
GDP	Gross Domestic Product	TOR	Terms of Reference
HBC	Home Based Care	UN	United Nations
HIV	Human Immunodeficiency Virus	UNAIDS	United Nations Joint Programme on HIV/AIDS
HQ	Headquarters	UNDP	United Nations Development Programme
IATT	Inter-Agency Task Team	UNHCR	United Nations High Commission for Refugees
IDP	Internally Displaced Person	UNICEF	United Nations Children's Fund
IDS	Institute of Development Studies, Sussex University	USD	United States Dollar
IDTR	Identification, Documentation, Tracing and Reunification	USI	Unlawful Sexual Intercourse
ILO	International Labour Organisation, United Nations	VCT	Voluntary Counselling and Testing (for HIV/AIDS)
IOM	International Organisation for Migration, United Nations	WB	World Bank
KAACR	Kenya Alliance for Advancement of Children rights.	WHO	World Health Organisation
KCHS	Kenya Christian Homes Society (adoption society)	WFP	World Food Programme
KDHS	Kenya Demographic Health Survey		
KKPI	Kenyan to Kenyan Peace Initiative (adoption society)		

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Executive summary



This technical assessment report requested by the Department of Children's Services (DCS) in the Ministry of Gender, Children and Social Development in conjunction with UNICEF, uses a transformative social protection framework adapted for studying the provisions and practice in alternative care and adoption. It has taken due cognizance of the Kenya Vision 2030 and its transformative agenda which under the social pillar is to build 'a just and cohesive society with social equity in a clean and secure environment' and by 2012 to increase opportunities for all disadvantaged groups and to achieve that through establishing 'a consolidated social protection fund'. The Ministry of Gender, Children and Social Development responded to Vision 2030 by proposing that cash transfers be the core social protection intervention in Kenya.

Chapter 1 outlines background information upon which this assessment was carried out. It retraces the GoK efforts towards responding to the country's OVC within the context of global expectations. Relevant documents and processes have been referenced as forming the basis of this assessment. The chapter demonstrates interrelation of this initiative with other national and international response efforts to OVC and other vulnerable population. Some of the references include the African Union's 'The Livingstone Call for Action' on 'Social Protection - a Transformative Agenda'; The Framework for Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS (2004) ; The Child Protection and Children Affected by AIDS: A Companion Paper to The Framework for the Protection, Care And Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS 2006 and The Kenyan National Plan of Action for OVC.

Chapter 2 outlines the socio-economic context for this assessment both in general and with regard to children particularly highlighting the situation concerning poverty, HIV/AIDS and abuse of which the former two are declining. It points out the very unequal distribution of wealth with poverty predominant in rural areas especially in the NE and Coastal provinces and the urban slums. Kenya's 18 million children equal about 50% of the total population. Despite declining poverty, infant and under 5 mortality rates rose considerably between 1993-2003. The NACC in 2007 estimated the number of orphans in Kenya as 2.4 million of which about 47% are a result of parental deaths due to AIDS.

The number of double orphans stands at 443,000, of which 73% are AIDS orphans. The draft National Policy on OVC, 2005, indicated that 6 million children require special care and protection which was 40% of the country's child population. According to PEPFAR only 17% of OVC households received free basic external support for their children in 2006. According to the Kenya Demographic Health Survey, 2005, nationally only 64% of children aged 0-14 live with both of their parents, while 20.5% live with their mothers alone and 2.4% with their father's alone. 13.1 % of all children under 15 years (1.9 million) are not living with their parents and are 'fostered' out to relatives and friends, although of these children 1.5 million have at least one parent alive.

Chapter 3 highlights the objectives of the assessment, methodology used to collect data/information and limitations encountered during the assessment. The scope and tasks of this assessment are broad as can be seen from the abbreviated TOR in appendix 1. Time was spent in Nairobi and visits were made to Nyanza, Western, Coastal and NE provinces. There have been some major limitations in drawing up this assessment. There are the deficiencies resulting from the absence of data and in receiving incomplete data. The assessment could not identify children who had been involved in guardianship, foster care and adoption who were of an age to express their feelings about those experiences. The assessment of the effect of emergencies on alternative care and adoption was all from secondary sources. As to community attitudes the consultants were only able to gain a few insights into the complexity of different ethnic cultures.

This assessment as it stands for the reasons given above can only be seen as a preliminary report and will need updating when the data that is missing becomes available and there is a more comprehensive understanding of the issues involved. In addition, it is very difficult to make an assessment of this technical area without a much clearer understanding of current family support/prevention systems and the effect of Charitable Children's Institutions (CCIs) as it is from these two that the caseload for guardianship, fostering and adoption comes. Recommendations are given at the end of each chapter from chapter 8 onwards for the consideration of the various stakeholders concerning matters that appear to require resolving to improve law, policy and practice, so as to better protect children, especially with regard to family support, alternative care and adoption.

Chapter 4 assesses the institutional framework for guardianship, foster-care and adoption and for CCIs as set out in The Children Act (CA), 2001, and the two Regulations for Adoption and CCIs, dated 2005.

Chapter 5 reviews the achievements made in alternative care and adoption since 2001. It describes the great strides forward in relation to the legal and policy framework since 2001 with the above legislation which incorporated the principles of the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the 1993 Hague Convention in Respect to Inter-Country Adoption all of which have been ratified or acceded to by Kenya.

The institutional frameworks have also been centralized and strengthened and given support structures. Examples are: the National Council of Children's Services, which also has as its role the establishing of Area Advisory Councils (AAC) (whose role is 'to specialise in various matters affecting the rights and welfare of children'), the Adoption Committee (AC) whose role include registering and monitoring of adoption societies, and the Department of Children Services with its establishment of central units to have oversight of different areas of the department's work. With regard to service delivery the DCS has had a significant increase in staff with 160 additional new Children Officers in 2007. In terms of social protection there has been the introduction of a cash transfer scheme for OVC, which currently reaches 25,000 households in 37 districts. The plan endorsed by government is to reach 100,000 households by 2012.

Chapter 6 describes the current available data on alternative care and adoption. There is no central data base for guardianship which both as wills/deeds or Children's Court orders should presumably come under the Registrar's office. The most exact way to gain an impression of the number of such

orders is through the Children's Court register. In the 3 major Children's Courts (Mombasa, Kisumu and Kakamega) where it was studied 4 orders were made in 2007 and 23 in 2008. There is no information of how many were made by will or deed. Similarly with foster care there is no central data base. The information seems to be held at district level. The one provincial report seen did not have any specific mention of foster care placements. The fact that the CA 2001 authorised the making of foster care placements by the DCS and the CCI rather than court orders means that the numbers cannot be assessed from the court register. The Registrar General's Children Adoption Register records the number of annual adoption orders, although the method by which this is received from lawyers raises questions of reliability. There is also no clear disaggregation of local, resident and inter-country adoptions in the register. 895 orders were registered between 2003-2008 (September). Other adoption data has been obtained from four adoption societies and the DCS Family Based Care Unit which acts as the Secretariat for the Adoption Committee and coordinates DCS adoption reports when ordered by the High Court in Nairobi and also has information on all DCS reports on local adoptions ordered by the High Court in the provinces. The total number of adoptions recorded by the DCS between 2003-June 2008 was 781 of which 486 (62%) were local and 295 (38%) inter-country. Adoptions by resident foreigners are included in the inter-country category. If these percentages are replicated for all orders made in Kenya then the number of inter-country adoptions seems disproportionately high. In the USA 14% of their 127,000 adoptions are inter-country.

Chapter 7 describes the impact of CCIs on guardianship, foster-care and adoption. The CA, 2001, has placed considerable responsibility on CCIs with regard to foster care placements in conjunction with the DCS. There is no data on how many children have been fostered from CCIs since the CA. The CA is unclear as to who should supervise such placements giving the role both to the CCI (sect.147) and to the DCS (under the fourth schedule). Without research it is unclear if all adopted children come from CCIs but it would seem likely that most do so. CCIs are something of an unknown quantity in Kenya as most of them are unregulated and unregistered. The number of CCIs, could be anywhere between 761 and 1,500, and the number of children that are resident in them, could be anywhere between 30,000 to 200,000 children. What is worrying is that the children in the unregistered CCIs are there illegally as few, if any, have been committed on a care order by a court as the law requires. What is surprising is that this is also true for a large number of children in the registered CCIs, e.g. none of the 1,011 children in the 6 Garissa registered CCIs were committed by the court and this is frequently the case elsewhere. These children have no legal guardian looking after them and could easily be vulnerable to trafficking, child labour and other forms of abuse. The current situation is failing to protect children.

It is recommended that the National Council of Children's Services (NCCS) order a moratorium on the establishing of any new CCIs. There is also a need for an assertive drive by the NCCS and DCS to register only necessary CCIs that fulfil the regulations set by government and review again in 3 months or close those that are not up to standard. A research study of all children in CCIs is required so specific plans can be made for their reintegration and where there are no committal orders to obtain them. A paradigm shift by CCIs and the organisations that fund them to concentrate on the provision of outreach support to OVC, their families and communities rather than that on residential care would bring inestimable benefits to children. Good examples of CCIs doing this are St. Camillus CCI and the Nyumbani Children's Home for HIV+ children. The recent post election emergency showed some of the ways that some CCIs went out to recruit children for their homes and no doubt only highlighted what is not an uncommon practice.

Chapter 8 looks more specifically at the effect of emergencies on guardianship, foster care and adoption as evidenced by what happened during and after the post-election violence of December, 2007.

Chapter 9 reviews the national and international legislation on alternative care and adoption. A general issue raised concerning the CA is its under-emphasis of community family care compared to

its emphasis on CCIs. There is nothing in the CA which specifically stresses the importance of family support where families are facing difficulty except ironically it is seen as the responsibility of the child 'to work for the cohesion of the family'.

In the CA, foster care placements as set out in Part 1X are only seen as arising as a result of a child being resident in a CCI. One of the apparent results of this is that districts do not appear any longer to have lists of potential trained foster parents to whom children can be placed in an emergency. As a result an emergency placement is usually to a CCI in contravention of international instruments and Kenyan policy of it being a last resort. There is also a contradiction within the CA as to who should supervise such placements. Direction is needed from the DCS as to how Children's Officers can be pro-active in promoting foster care through the courts as the CA Amendment Bill proposes without going through a CCI. With regard to adoption Practice Rules are urgently needed from the Chief Justice to clarify the situation in a number of areas. The question of kinship adoption is not addressed in the CA. In the draft Amendment Bill, 2007, it is proposed that the Chief Justice shall prescribe Rules for kinship adoption.

Chapter 10 reviews issues of implementation, process plus the role and responsibility of duty bearers. Guardianship has become less forbidding as a process as matters are now heard in the Children's Court rather than in the High Court. Although the process is now easier it is felt by some to be the least understood of the alternative care approaches. There are at least three major issues concerning implementation. The first concerns the level of protection guardianship can provide for those undertaking kinship care where the child's parents have died, deserted the child or are unable to care for the child. Guardianship is intended to protect the child's inheritance but does not give the child a share in the inheritance of the care giver which is automatic with adoption. Greater clarity is required of the benefits of guardianship for the child and whether it provides any rights to the carers' inheritance and how. If it were shown to provide this then for those who are relatively poor it might be a better option than the cost of a local adoption order. Second, is concern that foreign residents may use a guardianship order to take a child out of the country and then exploit that child. Some feel therefore that guardianship should only be for Kenyan citizens and/or restrictions placed on taking children abroad. Third, is that there is no monitoring of guardianship orders and that this should be the task of the DCS.

The law is somewhat confusing concerning foster care procedures as mentioned above and hence in practice it does not seem to be pro-actively used as a way to keep children in a family environment. It is proposed that a modest regular grant is given to foster parents receiving a child on a foster care order.

The implementation process for adoption is detailed and many concerns exist, including:

- the few rules governing resident adoptions,
- that there should be different procedures for local kinship adoption and
- the law that forbids, unless there are special circumstances, single women adopting a male child, when there are many single women who wish to adopt a boy child and there are many more abandoned male than female babies in CCIs. Because of this ruling many of these male babies will either be placed for inter-country adoption or remain in the CCI till they are 18 years old.

There appears to be considerable misunderstanding among the public about the meaning of adoption as well as among CCIs, churches, even it is said some children's officers. An implementation issue concerning adoption is that many parents do not realize that by signing the consent form they are forfeiting all their rights over their children; they appear often to see it as a temporary arrangement while their child receives education or a better life not that their relationship with their child will be completely severed.

The use of self-representation by prospective adopters is discussed. It was repeatedly reported that the expense of adoption, especially for hiring a lawyer, coupled with a fear of going to the High Court was what kept people from adopting. One adoption society which dealt with non-affluent applicants reported that 60% of prospective adoption parents once they reached the 3 month fostering stage felt unable to carry on because of the cost of lawyers; this is very restricting on the many who are poor who want to adopt. A recommendation for the introduction of legal aid for such people is proposed. The roles and responsibilities of duty bearers, namely the judiciary, adoption societies, lawyers, the DCS and the foster parents and adoptive parents are discussed in this chapter.

Chapter 11 concerns governance and accountability. The accountability for guardianship orders being carried out correctly lies primarily with the Children's Court magistrate. Once made no one is directly accountable as to how the guardianship is practiced and no national register for guardianship orders was available. In practice the DCS appears to be accountable for the managing of foster care placements since the CA. At present the system is very ad hoc and lacks central direction, probably because it has taken considerable time and effort to put adoption on a sounder footing. The Adoption Committee's (AC) role is the formulating of the governing policy in matters of adoption, effecting liaison between adoption societies and government and NGOs, responsibility for the annual registering and monitoring of adoption societies and the screening of inter-country applications. There is a lack of centralized disaggregated data and annual reports from the adoption societies by which to assess their practice. The Family-Based Care Unit of the DCS acts as the secretariat of the AC and when it has been called on to write reports in adoption cases these have generally been commended, particularly by the judiciary.

Chapter 12 gives an overview of the support systems that exist and how they could be improved. It covers support systems internal to alternative care and adoption, such as: informal fostering, magistrates, lawyers, High Court judges, the DCS, the training of social workers, the training of Area Advisory Councils and of other agencies, the police and the Child Protection Unit, foster parents and the parents of adopted children, NGOs and the private sector and the external prevention support system of cash transfers.

Chapter 13 acknowledges the lack of public knowledge in Kenya of the concepts and procedures concerning guardianship, formal foster care and adoption and the critical need to raise awareness about how members of the public can become involved in these protection arrangements so as to provide a substitute form of family care for OVC. The AC particularly wishes to raise the public's awareness of local adoption which it sees as preferable to inter-country adoption. The Chairman of AC hopes that the AC will soon use FM radio stations, TV talk shows, brochures to raise awareness as well as talking to chiefs at the Institute of Administration, the police at their Staff College and any other training centre for relevant duty-bearers. The AC would also like to raise corporate responsibility for these forms of family care among lawyers, the churches and the mosques. The AC needs to use all duty-bearers as supporters in this advocacy campaign. The meetings with foster and adopting parents made it clear there was a willingness by them to be active in an awareness campaign. The importance of understanding different community attitudes and beliefs is discussed with regard to alternative care and adoption. A better understanding of those ethnic groups who seem most amenable to fostering and adoption would be a good starting point for any campaign to promote interest in fostering and adoption.

Chapter 14 concerns monitoring of alternative care and adoption. A lack of collated data and centralized coordinated monitoring and evaluation is apparent. This seems a generalized problem in child protection, particularly concerning informal fostering, CCIs, guardianship, foster care placements and adoption. Any decisions concerning the effectiveness and trends in these areas and whether changes to policy and implementation should be made depends on centralized analysed data being available to all stakeholders. The DCS centrally does not appear to have an adequate computerized data-base system which is necessary for the numbers involved and would be of great

assistance in the DCS's role as the secretariat to the AC and in the assisting the NCCS. Annual reports from adoption societies, the AC, NCCS and DCS are hard to come by. Although there is some data for adoption it could be much more comprehensive and useful for planning than it is.

Chapter 15 looks at the financial implications of the recommendations made in the report with an approximate estimate of their costs.

Chapter 16 is the conclusion of the report and looks at general areas for action from the recommendations made using a transformative, protection and prevention social protection framework adapted for this assessment.

Transformative strategies fall under Legal and Policy, and Service Delivery, Structures and Data under which the following suggestions are made:

Transformative Legal & Policy Actions

Greater priority be given to Family Support. A policy initiative be considered by the DCS, in conjunction with other ministries that provide basic social services, that emphasizes the priority role of DCS staff to liaise with other agencies to keep families together. It will stress that working with: schools, the MoH over ART provision, with home-based care providers, ECD schemes, community workers and leaders, NGOs, the cash transfer programme, etc are major planks in the priority work of assisting families to stay together in the best interests of the child.

Informal Fostering.

The requirement that any family informally fostering a child on a regular basis register this fact without payment to their local chief or a local government body is dependent on an attitude in government that views this as a way of assessing support to the child and family and is in some way able to deliver this. Such a system could usefully link in with social protection schemes. The numbers are large and the issues involved are wider than the DCS's mandate and therefore requires an inter-ministerial approach to ensure that such children receive their entitled basic services. Much would depend on the attitude of the ministries of Local Government, Education, Health and Gender and Children's Affairs. A joint policy is required if any progress is to be made in this area. The revised draft of the National Plan of Action on OVCs might wish to address this.

Guardianship.

A review is needed to assess whether guardianship is better protecting the rights of children, including those from poor households. Also an assessment should be considered of whether and in what circumstances guardianship or local adoption is the best course of action for the protection of children in kinship care. The DCS could be instrumental in approaching the Ministry of Justice to see how such a review and assessment would be done. The findings of such studies should be made known to the public.

Foster-Care (non-kinship).

The promotion of foster-care as a pre-emptive intervention for children in need of care and protection (which cannot be provided by or to their family) requires a policy decision by the DCS and the necessary adjustments to the CA and DCS practice. Such a policy decision would be one way of steering the DCS to a more family-based response to children who are in difficulty than is currently the case. Foster care should be viewed as providing a temporary family respite for a child before a more permanent solution is found by way of return to family, guardianship or adoption. Alternative forms of family care or adoption must be promoted instead of the current automatic resort to using residential care.

Adoption.

There are almost half a million double orphans and some of these as well as other children have been abandoned. In policy the major need is to heighten the public's awareness of the benefits of local adoption for the many abandoned or fully orphaned children. This would reduce the number spending their lives in a CCI or being adopted abroad and leaving their culture and community. The policy needs to emphasise inter-country adoption as the less preferred adoption option. The Hague Convention states that an inter-country adoption 'shall take place only if the competent authorities of the State of origin...b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests'. The system of adoption needs to be demystified for the general public and their awareness raised of the better life that living in a caring family is for young children rather than residing in an institution. A campaign led by the AC and DCS to promote local adoption by Kenyans is a priority. Such a campaign supported by all stakeholders could bring a great increase in Kenyans applying to adopt.

Revision of Adoption Legislation.

Consideration should be given to changing the law with regard to:

- 1) Local kinship adoption by allowing kin who have looked after a child in the family for a set number of years to apply for adoption in the Children's Court and to be considered after a DCS report has been presented. The child's views must be taken into account. This would make local kinship adoption more accessible and affordable to the many relatives, especially the elderly and poor who wish to guarantee the inheritance of the children they are looking after. This system would cut out lawyers' costs and the need for a guardian-ad-litem.
- 2) Single women who are 21 years older than a male child should be allowed to adopt a male child. As single women are among the most frequent adopters this would enable the larger proportion of boys than girls who have been abandoned to find a home. The case of sexual harassment by women of young boys is rare as opposed to that of men on young girls.
- 3) The issuing of Practice Rules by the Chief Justice would lead to greater clarity and consistency in the way that adoptions are conducted by the High Court and would be welcomed by all involved. The use of templates for the documents the court requires would also be of assistance including to those who represent themselves.

Charitable Children's Institutions (CCIs). A moratorium by the NCCS on the building and establishing of new CCIs backed by sanctions should put an end to the mushrooming number of CCIs in the country. A date set by which all CCIs are to be inspected and either approved, put for further review or closed is necessary. In addition, the DCS with outside assistance needs to discover the status of all children in CCIs so that a concerted effort at their reintegration can take place. These policies would at last put the Government of Kenya in some measure of control of the plethora of CCIs that exist and start to reduce the abuses that are taking place.

A paradigm shift by CCIs and the organisations that fund them to concentrate on the provision of outreach support to orphans and vulnerable children (OVC), their families and communities rather than that of residential care would bring inestimable benefits to children.

Transformative Service Delivery, Structures & Data

Family Support. Training in family and community support to DCS and local government bodies and a significant allocation of resources is necessary so that there is a family support first approach. The support of families is not a task of the DCS alone but for the local government administration in which Area Advisory Councils (AACs) have a vital role. AACs need to be adequately funded so as to undertake their duties.

Specialisation.

The specialization of DCS field staff, with regard to family support, guardianship, foster-care, adoption and CClIs would improve child best interest decisions. This means identifying specific staff within districts who would be solely responsible to promote appropriate advice and practice concerning family support, guardianship, the setting up and managing of foster-care schemes, ensuring good adoption reporting in the districts and in the inspection and necessary action concerning CClIs. The specialization at DCS headquarters needs to be more comprehensive and assertive.

Finance:

A modest grant to foster carers who receive children on a foster care order and the providing of legal aid to poor prospective adopters who otherwise could not afford the lawyer's fees would enable more children to be cared for within a chosen caring substitute family under these orders.

Data.

From this assessment it is clear that quantitative data is not a priority within any of the areas studied and is seldom used as a tool for establishing current realities, measuring progress and for future planning. An ethos that sees data as a tool for assessing work done over a period of time so as to improve it in the future needs to be established in the DCS and with all those stakeholders with whom they work.

Protection.

CClIs. There is a real danger of trafficking and other abuses taking place in CClIs, particularly in the majority of unregistered CClIs. However, even in registered CClIs it seems that in some districts 100% and in others 60% of children have not been committed by the court and are there illegally and could be exploited. To rectify this situation is a major challenge for the NCCS, the AACs and the DCS.

Guardianship.

Clarification is needed as to how guardianship orders given to residents can be stopped from being used to remove children from the country illegally.

Foster-Care.

Well run foster care schemes would enable children to stay in family surroundings but to ensure a good standard of care requires that prospective foster parents are trained at district level before they are needed, and once selected as suitable and given a foster child the placement is monitored and the parents are assisted to support each other. Foster care schemes go hand in hand with stressing family-based solutions.

Adoption.

Foreign resident adoptions falling in between local and inter-country are a cause for concern among some stakeholders who claim they are being sought for the wrong reasons and children so adopted are being removed from the country without the necessary checks having been previously been done by a foreign adoption society.

Prevention.

Family Support. Family support is the key to prevention and everything that can be done to keep families together and mothers alive assists children. A campaign that emphasizes the fundamental importance to a child's growth and development of belonging to a caring family and community is essential as some parents seem to genuinely think they are benefiting their children by sending them to a CCI. Everyone needs to know that a caring family home outweighs almost any other advantages that can be gained elsewhere. It is the task of the State and NGOs to do whatever they can to assist families, unless severely abusive, to stay together. This is why the outreach services of NGOs has been highlighted in this report.

NGOs that assist in the unnecessary separation of children from their families should be questioned by the community and the local government authorities and if they continue, be banned by the AAC from the district and reported to the NCCS. Donors that support the expansion of CCIs should be informed that it is against government principles but that instead they should support OVC children to stay within their families rather than support their institutionalization. The type of local priorities in need of funding include: ARV schemes, home-based care, cash transfer schemes for OVCs, ECD, training of community workers or school feeding in the poorest areas. Parents need to be assisted to understand that poverty should not be the basis for sending a child to a CCI nor should a CCI be used for primary education as it is free. Families who know their children are having difficulties should seek assistance from those bodies that should be providing services and all government servants should see it as their duty to assist them.

Social Protection Initiatives. There are various forms of social protection interventions assisting children including the government's Core Poverty Programmes with its school equipment scheme and bursary programme for primary school, other programmes that build schools in the slums and in-kind transfers including free primary education, school feeding and emergency food aid programmes. Free ARVs keep mothers and children alive and families together for longer. All these and others provided by government, donors and NGOs support family cohesion. The Kenya National Social Protection Strategy by the Ministry of Gender, Sports, Culture and Social Services in 2007 advocates cash transfers for the core social protection intervention in Kenya. Cash transfers to all OVCs in need on a national scale would have enormous impact in the prevention of vulnerability as it would improve the lives of so many children who are at risk.

Cash Transfers for OVCs. Currently these reach about 25,000 households and by 2012 it is planned to reach 100,000 households. From early evaluations it seems cash transfers are enabling more children to go to school and is raising immunization levels, both of which are conditionalities for receiving cash transfers. Going to school is one of the most preventive strategies that exist for children, as it is something they seek and it reduces the chance for abuse and exploitation, eg child labour. There is a plan to widen the role of the Location Advisory Councils currently involved in the selection process of beneficiaries by encouraging them to use the scope of their child protection mandate to refer children who they meet who are in need, even if they are not selected for a cash transfer, to the relevant government department or neighbourhood group who could give them the necessary assistance, whether it be education, health care, home-based care, ART, shelter, ECD, counselling or neighbourly support.

Chapter 17 brings together all the specific recommendations made throughout the report.

Chapter 1

INTRODUCTION



This technical assessment report on aspects of alternative care and adoption in Kenya has been requested by the Department of Children's Services in the Ministry of Gender, Children and Social Development in conjunction with UNICEF. For UNICEF it constitutes one of a series of assessments on the capacity to manage alternative care being spearheaded by

its East and Southern Africa Regional Office in conjunction with the responsible ministries and stakeholders in the countries involved. So far the countries covered include Kenya, Namibia, Malawi, South Africa, Swaziland and Zambia.

This report has been written using a transformative social protection framework adapted for studying the provisions and practice in alternative care and adoption¹. Increasing attention has been given to social protection and social transfer programmes in Africa over the last 5 years highlighted by the African Union's 'The Livingstone Call for Action' on 'Social Protection - a Transformative Agenda' attended by 13 African countries, including Kenya, in Zambia in 2006. This assessment forms part of the government of Kenya efforts and that of its partners towards implementation of the recommendations for care and support of OVC as outline in The framework for the protection, care and support of orphans and vulnerable children living in a world with HIV and AIDS (2004) and also the Child Protection and Children Affected by AIDS: A Companion Paper to The framework for the protection, care and support of orphans and vulnerable children living in a world with HIV and AIDS 2006.

The first document came up with the 5 strategic areas as outlined in the first 5 of 7 priority strategic areas of the Kenyan National Plan of Action for OVC. The companion paper provides for additional actions and recommendations, including the strengthening of Alternative Care through

- i) finding appropriate ways of supporting and monitoring informal care arrangements to ensure children are protected in extended families and other settings where parents are not present,

¹IDS Working Paper 232 Transformative social protection Stephen Devereux and Rachel Sabates-Wheeler October 2004, IDS, Brighton, Sussex, UK; Social Protection in Eastern and Southern Africa: A Framework and Strategy for UNICEF, 2008.

- ii) improving the formal care system to reduce overuse, guard against protection violations, encourage appropriate permanence planning, and provide opportunities for children and caregivers to express their preferences and iii) develop government and community-based protection and monitoring systems that are supported by national guidelines and standards for care providers.

This report has taken due cognizance of the Kenya Vision 2030, which aims to provide a 'high quality of life for all its citizens by the year 2030'. The vision is based on three pillars, economic, social and political. The social pillar seeks to build 'a just and cohesive society with social equity in a clean and secure environment'. The social vision has a transformative agenda and by 2012 aims to increase opportunities for all disadvantaged groups and a flagship project to achieve that is through establishing 'a consolidated social protection fund'.²

The Vision's 2012 goal for strengthening public administration and service delivery requires 'strengthening rules and processes around the policy cycle' and 'inculcating a performance culture in the public service'. It concludes that delivering the national transformation will need a centralized implementation process, relentless follow-up, fast, proactive legislating and a war for talent.³

To achieve the objectives of the social pillar the Ministry of Gender, Children and Social Development drew up a draft national social protection strategy later in 2007.⁴ It proposes cash transfers as the core social protection intervention in Kenya. National cash transfer programmes already exist in both Central and South America and in sub-Saharan Africa in Lesotho, Namibia, Botswana and South Africa. The strategy points out the importance of 'effective mechanisms to exploit linkages between cash transfers and other social protection programmes' such as free primary and secondary education, school feeding, health care, skills training to caregivers, ARV treatment accessibility, family support, etc.⁵

Social protection is increasingly seen as an overarching framework, in which social transfers are accompanied by an integrated range of support services and policies that focus on family support, child protection, alternative care and livelihoods promotion, which will in turn enhance social equity for the most vulnerable. This report focuses on children who are among the most vulnerable and prone to multiple risks because of a variety of factors which have led them to lack adequate parental care. Guardianship, foster care and adoption offer these children the opportunity to receive temporarily or permanently the family care and greater protection they need. To ensure that the alternative and permanent care arrangements do protect these children from further vulnerability and risk the practices that encompass these care arrangements need to be sound, beneficial to children, workable and well monitored. This report seeks to identify both good practices and shortcomings, and in the case of the latter the improvements to be considered to overcome them.

² Kenya Vision 2030, Government of Republic of Kenya, July, 2007

³ Ibid

⁴ The Kenya National Social Protection Strategy (Draft), Government of Kenya, MoGSCSS, Nov. 2007

⁵ Ibid

⁶ Social Protection for Vulnerable Children in the Context of HIV and AIDS, IATT, 2008.

CHAPTER 2

SOCIO-ECONOMIC CONTEXT FOR THIS ASSESSMENT



The population of Kenya is estimated at 35.5 million⁷ of which about 18 million (50%) are children⁸. It is projected that the population will reach 51 million by 2025⁹. Real GDP growth has increased over the last few years and was 6.1% in 2006. National absolute poverty has fallen from 52% in 1997 to 46% in 2005/6, yet still nearly half of the population cannot meet their basic food and non-food needs.

National hardcore poverty has also declined from 30% to 19% over the same period, this is where consumption levels are inadequate to meet basic food requirements even when all non-food requirements are dispensed with; the improvement has been primarily in rural areas where hardcore poverty is most common (22% in 2005/6) while it has worsened slightly in urban areas (8% in 2005/6)¹⁰. Rural hardcore poverty is least in Central province (11%) and worst in the Coast (35%) and NE (46%) provinces. Nairobi has the least urban food poor but in Nakuru and Mombasa 1 in 2 people's food consumption is below the minimum food requirements. Income disparities have not greatly changed over the last decade and remain fairly high as the richest 20% of the population consume 49.1% of GDP¹¹. In terms of the UNDP's Human Development Index 2008, Kenya is rated as 148 of the 177 countries listed, which places it at the lower end of the medium index section.

National HIV prevalence peaked about 2000 at 13-15% of 15-49 year olds and is now declining. The first national HIV prevalence survey in 2003 estimated 7% of persons of 15-49 years were HIV+¹². In 1999 the government declared HIV/AIDS a national disaster. About 1.2-1.5 million people are currently HIV+ and it is estimated that 1.5 million have died of the virus. Prevalence in 2006 was estimated as highest in Nairobi and then Nyanza provinces¹³. Nearly two thirds of those HIV+ are women who are more infected at an earlier age than men. However, it is women who are the main carers for orphans. ARVs have recently become free in MoH and many mission facilities and it is estimated that 120,000 were receiving ARVs by December 2006. ARVs are having a considerable impact on annual adult AIDS deaths accounting for much of the reduction from 120,000 to 85,000 deaths for 2003 and 2006¹⁴. There is a wide discrepancy in reports with regard to the negative impact of HIV/AIDS in reducing Kenya's GDP ranging from 15% to 4%¹⁵.

In the 2003 KDHS study 44% of women reported being physically or sexually abused in their lifetime and 12% said they were sexually abused in the last year. This was worst in Western and Nyanza provinces. Violence is reported to become less with a woman's higher educational level.

2.1 CONTEXT OF CHILDREN

8.6 million children are estimated to live in absolute poverty. HIV/AIDS has also had a massive affect on children either through their being infected (c.120,000-150,000) or more commonly through being affected by their parents' infection or death. As a result many have had to drop out of school because of lack of funds, or the need for their labour in caring for sick parents/relatives or to earn money despite there being free primary education (36% of children from HIV/AIDS affected households have dropped out compared to 25% from unaffected households). It is estimated that more than 1 in 10 of all primary school teachers are ill and this has had an effect on the quality of teaching children receive . 1.3 million children (aged 5-17 years) were engaged in child labour in 1998/99 and there are said to be many thousands of children working on the streets. . Only 4% of HIV infected children are receiving ARVs.

Despite declining poverty both infant and under 5 mortality rates went up considerably between 1993-2003 from 62 to 78 and 96 to 114 per 1000 births respectively. The percentage of children fully immunized between 12-23 months fell from 79% to 60% during the same period. Since the introduction of free primary education in 2003 an extra million children have enrolled bringing to 7.2 million the numbers in primary school.

The NACC 2007 estimate of the number of orphans in the country is 2.4 million of which about 47% are a result of parental deaths due to AIDS. The number of double orphans stands at 443,000, of which 73% are AIDS orphans. In 2003, Nyanza, at 6% had the highest rate of double orphans. Orphan numbers have increased steadily over the last ten years, from 1.4 million in 1998 to 2.4 million in 2007, a greater proportion of the increase is due to the death of parents from AIDS. Orphans are liable to: removal from schooling, disinheritance, discrimination and being exposed to child labour, orphans and children of single mothers are seen as being at a higher risk of being trafficked and involved in exploitative work such as child sex tourism (40% of children involved in informal sex with tourists on the coast were orphans).



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⁷ CBS projections from 2005-6 Kenya Integrated Budget Household Survey, 2007

⁸ Projection from UNICEF, State of the World's Children, 2007

⁹ UN Population Division, World Population Prospects: the 2006 Revision

¹⁰ Basic Report on Well being in Kenya, Kenya National Bureau of Statistics, based on Kenya Integrated Household Budget Survey, 2005/6

¹¹ United Nations Development Programme, 2006

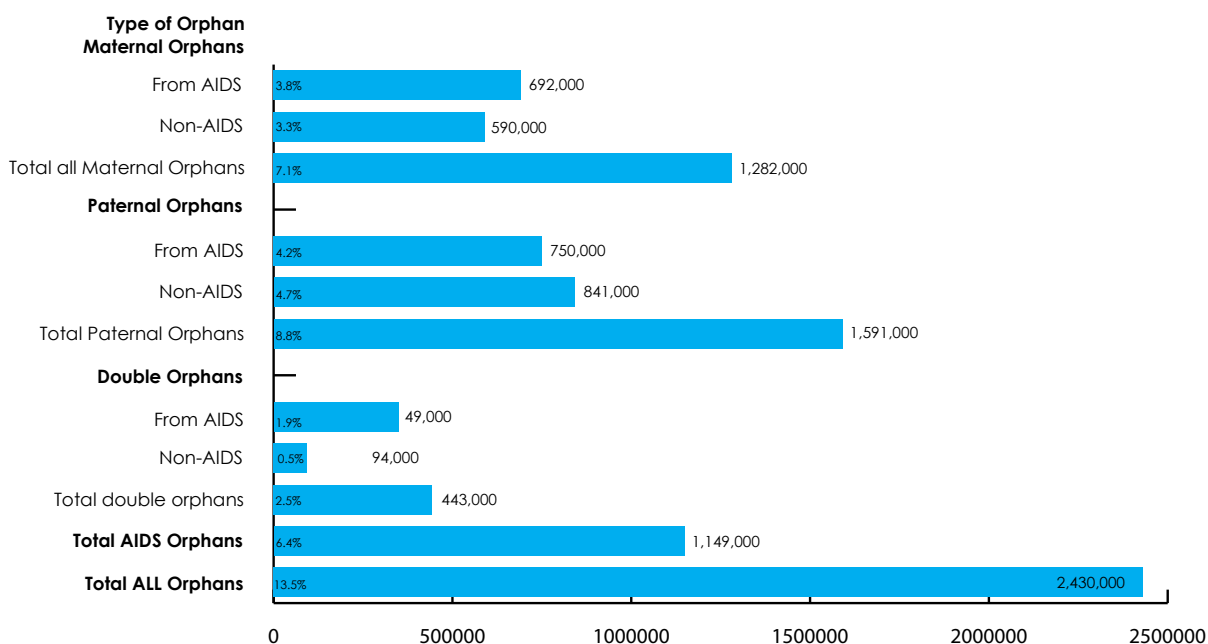
¹² Revised Draft National Plan of Action on OVC, 2008

¹³ 2006 National Prevalence as released by NACC Director on 13/8/2007

¹⁴ NACC report to UNGASS on HIV & AIDS, 2008

¹⁵ Final report on assessment of the socio-economic impact of HIV and AIDS on key sectors in Kenya, NACC, 2006.

Graph 1. Estimated number of orphaned children under 15 years by type



Source: National AIDS Control Council and the National AIDS and STI Control Programme, Epidemic Review Report, Nairobi, Kenya, June 2007

A study²⁵ on 'foster care' support to orphaned children in Kibera slums revealed an average of 2.2 orphaned children per 'foster carer' with 10% having at least 5 orphaned children. According to the study 56% of carers were forced by circumstances to provide foster care which exposed the children to the risk of child labour and neglect. Only 4% of respondents received government bursaries. The quality of 'foster care' with regard to provision of food, clothing, shelter, education and health is poor and inadequate. The carers greatest problem (73%) was in the provision of education followed by food, health and shelter. The majority of children expressed dissatisfaction with the care they received.

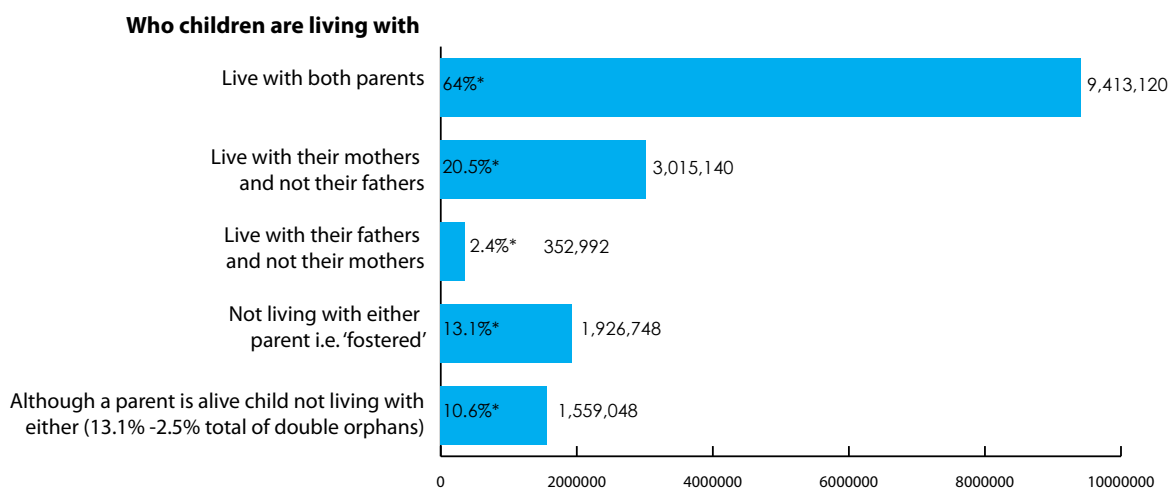
The draft National Policy on OVCs, 2005, indicated that 6 million children require special care and protection which was 40% of the country's child population. Only 17% of OVC households received free basic external support for their children in 2006²⁶.

According to the Kenya Demographic Health Survey, 2005, nationally only 64% of children aged 0-14 live with both of their parents, while 20.5% live with their mothers alone and 2.4% with their father's alone. This means that about 13.1 % of all children under 15 years (1.9 million) are not living with their parents and are therefore 'fostered' out to relatives and friends, although of these children 1.5 million have at least one parent alive (the actual percentage of children under 18 years not living at home would be higher as more children will live away from their families between 15-17 years). Informal fostering to relatives and friends is therefore a common occurrence and takes place for about 11% of Kenyan children even though they have a parent alive. One NGO thought that 75% of children placed with relatives were mistreated. However, if this system were to collapse very many more children than are already in CCIs would no doubt be placed there. With family ties weakening through increased urbanization and people's wish to have a higher standard of living, informal fostering is under threat. It is vital that the government ensure everyone is aware of the importance it places on protective family child care and its being strengthened and that it views institutional care as a last resort²⁷.

²⁵ The Provision of Orphan Care to Orphaned Children in Kibera Slums in Kenya, M. Sala, 2006.

²⁶ PEPFAR, 2007

Living Arrangements for children under 15 years



*Percentage of all children under 15 years

14,708,000 = Total number of children under 15 yrs. (using estimate from UNAIDS/UNICEF July, 2002)

Source: Kenya Integrated Household Budget Survey 2005/6, except for population of children source UNAIDS/UNICEF, July, 2002.

One respected local NGO stated that many parents do not want to take responsibility for their children and see their care as the State's responsibility. Those who are poor see placing them with others who are more affluent as a sensible option. The NGO felt many communities did not know of the rights of the child and that trafficking was much more prevalent than people thought and this view was supported by one police chief spoken to.

Some children suffer from harmful cultural practices such as early marriage and female genital mutilation (FGM), eg the latter is the case for 99% of women in NE Province and often this is done to girls aged 3-10 years²⁸. Only 4 out of 42 ethnic groups in Kenya practice no FGM²⁹. However, according to a 2004 UNICEF survey FGM practitioners reveal that there is increasing pressure on them to abandon the practice; the reasons include religious advice, recognition of the rights of girls and increased awareness on the adverse effects of FGM.

²⁷ Draft National Policy on OVC, Republic of Kenya, Nov. 2005 and revised draft NPA on OVC, 2008

²⁸ 2003 Kenya Demographic Health Survey (KDHS)

²⁹ Personal communication from UNICEF

CHAPTER 3



© UNICEF/NYHQ2006-0163/Michael Kamber, Kenya, 2006

3.1 CONSULTANCY OBJECTIVES

The purpose of this consultancy was to undertake an assessment on alternative and permanent family based care for orphans and vulnerable children, in respect of the practice of guardianship, foster-care and adoption during non-emergency and emergencies. There was a concern related to the role played by Charitable Children's Institutions (CCIs) in contributing to the separation of children from their parents, relatives and communities. The scope of work includes an assessment of;

- Existing legal provisions and regulations,
- Existing processes of re-integrating children with their families/relatives and/or placing them in alternative family-based care,
- Existing implementation and monitoring mechanism and structures as they relate to the practice of guardianship, foster care and adoption of children.
- Levels of public awareness on the three areas
- Financial implications of the processes
- The role played by different stakeholders and specifically by CCIs in terms of promoting separation and/or integration and placement.

The assessment report is expected to highlight 'good practices' and to provide recommendations on gaps identified in all the above areas. Specific tasks to be accomplished which expanded on the scope of the assessment given above is given in Appendix 1.

3.2 METHODOLOGY.

A literature review was undertaken and references are given in the text; additional references are in the bibliography. In Kenya the international consultant had the benefit of a national consultant. Most of the interviews listed in Appendix 2 were attended together. Consultation with key stakeholders included a meeting with them both at the beginning and end of the three week field visits, at the latter there was a presentation and discussion with key stakeholders arising from the assessment's findings. The first week was spent in Nairobi; the second was largely spent in Western Kenya, particularly Nyanza, where there is the highest percentage of double orphans, the second highest prevalence of HIV/AIDS and the most physical and sexual abuse of females. Places visited included: Kisumu, Kakamega, Vihiga because of the practice called 'taboo children', Eldoret and Nakuru. In the third week a day each was spent in Mombasa and Malindi. The Coastal province being largely Muslim is culturally different from the rest of the country, it has the country's second largest city, is the second poorest province in the country and is also most affected by sex tourism and influx of non-Kenyans

especially from the west. The national consultant made separate visits in Garissa, Migori and Nairobi. Garissa was especially visited because it is predominantly Muslim and has strong Somali culture, it is the capital of the NE province (the poorest in Kenya) and representative of the arid and semi arid lands of the north. Garissa also has one of the highest reported cases of abandoned babies. A list of the persons interviewed and a full description of the itinerary and the processes undertaken during this assessment are contained in Appendix 2 and 3, respectively.

3.4. LIMITATIONS.

The breadth of this assessment and its timeframe required a greater accessibility to data than was available, as a result its conclusions and recommendations are best viewed as preliminary. The greatest gaps in available and accessible data are in regard to CCIs, foster care and guardianship; there are also major gaps in adoption data, which is surprising considering its central organisational management. 331 CCIs had been registered by the Department of Children's Services (DCS) by June 2008 since The Children (Charitable Children's Institutions) Regulations, 2005, came into force in 2006 giving the department this responsibility.

However, there are widely ranging estimates from 460 (DCS) to 1,500 (UNICEF) of the number in existence that are unregistered. In addition, for those homes that have been inspected and registered by the DCS there seemed to be no available data on the numbers of children resident in each home and on their status by which an assessment could be made as to whether they really need to be there. The same is obviously the case with unregistered homes. Consequently there is a complete lack of information on how children come to be in the CCIs and whether any attempt is made to reintegrate them in their or substitute families and how quickly, before they have to leave at the age of 18 years. Hence, an assessment of the role played by CCIs in contributing to the separation of children from their homes as requested in the TOR, which in many countries is a major contributor, is anecdotal and subjective. The same is true for any assessment of the CCIs role in reintegration or other placements.

This assessment has had little success in soliciting the views of children placed in substitute families. The adoptee parents interviewed had recently adopted and as in most cases in Kenya the children were under 5 years. Two of the adopted toddlers seen were very active and behaving like one would expect of a well cared for and well fed child. It was not possible with the limited time to find older ones who might inform us whether they understood the process, nor did we interview a child who has been formally fostered or placed under guardianship. One young person, aged 20, who was fostered by non-relatives but informally, in that neither the Children's Officer nor the court was involved, was interviewed (see chapter 13).

No direct interviewing was done with children or their parents affected by the recent emergency so all the comments on the affect of emergencies in Kenya on children is based on the views of involved members of humanitarian organisations.

Community attitudes, beliefs and perceptions as they relate to guardianship, foster-care and adoption is largely anecdotal and partial. Our financial assessment, where we have given it, for making suggested changes are more indicative of a process than quantitative.

CHAPTER 4

INSTITUTIONAL FRAMEWORK OF ALTERNATIVE CARE AND ADOPTION IN KENYA.



The institutional framework for guardianship, foster-care and adoption and for CCIs is set out in The Children Act 2001 and the regulations for adoption and CCIs dated 2005. The spirit behind this legislation is the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child as stated in the preamble to the Act and specified in

Part II on Safeguards for the Rights and Welfare of the Child. The part on adoption was affected in spirit by the 1993 Hague Convention on Inter-Country Adoption although not at the time acceded to by Kenya. The institutional framework for alternative care and adoption is further elaborated in the draft National Policy on Orphans and Vulnerable Children (OVC) and the revised the National Plan of Action for OVCs. A National Children's Policy is in the process of being finalised.

The revised National Plan of Action for OVCs, 2008, draws for the first 5 of its 7 strategic areas on 'The Framework for the Protection, Care and Support of OVCs Living in a World with HIV and AIDS'³⁰, which are:

1. Strengthen the capacity of families to protect and care for orphans and vulnerable children by prolonging the lives of parents and providing economic, psychological and other support,
2. Mobilise and support community-based responses
3. Ensure access for orphans and vulnerable children to essential services, including education, health care, birth registration and others,
4. Ensure that the government protects the most vulnerable children through improved policy and legislation and by channelling resources to families and communities
5. Raise awareness at all levels through advocacy and social mobilisation to create a supportive environment for children and families affected by HIV/AIDS.

The companion paper³¹ to The Framework promotes additional actions and recommendations, including under Social Protection the use of social transfer programmes, under Legal Protection and Justice the strengthening of specialised child protection services, under Alternative Care the supporting and monitoring of informal and formal care arrangements using national guidelines and standards for care-givers, and the Strengthening the State's Social Welfare sector by increasing budgetary allocations, to invest in its human resources and develop regulations, guidelines and coordination to ensure more effective service provision.

Guardianship (Part VIII of the CA, sections 102-112).

The prime players in deciding guardianship are the parents and the Children's Court. A parent(s) may through a will or deed assign a guardian for their child on their death, if both parents appoint separate people they will act jointly when they both die. They may be appointed as the guardian for the child's care/custody or over the child's estate or both. The court may become involved where there is a dispute between the surviving parent and guardian or between joint guardians or on the death of guardians, or when the parents die or cannot be found and no provision has been made for a guardian and someone applies to become the child's guardian.

The court may ask a Children's Officer to interview a prospective guardian and report where they have concerns. An example of good practice is that some Children's Court Magistrates require that the child concerned is brought to court so that they can ask the child whether they wish to have the applicant as their guardian and if they do not they will dismiss the case. A child can also bring an application to the court for the guardianship to end. Guardians themselves may bring matters to court. The Director of DCS may also request for the extension of guardianship after the age of 18 years in special circumstances, eg for a child who cannot make decisions because of severe disabilities.

The legal guardian certificate is often drawn up by lawyers though there is nothing to stop an appointed guardian from drawing up the required affidavits themselves. The Chief Justice may make rules concerning the procedures.

Foster-Care (Part XI of the CA, sections 147-153).

Unlike under the Children's and Young Persons Act which was repealed by the CA in 2001 foster-care is no longer made directly as an order of the court. Instead once a care order has been made by the court to a CCI, the DCS in conjunction with the CCI may arrange a foster care placement without reference to the court. The CA does not allow a CCI to make a foster-care placement without the involvement of the DCS. According to the CA it is the task of the manager of the CCI to which the child was first committed on a care order 'to supervise and assess the condition of the child periodically'. However, this appears to have been superceded by Schedule 4 of the Act as set out in the Foster Care Placement Rules and the five forms that go with it. According to Schedule 4 of the CA it is the Children's Officer of the DCS who manages the foster care placement. It is the Children's Officer who is required: to fill in the prospective foster parent record, ensure that a police check is done and write a report on their suitability to foster, with whom the foster-parents make the undertaking agreement, who with a witness is signatory to the foster-carer's certificate of registration and fills in the foster child's care record. A foster parent's registration certificate only lasts for 12 months and then has to be renewed by the Children's Officer. It is also the Children's Officer who will have to ensure immunisations are known and carried out by the foster parents and deal with matters of maintenance. The Children's Court has to agree that a foster parent may take a foster child out of Kenya before they do so.

Adoption (Part XII of the CA, sections 154 to 183 and the Children (Adoption) Regulations, 2005).

The Adoption Committee (AC), which is a national authority (CA, sect. 155), has been given wide ranging powers over adoption processes by the CA and the 2005 regulations. It is responsible for approving Adoption Societies on an annual basis both for carrying out local and inter-country adoptions. It has to approve each society's Case Committee, which must not include employees of the society. It also has to approve any inter-country adoption proposed by an adoption society. Any Foreign Adoption Society that a local Adoption Society wishes to work with has to be approved by the AC.

³⁰ The Framework for the Protection, Care and Support of OVCs Living in a World with HIV and AIDS', 2004, UNAIDS, UNICEF, UNESCO, WFP, Global Fund, DANIDA, DfID and many NGOs

³¹ Enhanced Protection for Children Affected by AIDS, 2007, UNICEF and the inter-agency reference group.

The local Adoption Societies are responsible for ensuring:

- the suitability of a child for adoption and of prospective adoptive parents,
- that any parent or guardian understands the effect of consenting to a child's adoption,
- the child is properly cared for immediately prior to the adoption process,
- all the necessary details concerning the child, adoptive parents and details of the case are recorded,
- the approval of its case committee to any proposed adoption,
- a medical report on both the child and the adopter is obtained,
- a report for the court is written and all the files it requires are assembled,
- its annual report is sent to the Director, DCS.

At present 3 local adoption societies have been registered by the AC to undertake both inter-country and local adoptions, namely, the Children's Welfare Society of Kenya (CWSK), Little Angels Network (LAN) and Kenya Christian Homes Society (KCHS). Foreign Adoption Societies are found by the local adoption society and their particulars forwarded to the Adoption Committee (AC) for approval. Two additional adoption societies have been registered to undertake local adoptions only, namely Kenyan to Kenyan Peace Initiative (KKPI) and Ark Cradle Centre, the latter is the only one solely based outside Nairobi in Kisumu ³².

The High Court is the only court that has jurisdiction to hear adoption cases and make adoption orders. Whereas the High Court sitting in the provinces may hear local adoption cases only the High Court in Nairobi can adjudicate on cases of inter-country adoption (Kenya Gazette directive by the Chief Justice). These cases are always to be heard in chambers. The High Court would seem to be responsible for forwarding information on every adoption order made to the Registrar General for entry into the Adopted Children Register (CA, sect. 170) but this does not appear to be happening (see chapter 8).

Lawyers usually represent the adoptive parents but there is nothing to stop a prospective adoptee from self-representation. A considerable amount of contact is required with the High Court registry to ensure all the right documents have been assembled. The documents required for local and inter-country adoption are listed in Appendix 4.

A guardian-ad-litem is not obligatory according to the CA but is usually requested and approved by the court. The role of the guardian-ad-litem is to look after the interest of the child and prospective adoptees during the duration of the court process and to write a report on how the 3 month or longer period of being fostered by the adoptive parents has gone and whether in their view the adoption is in the best interests of the child.

The Department of Children's Services (DCS) is involved in a number of ways:

- it acts as the Secretariat for the AC, including monitoring of adoption societies, holding and writing annual reports, collecting data concerning adoption orders, making the minutes of AC meetings and following up on instructions from AC,
- Secretariat checks that a proposed foreign adoption society is registered in its own country, is non-profit making and respects Kenya laws and adoptions and passes this information on to the AC,
- Secretariat checks that each individual international adopter is favourably assessed by the foreign adoption society,
- when a judge wants a further check on the situation a report may be requested as part of the court process at the end of the 3 month fostering period from the DCS's special section responsible for adoption and alternative care or the DCS provincial offices.

³² Unfortunately neither the consultants nor the DCS were able to find their offices or staff.

CHAPTER 5

ACHIEVEMENTS IN ALTERNATIVE CARE AND ADOPTION SINCE 2001.



Child protection has been improved especially since 2001 through transformative changes in law, policy and institutional frameworks. The cash transfer scheme to critically at risk OVCs has, with other schemes managed by civil society bodies such as PEPFAR, NGOs, FBOs and CBOs, assisted in reducing the increase in family breakdown in those districts where they have been introduced.

A. Legal and Policy Framework. Prior to 2001 the main law concerning children was the Children and Young Persons Act 1964 (CAP 161 now repealed). It primarily focussed on children in conflict with the law rather than their care and protection. A child was also defined as under 16 years. The Children Act, 2001, is a transformative piece of legislation inspired by international instruments and good social work practice. Its preamble sets its tone and remit and particularly emphasises its care and protection focus. It states:

'An Act of Parliament to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children's institutions; to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and connected issues'

Part II of the CA on the 'Safeguards for the Rights and Welfare of the Child' make clear the government's aim to progressively achieve the full realisation of the rights of the child, explicitly stating among others a child's right to education, health care, protection from child labour and armed conflict, protection from harmful cultural rites and protection from sexual abuse and exploitation.

In relation to this assessment it details the administration and procedures in respect of guardianship, foster care and adoption. It also has Parts which set down the law concerning the administration of Children's Services under the National Council for Children's Services, Children's Institutions and Children's Courts. In relation to Adoption and Children's Charitable Institutions the CA was supplemented by regulations in 2005. In the case of adoption it has refined procedures and set out the forms required in relation to applications to register as an adoption society or foreign adoption society, for an adoption society's annual report, for consent or not to adoption by biological parents and forms for prospective adoptive parents.

The Charitable Children's Institutions regulations, 2005, sets out how CCIs should register and the minimum standards they should adhere to and 14 schedules that elaborate on their and the government's responsibilities. In addition to this legislation the government of Kenya has acceded to the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption, and this came into force in June, 2007.

There has been a major improvement in the way adoptions are conducted compared to before the CA where some major examples of bad practice were exposed in the press. In those days an inter-country adoption, for which there were no regulations, could take place on the same day without any assessment and one senior DCS officer described it as being done 'underground'. Government has responded to the HIV/AIDS epidemic and the high levels of vulnerability of children in Kenya by issuing in 2005 the draft National Policy on Orphaned and Vulnerable Children; and by developing in 2005 and rolling out implementation of a National Plan of Action for OVCs. In line with this has been the initiating and expanding of the cash transfer program for poor families caring for OVC. This assessment, and any subsequent implementation of its recommendation, is in response to the draft National Plan of Action for OVC recommendations.

B. Institutional Frameworks. Under the CA the National Council of Children Services (NCCS) has been given the powers to set up Area Advisory Councils (AAC) whose role it is 'to specialise in various matters affecting the rights and welfare of children'. Most areas have these Councils and in some places Location Advisory Councils have been established often because of their role in the cash transfer programme for households with OVC children. The Area Advisory Councils have a major role in inspecting CCIs to check they meet the criteria for approval as set out in the third schedule of the CCI regulations and if they do meet the criteria to inform the Director DCS or otherwise recommend what improvements be made or recommend its closure to the Director.

The Department of Children Services has undergone some major developments over the last few years. It has restructured itself at headquarters such that there is a unit responsible for Alternative Family-Based Care (guardianship, fostering and adoption), one responsible for Institutions , another one for field services , one for OVC support and a fifth one for administration and Finance issues. Recently due to representations made by the department an extra 160 new Children Officers have been appointed most of whom have some training in a discipline allied to that of social work. The DCS also has many Volunteer Children's Officers.

The new CCI unit was officially set up in January 2008; the DCS had only registered 5 CCIs by December 2006 but by June 2008, 18 months later, it had registered 331 CCIs. The DCS carried out training in 100+ CCIs in 2007 across the country. On June 1st 2008, the DCS set up, with the assistance of Safaricom and CellTel and the NGO Childline Kenya, a new short code numbered free hot line '116' for children to phone if they have problems of any sort; adults also can call to report cases of child abuse. The call centre in Kenya which is manned 24 hours a day is currently receiving 500 calls a day from all over the country. Discussions with the Communication Commissions of Kenya, Uganda and Tanzania have been initiated with the plan to establish this hot line in all East African countries.

C. Introduction of a Social Protection Scheme for OVCs. The government with UNICEF, WB and DFID support has established a pilot cash transfer scheme now in phase 2 to assist extremely poor households caring for OVCs, particularly child headed households and where children are dependent on an elderly care-giver, often a grandmother. The objective of this programme is to ensure that these OVC are retained in these households and that they can access basic services so improving their future prospects. Currently the selected households receive 1,500 KSHs (estimated US \$ 23) per month per household which they receive every 2 months. Within the current pilot phase, the government is the impact of imposing conditionalities in some 4 districts of the 37 districts covered. The conditions that recipients have to meet are: i) ensuring children below 1 year old receive full immunization, children between 1-5 years are taken to hospital at least 2 times in a year for growth monitoring, and vitamin A supplement (iii) that children above 6 years attend at least 80% of the school term for primary school.. At present 25,000 households are being reached in 37 districts. The plan endorsed by government is to reach 100,000 households by 2012.

CHAPTER 6

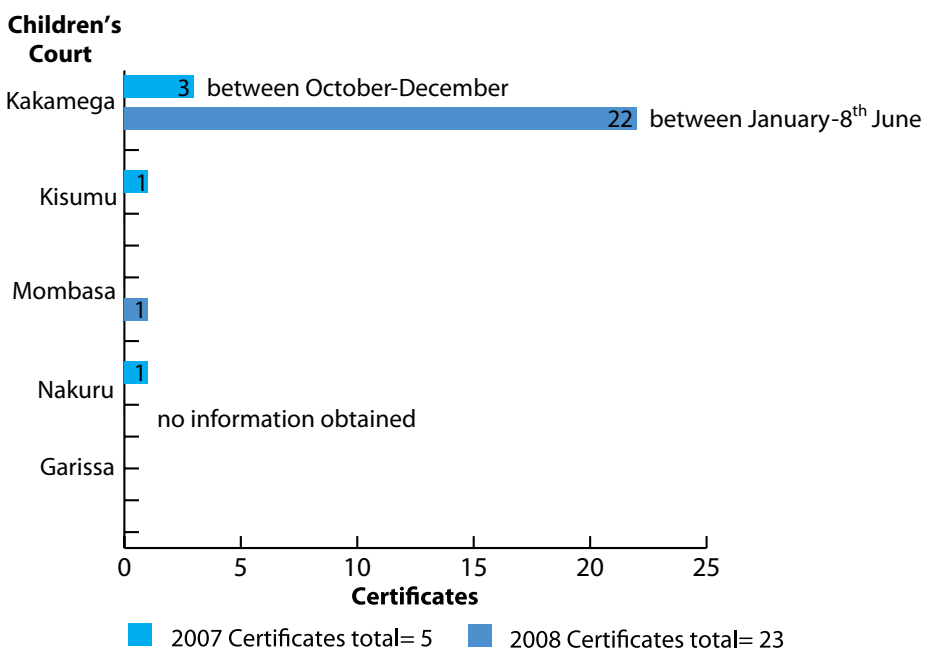
CURRENT AVAILABLE DATA ON ALTERNATIVE CARE AND ADOPTION.



Guardianship.

There is no central data base for guardianship. Those made through wills and deeds should be known to the trustees. While the consultants made attempt to follow up on this data , it was not possible as no one seemed to know where to get this data and also due to time limitation.. Guardianship certificates made by the court could be researched by looking at all the Children’s Court registers.

It is uncertain without interviewing each magistrate whether the entries are exact, e.g. do all the cases of maintenance in Mombasa which are many refer to maintenance only or may some also include guardianship of which none were mentioned? The 3 registers studied for the Children’s Court of Kakamega, Kisumu and Mombasa gave very different results which may reflect the approach of the magistrate. From this small sample and information received it does not look as though guardianship certificates are sought much through the Children’s Courts.



Foster Care.

The Director of DCS in conjunction with the manager of a CCI may place a child from the CCI with a foster parent. According to the Foster Care placement rules – form 3 it appears that it is the Children’s Officer who has oversight of the child and who may visit the child at the foster parents’ home and may remove the child. Currently the numbers of those fostered appears to be kept at the district and provincial level but not forwarded to the DCS centrally, so it is currently only by checking district and provincial annual reports that a clear picture of the use of foster care can be determined. It would appear that not all provincial annual reports are received by the DCS centrally and that those which are received are not collated. So there is at present no clear picture as to how much foster care placements are being made. From a study of the one provincial annual report obtained from the Rift Valley for the financial year 2006-7 there is no explicit mention of foster care placements done in the province. If this is the same template used by all provincial children’s officers then this will not currently be a source for such information. However, information on formal foster care placements was obtained from some District Children’s Offices as set out below.

Foster Care Placements for a group of 6 districts plus Kibera on consultants’ itinerary

District	Number of Formal Foster Placements 2006-8
Kibera, Nairobi	0
Kisumu	0
Kakamega	4 completed; 3-4 in pipeline. They have been going to court for orders as prior CA 2001
Vihiga	4 (2006-7)
Nakuru	8 (2007)
Garissa	3 (supervised by DCO)
Migori	0

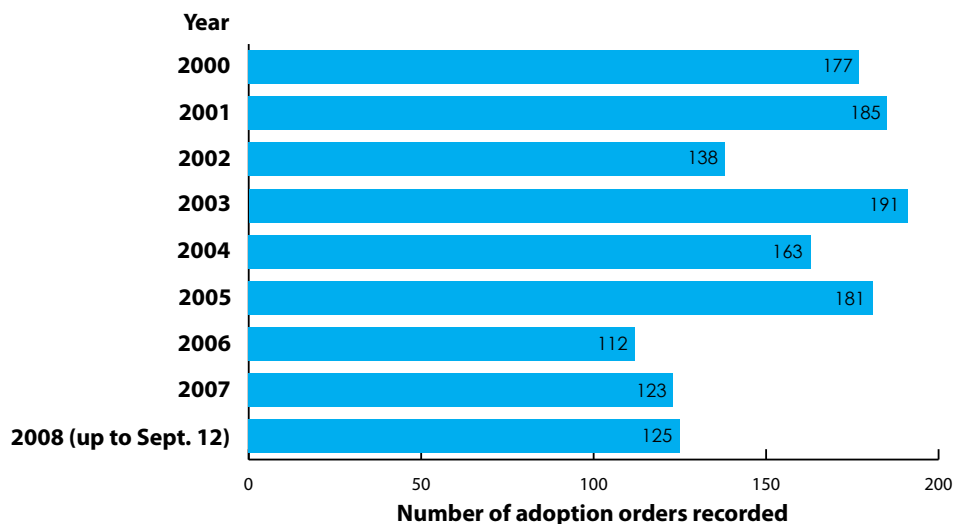
Adoption

The Registrar-General’s office holds the Adopted Children Register and it is the court who should direct the Register-General to make an entry in the register (CA, Sect. 170) The register provides a page for each case carrying the following information:

- number of entry
- date and country of birth of child
- name and surname of child
- sex of child
- name and address and occupation of adopter(s)
- date of occupation order and court by which made
- date of entry
- signature of officer deputed by RG to attest the order

The Registrar-General’s office supplied information from their Adopted Children Register of adoptions made from 2000 to Sept. 12th, 2008. The number of orders being made over these years fluctuates in the range 112-191 per year and the trend recently has been for orders to be at the lower end of that range.

Total Adoption Entries in the Registrar-General's Adopted Children Register 2000-8

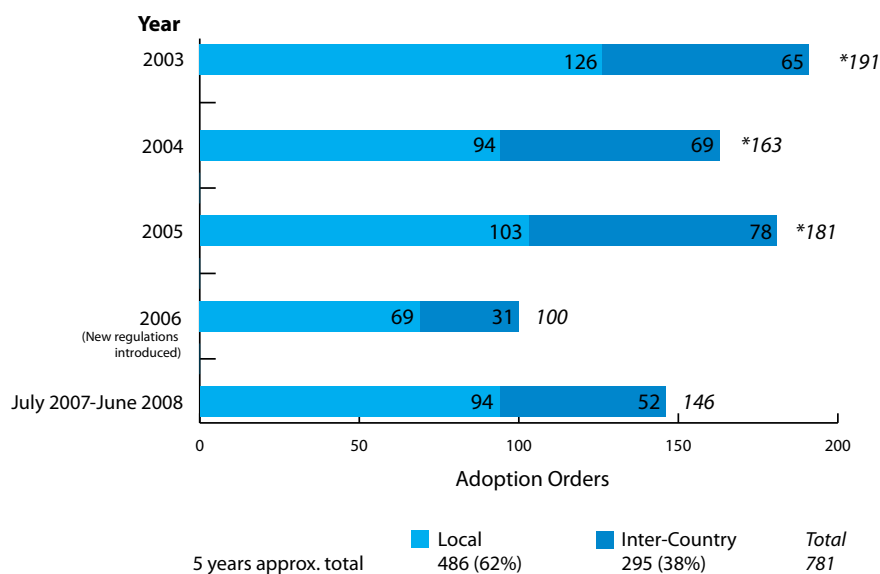


A study of the 2007 figures shows that more girls than boys were adopted 67 to 56. Also that most of the orders were made by Nairobi High Court (100) with the others as follows: Mombasa (5), Machakos (5), Embu (4), Eldoret (3), Kisii (2), Nyeri (1), Thika (1), Malindi (1) and Kitale (1).

However, there are concerns about these figures as they do not appear to come direct from the court to the RG's office but from lawyers, whose firms are not recorded. There is therefore no way of knowing if these numbers accurately represent the number of court adoption orders actually made in the year. Further there is no way of being sure of whether an order was a local, resident or inter-country adoption as that is not recorded. For both accuracy and research, it would be helpful if these issues were addressed.

DCS provided the following data on local and inter-country adoption. The data from 2003-5 are from the figures received from the RG. The data from 2006 is based on DCS adoption reports undertaken by the DCS unit but not provincially. The DCS data makes no distinction between resident and inter-country adoptions as the adoptive parents are foreigners and are likely to go abroad with the child(ren).

Adoption Orders – data provided by the DCS for 2003-2008 (June)



*Figures taken from the RG's Children Adoption Register

For the period 2006-2008 there is some difference in numbers between that of the RG's Children Adoption Register with 360 adoptions and that of the DCS with 246 probably because the DCS has only recorded those cases where they have done reports.

From the above DCS figures inter-country adoption makes up nearly 40% of all Kenyan adoptions as reported by the DCS. This seems a very high figure considering that normally domestic adoption is encouraged as keeping children within their culture as opposed to inter-country which should be seen as a 'last' option. In the USA in 2000 inter-country adoptions only made up 14% (18,000) of a total of 127,000 adoptions³³. While it may be questionable comparing USA and Kenya owing to different socio-economic and cultural conditions surrounding adoptions, 40% level of inter-country adoption is still high given the standards prescribed in the Hague Convention regarding giving priority to local adoption.

Recommendations.

- The Registrar-General review the way that orders are referred to the RG's office and as to whether it would be better for notification of adoption orders to be sent directly by the court and acknowledged.
- The Registrar-General to consider a reference being made in the registering of each adoption order as to whether it refers to a local, resident or inter-country adoption.

³³How many children were adopted in 2000 and 2001, Child Welfare Information Gateway, 2004

CHAPTER 7

THE IMPACT OF CHARITABLE CHILDREN INSTITUTIONS ON GUARDIANSHIP, FOSTER-CARE AND ADOPTION.



© UNICEF/NYHQ2006-1754/Michael Kamber, Kenya, 2006

Guardianship.

It seems unlikely that CCIs have much influence on guardianship except possibly indirectly as carers may try to ensure a child is able to stay in the community rather than go into an institution.

Foster Care.

With respect to foster-care CCIs have been given a critical role by the CA as it appears that a foster care placement, as set out in Part IX under Foster Care Placement (section 147), is dependent on a care order having already been made to a CCI. In other words the CA emphasises the making of foster care placements from a CCI. However, as set out in sect. 125 (5) the court may order that a child in need of care and protection shall remain with a fit person until the child is 18 years or a time to be decided by the court, also under sect.114 (b) a child may be placed with a person named in a 'residence order'. It would seem from these last two sections that a child can be placed through a court order with a fit person/foster parent without having first to go to a CCI, yet there seemed to be little or no awareness of this.

Prior to the CA all foster care orders were made by the court. The wording and common current interpretation of the CA has led most Children's Officers to see a foster care placement as an arrangement made between themselves, the CCI, the child and the foster parent without any need to involve the court. The result of this interpretation is that foster care placements are not used as a way of providing a substitute family for a child before that child has been placed with a CCI but rather as a way of providing an exit strategy from a CCI. However, the DCS and the CCI are unlikely to show much urgency in using this approach as the child has a place of residence.

Formal fostering therefore appears no longer to be a pro-active way of keeping children in a family environment, e.g. DCS district offices do not appear to have a list of trained foster parents with whom children in need of care and protection could be placed rather than putting them in a CCI. The current approach for placing children first with CCI before they can be placed with foster parents undermines the concept of residential care as a 'last resort'. According to one CCI social worker interviewed, her CCI often places children without relatives with families who express an interest in caring for them. The CCI makes a home visit to ascertain the conditions. The family writes an application. The child is then released and the CCI follows up especially when the foster parents are new. Visits to new "fostering" parents are impromptu. Although in this case some care is being taken it is not being arranged in conjunction with the DCS as the CA authorizes (sect.147). Our impression is that numerous other CCIs also place children in foster care without consulting the DCS.

Adoption.

Without research it is unclear what percentage of all adopted children comes from CCIs but it would seem likely that most do so. It seems probable that running a CCI which is primarily a babies' home means it will be involved heavily in adoption.

Two of the Adoption Societies (CWSK and Kenya Christian Homes Society) run their own CCIs and it appears that the Little Angels Network has close ties with the New Life Homes. Despite the connections between CCIs and adoption societies, there does not appear to be a restriction to the CCIs having links with other adoption societies when arranging adoptions. Adoption societies also report that they can work with most CCIs of their choice on adoption matters. The tight connection between adoption societies and CCIs could nonetheless occasion cases of pre-selection of children for adoption, which is illegal. Indeed, it was reported that some CCIs refuse to admit children who are seen as 'hard' to adopt, such as those with disabilities (even with slight disability such as squinty eyes), who are HIV+, boys etc. this is to avoid these children staying long in these CCIs.

However, it has been reported that some managers of CCIs refuse to give out children for adoption as they view them as their "own children". Even after parents have adopted children, the CCIs and adoption societies through which the adoption took place often view those parents as "our parents" making it difficult for anyone else to interact with adoptive parents. It was reported that, this possessiveness is for purposes of protecting the interest of adoption society and those of others involved in the process. The same kind of possessiveness was also reported when it comes to relationship between national adoption societies and international adoption societies where again a specific international adoption society is referred to as "our adoption society" and in some instances, the international adoption society have had to sign agreements with the local adoption society that identified it to exclusively deal with that local adoption society. This again limits free interaction for international adoption society and local adoption society of their own.

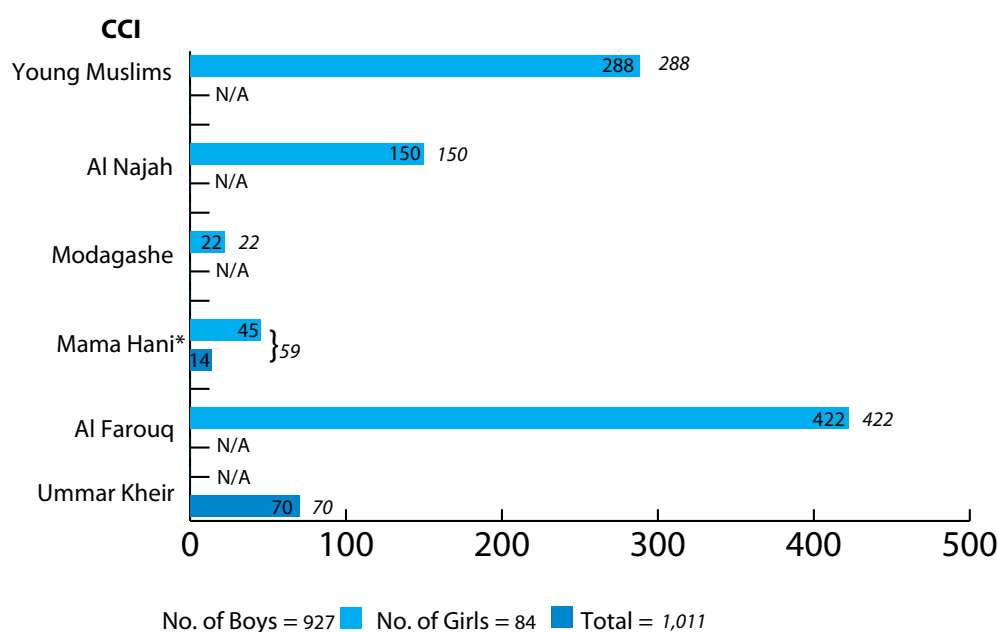
General Impact of CCIs.

Apart from their direct effect on fostering and adoption, CCIs are largely of an unknown quantity in Kenya as most of them are unregulated and unregistered. According to the CCI regulations 2005, 'No organisation shall operate as an institution unless it has been registered under these regulations'. All such registration is through the AACs and then on to the Director, DCS, for approval. However, there are reports that some AACs meet irregularly or rarely meet as much depends on the DCO having the funds to facilitate these meetings. Consequently the undertaking of their tasks including inspections can be haphazard. In addition, some CCIs are trying to avoid the minimum standards set by trying to become registered through the NGO Council, the the Department of Social Services, as church's charitable services or some other body. Others are simply not bothering to register. There was a directive that all CCIs had to be registered by December 2007, which led to a spate of registering but still the majority are not registered. With the passing of this deadline, no further directive setting a final deadline has come from government so the pressure on CCIs has been removed and registering has slowed down.

No one has any clear idea as to the legal number of CCIs, nor the number of children that are resident in them. If there were 1,200 CCIs as has been mooted as a lower figure by UNICEF and there were 40 children on average in each CCI (a probable underestimate see information from Garissa below where the average children resident in the 6 CCIs there is over 168) then there would be 48,000 children resident in them. But at present this is a complete guess. The DCS gave a figure of 761 homes but thought there could be many more; even at that estimate at 40 children per CCI there would be over 30,000 children in these homes. However, taking the lowest of 30,000 and a highest figure of $1,200 \times 168 =$ over 200,000 the total figure could be anywhere between 30-200,000 children. For government not to have a handle on what the number is when so many children are involved is worrying.

As the majority of CCIs are unregistered it is probable that the majority of the children in them will not be there under a court order and therefore are there illegally. Some CCIs are seen as being money spinners for their owners, which would tend to suggest that they might be open to trafficking as another way to raise money. The team was also informed that some CCIs send children to the street to beg for food and money. This is an illegal undertaking. What is also very disturbing is that many CCIs that are registered also do not have children committed to them by the court (see example from Garissa below). These children have no legal guardian looking after them and could easily be vulnerable to trafficking, child labour and other forms of abuse. In the NE province there are suspicions that many of the claims of death by CCIs are false and could be a way of accounting for the absence of children from trafficking. The current situation is failing to protect children. One senior government lawyer referred to CCIs as 'being out of control'.

Statistics on the CCIs (6 in total) for Garissa from the 2006/2007 Annual Report



*Only Mama Hani is not registered

According to the Garissa DCO none of the children have had committal orders from the court although he is hopeful the process will start soon. The Magistrate confirmed that he had never committed any child to the CCIs, which would appear to show a lack of involvement in how CCIs are managed. This may well be quite a common attitude and needs addressing. Mama Hani's CCI is an example of a sub-standard CCI existing because there are no other alternatives available (see box below).

Sub-Standard CCIs can Exist where there is a Real Need but no other Alternatives, e.g. Mama Hani's CCI.

According to the DCO in Garissa the DCS would like to close the Mama Hani CCI as it is failing to meet many of the standards set down in the regulations. But with the very moralistic ideas in the area about children born out of wedlock being cursed and therefore abandoned there is no one else willing to take these babies. The same is true for those children with a disability who are unable to graze the herds. Both these groups of children are received at Mama Hani's. Today the CCI has 79 children of whom 28 are handicapped, 6 are babies, 8 are in nursery school, 52 are in primary school, and 13 are in secondary school. The children and young persons are aged between 7 months and 22 years. The majority are aged between 5-7 and 12-13 years. Parents rarely come to see their children but claim them when they complete high school education. Many local people do not support it as they say it is housing illegitimate children who should be killed.

Article 6(1) of the CA states that: 'Where a child is separated from his family without the leave of the court, the Government shall provide assistance for reunification of the child with his family'. Until the current lack of government supervision over most CCI and the children they accommodate is addressed there is no way this process can begin. Further until the government through the DCS obtains control of the situation in the mushrooming number of unregistered CCI the guiding principle of the draft National Policy on OVC (4.6) which states that: 'Institutional care shall be a last resort, when all other social safety nets are not available, or are not the best option for the child's care, support and protection' cannot be realised as there is no knowledge of any other alternatives having been tried.

The CA states sect. 4(2) 'In all actions concerning children...the best interests of the child shall be a primary consideration' and sect. 6 (1) 'A child shall have a right to live with and to be cared for by his parents'. The general experience in sub-Saharan Africa is that the great majority of children in CCI need not be there if support and counselling was given to the child's parents or relatives, or where none of these was available and suitable, in a substitute family. There is an urgent need for all unregistered CCI to be inspected and decisions made as whether it is appropriate to register them according to the laid down guideline, or defer registration for a period so the necessary improvements can be made or to close them. This is a major undertaking. In addition, all children resident in these CCI should have their particulars taken concerning their age, sex, length of stay, reason for placement, home address, whether they have parents or relatives alive, whether their family members visit them or they go back home for holidays, their HIV status, their care plan arrangements, future wishes of the child, etc. From this information reintegration plans can be made.

The longer a child stays in a CCI the more institutionalised they become and the harder it becomes for him/her to reintegrate into a community when discharged at 18 years. The sooner monitored reintegration takes place into a caring family the better are a child's life prospects.

Reported Example of how some Homes Recruit and the Lack of CCI Regulation

A person went to a church saying they had started a Home and that they needed children and asked the congregation to let them know of any who could benefit. This was reported by a senior member of NCCS.

In the criteria for giving approval for a CCI in the Third Schedule of the CA it states that it 'Must accommodate or have capacity to accommodate at least 20 children'. The draft UN Guidelines on Alternative Care states that 'Facilities providing residential care should be small...' however the CA seems to be stressing largish Homes. It also raises the issue of what distinguishes the maximum size of a foster-parents home from a CCI. In South Africa and Namibia a fostering grant can be given to foster-parents who have a maximum of 6 children, so presumably then a Home is any residential Home that holds more than that number.

What constitutes a 'Child Welfare Programme' in the CA (sect.69-71) is difficult to understand. What is different about it as opposed to the approval to run a registered CCI? Does it apply to other organisations apart from CCI? It would be useful if the Director with the other relevant parties could make the purpose of this passage clearer. It may refer to a CCI running an outreach programme, by which children from a CCI or before they arrive at a CCI are assisted to stay within a family. This is a crucial role for CCI and as such an important feature of what CCI should be doing requires more explanation and emphasis.

There are examples of some CCI doing outreach work both in a small and large-scale fashion. Shangilia Mtoto wa Africa, Kangemi, supports 229 children, of these, 20 are being supported in their own homes and another 59 at boarding schools while the remaining 150 live on the premises. Mama

Ngina CCI, Nairobi, supports 120 children most of whom are HIV+ in the local community. Nyumbani CCI is another example of a CCI providing reintegrated HIV+ children with medication (see box below); it also has a preventative outreach programme of day-care and feeding to ease the burden for poor families in Kibera slums. Missionaries of Charity and Imani CCI also have outreach activities providing food and vocational training to poor children living in the adjacent neighbourhoods.

A highly developed example of outreach good practice is undertaken by St Camillus, near Migori, in Nyanza province, which supports 2,500 children in that way, (see box below). A paradigm shift by CCIs and the organisations that fund them to concentrate on the provision of outreach support to orphans and vulnerable children (OVC), their families and communities, as exemplified above, rather than that of residential care would bring inestimable benefits to children.

Nyumbani CCI and Good Practice with regard to HIV+ Children.

Nyumbani CCI is a home for 107 children with HIV. If a child who is HIV+ becomes HIV- they are returned to their family or put for adoption (3 have reverted since 2005 – one case is awaiting adoption). With medication a growing number of HIV+ children have returned to good health and so a growing number of reintegrations have taken place from 38 in 2005 to 60 in 2007. Reintegration has increased because there is a growing awareness that HIV+ children can be looked after by HIV- people without infecting them as long as the right precautions are taken. Nyumbani continues to provide medication to those children who are reintegrated.

Good Practice Use of Outreach by St Camillus Dala Kiya CCI (Dala Kiya is Dholuo for 'orphan care')

CCI is catering for 2,584 children under three arrangements, one of which is outreach foster care. The Outreach Programme for 2,500 children takes place in their homes within the community. These children are supported in 6 nearby primary schools and one secondary school and they get medical referrals, educational support (PTA, uniforms, etc.), food, ART and planned income generation support.

Besides the outreach, St Camillus' care for children in two other areas shows that they are thinking about how to improve the lives of children in their care:

- (i) 58 children (38 boys and 20 girls) within the children's home are organized into 6 foster care families each with two housemothers who work on 12-hour shifts. These children go home every holiday to reunite with their relatives. The eldest child is 16 years and the youngest 2 years. Only 12 of these are committed by the court. 80% of them are double orphans. The children are in the CCI for HIV+ care otherwise they would be in their communities. After 18 years, the children are expected to join their families.
- (ii) 26 children are being cared for by 'foster parents' in two homes right next to the CCI, i.e. within 50-100 meters distance. One home has 6 fostered boys who are housed by a mother with 3 biological children but has decided to foster the 6 children so she has nine children at home. The second foster home presumably has 20 children. Important, however to note is that the CA considers a CCI as one with at least 20 children.

Many CCIs offer schooling on the premises but there would seem no need for this as primary education is free and by going to the local school it would assist in integrating the children into the local community rather than isolating them. The money that is spent buying school equipment for the CCIs could be better put into providing children with the uniforms and books they need and also in assisting the local school, preferably doing this so they could stay at home or otherwise attend the local school from the CCI.

The CA concerning CCIs in Emergencies. The CA in sect. 63 (1a) allows for a child to be received into a CCI by an authorised officer in an emergency situation. The term 'authorised officer' is very broad and allows this to be done by an administrative officer, a labour officer or a chief. Giving this role to so many players makes the gate-keeping process extremely difficult. It would be more manageable if cases even in an emergency could only be referred to a CCI through a DCS member of staff or the police, where the latter knows from their own rules that the DCS must be immediately notified. In addition, the exception for not taking a child brought to a CCI to court in an emergency (sect. 63(2c)) gives the CCI grounds for doing nothing and could therefore easily be abused. An 'emergency situation' is not defined in the CA so is open to interpretation.

CCIs appear in Kenya, as in many countries, to be the first resort rather than the last. This seems largely due to the lack of emphasis on community care and the training and time of DCS staff to prioritise family (nuclear and extended), substitute family and community support to keep children within families and communities where they can be given individual care and attention³⁴. The time and cost involved in improving children's circumstances so they can stay in a family will usually be much less than that involved in re-integrating them from CCIs. An example from Sri Lanka where 782 reunifications from CCIs were undertaken with a 94% success rate showed that on average a full time social worker was only able to complete 2 reunifications per month as it took on average 5 pre-placement visits and 8 post placement visits³⁵.

In the opinion of the consultants, the CA gives undue influence to CCIs. This will be dealt with in chapter 11 on the legislative review.

Recommendations.

- The NCCS should consider placing a moratorium/freeze on the opening of any new CCIs from now until further notice. This notice to be advertised in the media and all government publications. Punitive action should be considered for those who ignore this order.
- The NCCS should set a date by which all CCIs need to be inspected and a decision made to register if they meet the criteria. CCIs can be given 6 months to meet it, or to be closed. Those consulted broadly concurred that 12 months was sufficient time for this process.
- The Department of Social Services in the Ministry of Gender, Children and Social Development and other relevant ministries, the NGO Coordinating Bureau, all NGOs, donors, AACs, churches and other stakeholders should be informed that a CCI may only be registered by the DCS after inspection by the AAC and approval by DCS.
- Children's Court Magistrates should proactively ensure in conjunction with the DCO that CCIs do not keep children as residents unless committed by the court.
- Children's Court Magistrates should be incorporated into AAC CCIs inspection teams.
- Data should be collected on all CCIs using a set format (example given below ³⁶) and copies left with the CCI, the district Area Advisory Council (AAC) and DCS and sent to DCS HQ to be collated and analysed. Where a CCI operates under a civil society or a faith based organization, the data should be passed to DCS HQ through the organization's HQ so as to make them responsible and accountable for their CCIs.
- Data should be collected on all children in each CCI using a set format (example given below ³⁷) and copies left with each CCI and held at the DCS district office and centrally for district and national collation and analysis. A system should be devised that require CCIs to provide annual reports which includes the number of children they have received during the year, those that have special needs (disabled, HIV+, cerebral palsy, etc.) and the number they have re-integrated back to families.
- Information on the numbers of children with special needs (disabled, HIV+, cerebral palsy, etc.) in a CCI should be passed on to the local relevant medical and other support bodies to ensure appropriate attention is paid to the children. In addition, the AAC must be notified of all special cases in any CCI.

- The authorised persons who can place a child in a CCI or place of safety in an emergency should be limited to the court, a Children’s Officer, the police or any other credible children’s organization. Where a children’s organization places a child in a CCI as a result of emergency, the DCO and the police must be informed within a specified time. Documentation by CCI during emergency placement is of utmost importance, and the country must develop formats for documentation during emergency so as to grantee protection of children placed under their care.
- Unless a child is returned to their parents/carers, all children placed in a CCI in an emergency should be taken to court/magistrate within a stipulated period (1 week would seem reasonable).
- Trainings should be given to AACs and district DCS staff on inspection methods.
- The CCI regulations are minimum legal standards, in addition, the DCS in collaboration with the AAC should work with CCI managements and staff on agreeing on quality standards that they would wish as CCIs to aspire to.
- The question of the size of a CCI as set down in the third schedule of the CA should be reviewed bearing in mind the need to make a distinction between a CCI and a foster home. It is necessary to decide what is the maximum number of children it is felt reasonable for one family to foster then a CCI would be any residential place that cares for children full time above that number. It would be helpful if the DCS in consultation with registered CCIs stated what it saw as the optimum number range of children for a CCI to have so as to promote a family atmosphere and a similar level of caring.
- The DCS to clarify what is meant by a ‘Child Welfare Programme’ as provided for in the CA and the CCI regulations.
- CCIs and their administration bodies such as FBO and NGOs, in conjunction with DCS be encouraged to primarily support children within their families or substitute families through outreach support so avoiding the need for committals and children entering their CCI or where this has already happened by speedy reintegration wherever possible.
- CCIs should be prohibited from providing primary and secondary education within their premises instead children should be sent to the schools in their neighbourhood unless none exist or where special education is being offered by the CCI and is not available within the neighbourhood.



³⁴ A relevant short paper on this is, ‘Community-Based Care for Separated children’, D. Tolfree, Save the Children Sweden, 2003

³⁵ Evaluation of SCISL programme ‘New Beginnings for children affected by violence and conflict’ in Jaffna district and southern & western provinces & suggestions for a 3 year strategy 2008-11, J. Parry-Williams, 2008

³⁶ Children’s Home Assessment Form sent to Kenya UNICEF office, 2008, A. Dunn & J. Parry-Williams See appendix 5.

³⁷ Children’s and Babies’ Homes Child Case Record sent to Kenya UNICEF office, 2008, A. Dunn & J. Parry-Williams

CHAPTER 8

THE EFFECT OF EMERGENCIES ON GUARDIANSHIP, FOSTER-CARE AND ADOPTION



The comments in this section are primarily drawn from communication with humanitarian workers national and international working in the emergency field in Kenya particularly in relation to the post-election violence which started in late December 2007 and continued well into January and February 2008 and still lingers on in some places in its aftermath.

According to UNICEF³⁸ as a result of the post-election violence over 1,000 people were killed, over 350,000 people were internally displaced (IDP) and a total of 500,000 people affected by the post-election violence; others put the number of IDPs at between 350,000 -500,000. Somewhere between 211-300 IDP camps were set up; some were informal. More IDPs were in host communities than in the camps. It is estimated there were about 500,000 IDPs in Kenya from before the recent post-election violence, in addition there are the refugee camps in the north east.

The Kenya Red Cross (KRC) registered 800 unaccompanied children of whom they had reunified 621 as of September, 2008. Photographs of 154 unaccompanied children in CCIs were in the paper in June in an effort to establish contact with their parents/carers. No separate data was kept by KRC of separated children. It seems that the identification, documentation, tracing and reunification process (IDTR) was initially uncoordinated. In addition parents and adults have reported about 1,000 adults and children missing since January the KRC. According to the KRC they were not prepared for the scale of this emergency.

As part of emergency response, UNICEF and Save the Children supported the DCS and a few local NGOs to respond to the needs of separated children through IDTR as a result of the post election emergency. The table below gives information of 1,362 children , other than those assisted by KRC, from a collaborative effort between DCS, UNICEF, CWSK, Save the Children and Catholic Diocese of Nakuru . These figures underline the problems that arise when children are placed in CCIs in emergencies, as well as in non-emergencies, in that only 535 of the 1,362 children have been reunified with their families so far. For the DCS to obtain the overview and comprehensive collation of information of all the separated and unaccompanied children in emergencies for which they are responsible for, there is need for the DCS to take a major role in leading coordination.

³⁸UNICEF Humanitarian Action Kenya in 2008.

Table of Separated/Unaccompanied Children Found in 352 Institutions by 31st/1/2009 by DCS & CWSK and the Numbers Reunified

District	Mediation cases		Tracing cases		Total cases registered	Total reunified.		Total reunified.	
	Sex	M	F	M		F	M		F
Nairobi		155	131	14	17	317	135	104	239
Kiambu		168	117	26	16	327	15	9	24
Eldoret		114	99	17	13	243	44	35	79
Narok		2	0	5	4	11	0	0	0
Naivasha		0	0	15	13	28	0	2	2
Kitale		2	2	4	2	10	0	0	0
Molo		0	0	13	9	22	0	0	0
Kericho		1	4	4	0	9	0	3	3
Koibatek		0	0	0	0	0	0	0	0
Baringo		0	0	0	0	0	0	0	0
Nakuru		91	85	72	64	312	110	77	187
Machakos		6	22	0	0	28	0	0	0
Kisumu		20	17	0	0	37	0	0	0
Cherangani		2	2	4	2	10	0	0	0
Nyamira		2	5	1	0	8	1		1
Totals		563	484	175	140	1362	305	230	535

Figure of end of January 2009 in 352 CCI. 'Mediation cases' is whereby parents know the whereabouts of their children while 'Tracing cases' is when neither parent nor the child know of each others whereabouts.

The management of the emergency raises many questions. Unofficial camps were allowed to be opened by churches, where no registration was done. According to one source about 75% of the recruiters of children for CCIs were pastors who sometimes took children well away from their homes e.g. in one case from Nakuru to Nairobi. Blatant 'harvesting' of children (going out to recruit children) by CCIs was reported, e.g. in Eldoret. One humanitarian worker reported going into some CCIs which were eerily quiet as though the children were afraid of beatings and harassment. An experienced humanitarian worker was shocked by the lack of thought by parents and IDP management over how to avoid children being exposed to risks, including trafficking. Some recruiters of children no doubt meant well but were ill-informed of what is best for children in this type of emergency.

Good Practice by the Police in Stopping the Recruiting of Children by a Nairobi Pastor.

The Kenya Alliance for the Advancement of Children reported how a pastor from Nairobi came to Nakuru and took children from the IDP camp and nearby neighbourhood after persuading their parents that he could provide them with a better life. He had 30 children in a mini-bus when he was stopped by the police. They phoned the Children's Officer to see if he had been authorised to take these children. They were informed that no permission had been given and the pastor was detained. The children were returned to the camp and to their parents.

In June 2008 a team of humanitarian workers found that Molo parents had left about 500 children in the town to look after themselves and their parents' property while their parents moved to 'transit camps' nearer their homes after the government initiated the 'operation rudi nyumbani'. They did this because they feared for their children's safety near their homes; some of these children were as young as 7 years. Many IDP parents stayed for over four months without visiting their children although living only a few miles away as they have no food to give them. Anecdotal evidence was reported of many children being pushed into domestic labour and children being involved in sex for food. No records were kept of abuse against children and adults. Given below are the figures for child headed households which appear to have resulted from the post election emergency as identified by DCS, CWSK and NCKK for those districts probably most affected.

Number of children left in Child Headed households due to 2007 post election crisis.
(Figures cover upto 31st January 2009)

District	Tracing cases		Mediation cases		Total registered children	Number of children under CHH reunified		Total reunified	
	SEX	M	F	M		F	M		F
Eldoret		64	48	56	38	206	24	18	42
Nakuru town & Subukia				37	58	95	0	0	0
Nyamira		22	34	0	0	56	4	5	9
Kitale		1	1	16	14	32	9	6	15
Molo town		0	0	1,689	1,039	2,728	392	417	809
Elburgon				3	4	7	0	0	0
Njoro Market				42	20	62	0	0	0
Kericho (Kipkelion)		19	16	84	38	157	0	0	0
Kisumu		9	6	6	4	25	1	0	1
Totals		115	105	1,933	1,215	3,368	430	446	876

Figure of end of January 2009. ('Mediation cases' is whereby parents know the whereabouts of their children while 'Tracing cases' is when neither parent nor the child knows of each others whereabouts.

Coordination of the different players appears to have been less than satisfactory with the proposed weekly meetings between the DCS, KRC and other players organised to respond to the needs of children, especially separated children, taking place infrequently.

It is reported that some children were inappropriately housed by the DCS staff at Remand Homes. Both DCS staff and the KRC placed children in CCIs, although most of these were registered, it is anecdotally reported that this was not the case in all instances and that some of the CCIs have actually moved so there is no knowing where all the children are now.

Parents also placed children in CCIs as they considered them safe and at the same time providing the basic necessities for their children such as food, shelter and education (some were in their national examination year). It was also reported that in some instances, these parents moved from the IDP camps to other places and never provided their new addresses to either the KRC manning the IDP camp nor to the CCI where they had placed their children.

The emergency spotlights the need for a foster care parents' scheme. This would have enabled separated children to be placed with selected caring families rather than in CCIs. The KRC said they looked for existing foster care schemes but did not find any. One Local NGO, KAACR, reported that one family in Limuru took on 30 children in the emergency but received no government funding, the opposite was the situation if the children stayed in an IDP camp where the KRC would receive government funding and were expected to support those children.

The emergency revealed the true colours of some CCIs in that they saw the emergency as a chance to recruit more residents rather than do what they can to keep families together. The behaviour of many pastors and others managing CCIs to use this emergency for their own ends reveals the real nature of the problem the government faces with some CCIs in the country and the importance of tight regulation. However, no doubt some CCIs who gave refuge to children had children's welfare and safety at heart in what was a very frightening situation.

An extreme example of what can happen to children placed in a CCI during an Emergency



The following example was reported concerning an SOS village. During the post-election emergency some IDP children were told by their parents to say they were orphans in order to be accepted by an SOS village. However, when the situation had improved and parents told the children they could come back home, the children denied their parents were their parents! It seems they did this as conditions in SOS is so much better than those they experienced at home.

The DCO in the NE Province reported that unaccompanied children in refugee camps there are being fostered casually. Apparently 300 children in the refugee camps cannot be accounted for by UNHCR and CARE due to a weak tracking process and it is possible that some of these have been trafficked. In June 2008, the DCO rescued 4 girls of standard. 8 (the highest primary school level) on their way to India. The girls were found in a public park in Nairobi having gone missing from Garissa 7 days earlier.

Recommendations

- As a part of disaster management preparedness it needs to be known who will organise the coordination of government, UN and NGO players with regard to child protection and specifically with regard to the placement of children in foster care and wherever possible only in registered homes. The principles to ensure the maximum cooperation between all parties should be jointly agreed so as to establish a system of best practice drawing on the experience from elsewhere in the world.
- Better preparation in disaster management in relation to children; a joint planning exercise should take place with immediate effect between DCS, the Kenya Red Cross, UN agencies, eg UNICEF, UNHCR, WFP and WHO and NGOs that are active in this field, eg Save the Children.
- There is need to prepare for the IDTR process for unaccompanied and separated children in order to respond effectively should another disaster occur. This is especially to ensure immediate coordination, agreed practice and the different roles to be undertaken by the various main players. The documentation to be used should be agreed upon between the main players as soon as possible.
- Registration of all unaccompanied and separated children should be done immediately any emergency occurs. Who does this need to be part of the preparedness plans of government and other relevant stakeholders.
- The proposal by the Kenya Red Cross to set up a Child Protection Unit at their headquarters will enable the KRC to be better prepared to contribute to better child protection practices.
- A foster care register of potential foster carers should be promoted and established in each district by the district DCS office.
- As part of a preparedness policy, government should give consideration in times of emergency to paying foster parents to look after children until they can be returned to their parents, which should be as soon as possible.
- No unregistered CCI should be allowed to receive children in an emergency.
- No Remand Home should receive children in an emergency unless its whole role is altered.
- Registered CCIs who are asked to take children in an emergency should receive financial assistance from government.
- Once the law/policy is changed concerning who can place children in CCIs in emergencies (courts, police and DCS) managers or personnel from a CCI recruiting children to their CCIs during an emergency should be prosecuted.
- The method for reporting and recording abuse in an emergency needs to be strengthened and all IDPs notified and a body set up in each camp to investigate complaints.

CHAPTER 9

LEGISLATIVE REVIEW ON ALTERNATIVE CARE AND ADOPTION – NATIONAL AND INTERNATIONAL.



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Kenya's Laws concerning Children since 2001 and its Ratification of International Instruments 1972-2008.

Kenya's legislation concerning children has moved forward dramatically over the last eight years with the Children's Act and the regulations concerning adoption and CCLs. It should be noted that the Law of Succession Act, 1981, details procedures for the inheritance of property by surviving children, the right of a dependent child (i.e. a fostered or an adopted one) or someone acting on their behalf to apply for redress where 'reasonable provision' has not been made for them (sect. 26) and for the trusteeship of property until a child is 18 years.

Kenya has ratified most of the international instruments pertaining to the care and protection of children (date of accession or ratification in brackets). This includes the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (1972), the Convention on the Elimination of All Forms of Discrimination against Women (1984), the Convention on the Rights of the Child (1990), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1997), the African Charter on the Rights and Welfare of the Child (2000), Convention for the Elimination of Worst Forms of Child Labour (2001), the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the UN Convention against Transnational Organised Crime (2005), the 1993 Hague Convention on Inter-country Adoption (2007) and the UN Convention on Persons with Disability in 2008.

According to the Kenya Law Reform Commission the DCS must give instructions as to how to incorporate and domesticate new instruments ³⁹.

³⁹ The Children's Legal Action Network is undertaking a study of international instruments concerning children and their domestication in Kenya.

There needs to be some harmonisation and demarcation of the responsibilities of the Children Act and Sharia law. The Principal Magistrate stated that, in Garissa, Sharia law takes precedence when the litigant is a Muslim. This is an area which requires clarification for both legal and social reasons. There appears to be little awareness of the various functions of the Kadhi Court and its interface with the Children's Court. According to the Kadhi in Garissa the Kadhi Court legalises informal fostering relationships verbally but there is no documentation.

Issues concerning the Legal Provisions.

Under-emphasis of Community Family Care compared to that of CCIs. The CA as the major underpinning legislation for children is in many ways a better principled piece of legislation than the CYPA it succeeded with its safeguards for children's rights. However, it insufficiently emphasises the benefits of community family care as opposed to institutional care and by so doing is ignoring a basic tenet of the Convention on the Rights of the Child (CRC) which states 'States Parties shall ensure that a child shall not be separated from his or her parents against their will, except...such separation is necessary for the best interests of the child' (art. 9); article 20 states that alternative care should only include suitable institutions if necessary and implies other family substitutes are preferable.

The Draft UN Guidelines 'For the Appropriate Use and Conditions of Alternative Care for Children' 2007, presented by the Government of Brazil which represents the latest thinking in good social work practice states: 'Removal of a child from the care of the family should be seen as a measure of last resort and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care should be assured once the original causes of removal have been resolved or have disappeared'; (art. 13).

'Financial and material poverty alone, or conditions directly and uniquely imputable to such poverty, should never be a justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family' (art.14).

There is nothing in the CA which specifically stresses the importance of family support where families are facing difficulty except ironically it is seen as the responsibility of the child 'to work for the cohesion of the family'.

The CA instead of stressing family support and alternative family placements seems to emphasise the role of the CCI. In the Part XI on foster care placements it only mentions such placements as happening as a result of a child being resident in a CCI. Other possibilities are not referred to in that part. The CA in sect.147(2) gives the supervision of foster-care placements to the manager of the first CCI that received the child in (is or in? or ??) seeming contradiction to the 4th schedule of the CA. Section 112 of the CA allows a CCI to decide if a child in its area is in need of care and protection and empowers that CCI to receive that child into its care without going immediately to the court. Although the CCI is meant to inform the DCS Director in 7 days and take the child to court within 3 months these are regulations that can be easily postponed and 3 months seems far too long. Knowing the harvesting habits of many CCIs this gives them excessive powers to recruit children. Under section 120(12d) a CCI seems also to be able to investigate a case where it has recruited a child! CCIs are not likely to try and ensure that a child coming to them is a last resort and so they should at no

time have the right to bring children to their Home without this being an order of the court or in emergencies, a placement of the DCS Children's Officer or the police who will directly inform the DCS.

Further, foster care should not by practice have to go through a CCI. A foster care placement seems to be allowed through the court, eg sect. 125(5), but this practice seems not to happen. One of the apparent results of this is that districts do not appear any longer to have lists of potential trained foster parents to whom children can be placed in an emergency. As a result in practice, an emergency placement is usually to a CCI in contravention of international instruments and Kenyan policy of it being a last resort. The Children Act (Amendment) Draft Bill, 2007, does not address this.

Other Issues concerning Foster Care.

Foster care seems in the past to have earned a bad name as it is said that some children who were fostered were used for domestic labour or worse. One informant in an NGO referred to foster care as placing a child in 'unwarranted danger'. There seem also to be terms of abuse that are used against those who foster and are fostered. However, what is certain is that if foster care placements are not regularly monitored and any concerns recorded and taken up with management for action then abuses can easily become rife.

Many judges, lawyers and some DCS staff question whether it is good law to allow the considerable change in circumstances from a court's care order to a CCI to a foster care placement without having an order from the court. A problem that arises by making no legal change to whom the care order is made out to is that it could be argued that the CCI is still legally liable for the child even after a foster care placement is made although this is clearly not practicable. This requires legal clarification. The Children Act (Amendment) Draft Bill, 2007, proposes that sect. 147(i) is repealed and that in future a child on a care order to an institution is taken to court for a 'foster care order' up to 3 years (see section 44 of the Bill).

It is important for the Director to make it clear to Children's Officers that foster care placements can be made directly by the court without a child having to go to a CCI. Although form C5 used by DCS refers to the Children's Court making a 'Committal to Foster Parents' as well as to a Rehabilitation School and CCI the first form of committal is not used probably because of sect. 147 of the CA. For reasons given above there seems a need for an amendment of Part XI that allows a foster care order to be made directly by the court without a child first having to be sent to a CCI. The draft Amendment Bill, 2007, also proposes that a child on a care order to a CCI needs to return to court if a foster care placement order is to be made.

The Foster Care Placement Rules (schedule 4) leaves it vague as to who should monitor the placement; it refers to the power of inspection by an 'authorized officer', who could be any of a number of people including police officer, Children's Officer, a chief, etc but it does not state clearly who should have the general oversight of such people, although as it is one of the functions of the Director to 'safeguard the welfare of children in foster care' this implies this is the role of Children's Officers. Neither the CA nor the Rules stipulates a minimum regularity for visits to a child on such a placement.

There is no payment for foster care parents. This is very different from many countries in east and southern Africa. In South Africa the carers of informal foster parents will usually receive

a foster care grant if it is proposed to the court by a social worker. There are a number of reasons such as the numbers involved, the cost and the heavy administrative demand on social workers time why Kenya should probably avoid this course of action. The argument often voiced in Kenya against foster care grants for formal fostering is that it could lead to people choosing to take on children for the money and not because they are interested in doing their best for the child. However, if the decision to place a child in formal fostering is proposed by the DCS after the necessary vetting of the foster carers and child and agreed to by the court that may be sufficient to dispel the voiced fears. Most countries make a formal foster care payment, so a modest contribution to the extra expenses an order would incur to foster carers would seem reasonable. The DCS and all stakeholders need to review this situation. Payments would seem appropriate for those who take children in an emergency.

Guardianship.

As a guardian of a child in Kenya need not be a Kenyan citizen or a resident in Kenya (CA sect. 102 (3)) there needs to be safeguards to prevent the child being removed from Kenya without the permission of the court. The draft Amendment Bill, 2007, proposes this and states that it shall, with the exception of a mother or a father, only give such permission in exceptional circumstances and with conditions.

In Islamic law adoption is prohibited. Instead a form of guardianship known as 'kefala' is practiced whereby parents may take custody of a child but that child retains his/her own name and relationship with his/her biological family. In the CA there is no recognition of 'kefala' as a legitimate form of guardianship for Muslims nor any rules as to the process and procedures, nor as to whether the Kadhi's court has jurisdiction in this area.

Adoption.

Judges face considerable difficulty in exhibiting consistent practice as there are no Practice Rules governing the detailed procedures for adoption. These are very important when you have the Family Division judges changing every 2 or so years. Some of the areas requiring the Chief Justice's determination with regard to Practice Rules are:

- who should have the role of guardian-ad-litem (a friend or stranger or someone in between) and whether their appointment is obligatory;
- what is meant by special circumstances for making an adoption order especially of a male child to a single woman, or in respect to kinship adoption where it is a grandmother over 65 years;
- the law does not adequately identify the rules for foreign residents, eg what constitutes a foreign resident (there is no definition in the CA and that in the draft Amendment Bill is vague); after how many years is a resident qualified to adopt;
- time-frame for a DCS report once it is ordered;
- what is the role of the DCS's adoption report is it compliance to the CA and regulations or investigative; to what extent is it expected that the DCS will check the child and adoptive parents situation with neighbours, doctor, school, etc.

The question of kinship adoption is not addressed in the CA. In the draft Amendment Bill, 2007, it is proposed that the Chief Justice shall prescribe Rules for kinship adoption.

Recommendations.

- Part XI of the CA be amended so that it is made clear that foster care placements can be made by the Children's Court without the necessity of a child first being placed in a CCI.
- A review be made as to whether it would be in the best interests of the child if when a foster care placement is made on a child with a care order to a CCI that the change of circumstances is brought to court for the making of a foster care order.
- The Director clarifies who has the oversight of any foster care placement and what it entails.
- A decision be made by the Director as to the minimum requirement as to home visits to a fostered child and his/her foster-parents.
- Consideration be given by the DCS and relevant stakeholders to the making of a modest payment by government to formal foster carers approved and proposed to the court by the DCS and for which a foster care order has been made by the court.
- The AC, NCCS and the Director after appropriate consultations eg with Family Division judges in Nairobi, the Law Society of Kenya and the Child Law Practitioners Committee to write to the Chief Justice requesting him to issue Practice Rules for adoption listing areas of concern.
- DCS to seek legal advice as to the domestication of recently ratified international instruments.
- Investigate how to incorporate 'kefala', a form of guardianship used by Muslims and part of the Kahdi court's jurisdiction as an amendment in the CA and to ensure that a system is in place for all such orders/decisions to be recorded and that data held provincially and centrally.
- The removal of children from Kenya by guardians, other than a mother or father, to be addressed as proposed by the draft Amendment Bill, 2007.
- Review of Act to emphasize family based placement as opposed to CCIs.
- The law concerning local kinship adoption needs to be made easier for adoptees who have been caring for a family child (see proposals in chapter 12).

CHAPTER 10

ISSUES IN IMPLEMENTATION AND PROCESSES WITH SPECIAL REGARD TO THE ROLE AND RESPONSIBILITIES OF DUTY-BEARERS.



Guardianship

Before 2001 guardianship matters not provided for by a will or deed had to go to the High Court but since then they may be heard in the Children's Court which has made it much easier and less forbidding for people to use. According to the CWSK the Children's Court is less congested, less complicated and quicker, and to file a suit costs about 500-1000 KShs (US\$ 8-15).

Some DCS staff felt that a lawyer was necessary but self-representation according to the Children's Court magistrate in Kakamega is not uncommon there and has been successfully completed. Most people consulted felt generally positive about the arrangements as set out in the CA. However, CWSK staff felt it was probably the least understood of the alternative care approaches.

An application for guardianship has to be supported by various affidavits which give information about applicants and their fitness to be a guardian. They must also supply a birth or baptismal certificate, a death certificate of parent if they have died. If they are seeking responsibility to look after the child's estate there is another affidavit for that which indicates how much land, funds, etc the child has or will inherit. The consultants have not seen copies of these affidavits. The magistrate in Kakamega insists that the child be brought to court to ascertain that he/she is happy to have the applicant as guardian. The court may order a DCS report on the guardian but this is not mandatory. Guardians are also seen as necessary if a single person is adopting a child so that there is someone to defend the rights of the child if the adoptee dies. There appears to be no formalized legal guardian certificate available at court so the lawyer involved has to draw one up; it would be helpful if this was rectified.

Once a guardian has been appointed over a child's estate they can legally access the public trustees. According to the Registrar there is no proper structure as to how to handle the estates of children in guardianship.

The use of guardianship is very inconsistent across the country as can be seen from the few figures collected (see chapter 8). Apart from guarding a child's inheritance guardianship is useful in enabling children to access their guardian's health and other benefits though this is becoming less the case with international organizations requiring an adoption order. There are at least three major issues concerning implementation:

The first, concerns the level of protection guardianship can provide for those undertaking kinship care where the child's parents have died, deserted the child or are unable to care for the child. Guardianship is intended to protect the child's inheritance but does not give the child a share in the inheritance of the care giver which is automatic with adoption. Greater clarity is required of the benefits of guardianship for the child and whether it provides any rights to the carer's inheritance and how. If it were shown to provide this then for those who are relatively poor it might be a better option than the cost of a local adoption order.

The second, is that foreign residents may use a guardianship order to take a child out of the country and then exploit that child in some way. This is the view both of an adoption society and the Registrar of the High Court. Some feel therefore that guardianship should only be for Kenyan citizens and/or restrictions placed on taking children abroad.

The third is that there is no monitoring of guardianship orders and that this should be the task of the DCS.

Foster Care

Although it would appear under sect.125(5) of the CA that the court can make a fit person order which is in fact similar to a foster care placement except that it can be ordered to last till the child is 18 years old if the court so decides, this seems seldom to be used by the court or requested by the DCS. Instead, unlike in the past where the court made foster care orders, a placement is made through the agreement of the CCI and the DCS. As described above the CA places the responsibility for supervision with the CCI but changes this in the schedules so that it is primarily the DCS Children's Officer who does the investigations and approvals of foster parents and an authorized officer who undertakes the supervision. The problem with an authorized officer has already been addressed above in chapter 11.

Monitoring of foster care placements can be difficult as many who foster don't want others to know that a child is not theirs; according to a senior DCS staff member 'everyone hides fostering'. Many foster parents do not see it as temporary and presumably do not want to see a Children Officer as that would arouse neighbours' suspicions. A major education drive about the purpose of fostering and being straightforward to children about it is necessary.

Many are cautious about the use of fostering as they say the biological children are given preference but even more so that fostered children are exploited, especially in relation to child labour. That this happens often in 'informal fostering' makes it quite likely to happen in formal fostering unless systems are put in place to assist the child and foster parents. The training of prospective foster parents and frequent visits coordinated between the Children's and Voluntary Children's Officer are essential. In addition, it might be advisable to pilot whether a child's links with others in the community, who know his/her circumstances and agree to befriend and assist the child the best they can, provides useful support to the child and foster parents. According to one DCS office a child and their foster parents are

visited about once a year, this is unlikely to be enough to know if a child is being exploited or abused. The Divine Providence CCI in Kakamega fosters about one child a month but having done so leaves the supervision of the placement to the DCS. As already pointed out there are no DCS rules with regard to the regularity of foster care placement home visits nor is there any national data base for the country on how many foster placements take place each year. The role of volunteer children officers have been emphasized in the recommendations but we do know that majority of them are not trained in dealing with children.

Adoption

The process of adoption starts with an applicant applying or being referred to an adoption society who will vet their suitability. If it is a foreigner living abroad who wishes to adopt in Kenya then a foreign adoption society will do the vetting first and inform the local adoption society. In Kenya it is the local adoption society which does the matching of what the adoptive family is looking for with a child. For the process to start the child has to be declared free for adoption by the local adoption society and this cannot happen until the child is at least 6 weeks old (sect.156 (1) and the biological parent(s) have consented to the adoption (6th schedule). In the case of the abandonment of a baby there must be a period of 6 months during which time every effort is made to trace the mother, before the court will agree to dispense with parental consent. The court will need to receive a letter from the police to verify that they have tried to find the parents but failed and that neither parent has made any contact either. It is not thought the police make a great deal of effort to find parents of abandoned children. Apart from through the police there is no systemized way that parents or relatives of abandoned children are looked for. Because of the police's lack of capacity to trace these parents alternative arrangements for doing this need to be investigated by the NCCS, the DCS and the police so that other bodies eg NGOs and FBOs can legitimately take on this role.

The adoptive parents are given a memorandum to sign and an enquiry form to complete, referees will be contacted, various certificates will be required birth, medical, marriage to show they have been married for at least 3 years and police clearance, etc then they will be interviewed and their home visited. Once most of this has been done the application will go to the Case Committee of the local adoption society (who must have 3-5 members approved by the National Adoption Committee), for their approval or otherwise. The KKPI Case Committee for example consists of: a social worker, a university lecturer, a girls primary/secondary school headteacher, a doctor and a counselling psychologist. Once the approval has been given the prospective adopters and the child meet regularly over 1-2 week period at the CCI or at a foster carer's home (less likely) where the child is being cared for to see whether they bond together. If the bonding is satisfactory then a written agreement between the CCI and the adoptees is signed for temporary custody to the adoptees for at least a 3 month placement after which the adoption application will be taken to the High Court. During the period of the 3 month placement a social worker from the Adoption Society will visit the child and adoptees at least twice.

If when the 3 month placement period is over and the Adoption Society is satisfied with the progress of the child in the new family the adoptees will be advised to formalize the adoption. This is a statutory requirement. If the process is going well the adoptees will be advised to engage a lawyer; the adoption society provides a list if required. The lawyer liaises closely with the adoptee parents and the adoption society in obtaining the necessary consents and

affidavits. A file is opened at the High Court Registry and a cause/case number obtained. The adoption society writes a report for the court with the freeing certificate plus supporting documentation. The lawyer helps the adoptees identify a guardian-ad-litem to oversee that the child's interests are safeguarded during the legal process. At the first hearing in the High Court the judge either agrees or not to appoint the guardian-ad-litem proposed, who will have to report to the judge in 45 days. Although there is no section in the CA or regulations concerning payment to a guardian-ad-litem it appears that some ask for it, eg one adoption society stated that they paid them between 10-30,000 KShs. This could lead to the guardian's independence being compromised. The judge may also order a DCS report on the suitability of the adoption which it has been administratively agreed should usually be completed in 60 days. The judge will take account of these reports in making his/her decision. A date is then set for a full hearing when the child, the adoptees, the adoption society and the lawyer, and also a guardian-ad-litem and DCS Children's Officer if their reports have been ordered, are present. The hearing is in the judge's chambers. Sometimes the judge makes a ruling immediately or postpones for a ruling date or further investigations if concerns arise. If the adoption order is granted the child's name is entered in the Adoption Children's Register in the General-Registrar's office and a certificate of the entry is given to the adoptees. Local adoptions take at least 6-9 months from the adoptees initial visit ⁴⁰.

The process is broadly similar for inter-country adoption except that the foreign adoption society vets the adoptive parents and sends their report to the local adoption society, although the local adoption society may review the case the deciding case committee is now the Adoption Committee and at least one of an adopting couple will have to stay in Kenya for the 3 month foster placement period. The system can be very unsettling for some families where the case goes on for a long time and there are other children and one partner has to continue working. Another major difference is that for inter-country adoption under Kenya law (regs. 27(2)) the foreign adoption society supervises the adoptees by visiting every 3 months for the first 2 years and annually thereafter for a further 3 years or until the child reaches the age of 18 years; these reports are to be sent to the local adoption society as 'progress reports' (The Hague Convention acknowledges that this can be done under art. 20).

The AC would like it to be a requirement that adoption societies place copies of the application and forms for each prospective adoption with the DCS immediately the fostering period begins, so they can be prepared if the court orders a report from them as is becoming more common.

Concerns over the Adoption Process.

Concern has been expressed by the Presiding Judge of the Family Division that neither the UK nor the USA fully accept Kenyan adoption orders. In the UK, after an inter-country adoption order is made, it will grant a 'right of abode' to a child but the parent has to obtain another adoption order in the UK. In respect to US citizens the parents who have adopted have to make an application to bring in an orphan, which allows the child a green card but not citizenship. The Presiding Judge would like to meet the ambassadors or their representatives with the Director DCS to try and sort out these issues.

⁴⁰ The sequence is based on the Kenya Christian Homes Adoption Society's Local Adoption Process document, tbh@wananchi.com

An area of concern in adoption is the few rules governing resident adoptions where the prospective adopters are foreign nationals who have been resident in Kenya for 3 years. It is difficult to undertake vetting of their home situation when they are in Kenya. The understanding is that they will stay in Kenya and that they have property in Kenya. However, this may not be the case and the example of foreign NGO workers has been given. If such adoptees return to their country there seems to be no arrangement for a foreign adoption society to automatically supervise them as is the case with inter-country adoptions from Kenya.

Concern has been expressed by many duty bearers over Local Kinship Adoption. For example, is it reasonable and appropriate to ask a grandmother who has been looking after her grandchild whose parents have died or disappeared to go through a 3 month supervised fostering period as expected of a local adoption, to pay the costs of the adoption society and lawyers and to possibly have a guardian-ad-litem, in order to adopt a child whom she has already been looking after for some years. Most of this the grandmother would have to do to ensure the child has an equal share of her property. Many will shy away from the expenses involved and rather spend such money on the child's educational and basic needs. Many propose that a DCS (and possibly a chief's) report would be sufficient in such cases and that it could be heard by the Children's Court. The grandmother, usually being a widow, would also need to appoint a guardian to ensure her wishes are carried out which again is a matter that is usually decided in the Children's Court. Rules would need to be made so that such a system was not abused but the end result should be that many more children who are OVC would be better provided for by local kinship adoption being made easier through the Children's Court. A similar argument for a simplified system could also be made where a parent of a child remarries and the new spouse wishes to adopt the child; this also would seem to be a case where with a DCS (and possibly a chief's) reports that the matter could be resolved through the Children's Court. If such a scheme were to go ahead it would require all Children's Court magistrates to receive training on how to manage such adoption cases.

Also with regard to local adoption a major issue is over the CA prohibiting the adoption by a single woman of a male child unless there are special circumstances to justify it (sect.158(2)). As most people who wish to adopt are women and many are single women (who have to be 21 years older than the child) this prohibition is limiting the number of boys who can be adopted when boys greatly exceed the number of girls available for adoption, eg 75% of the children under 5 years at the new Life Rescue Centre, Kisumu, were boys. Unlike with men where if an adoption was with the opposite sex the likelihood of sexual molestation would be a concern this statistically is very rare for women. It would benefit many male children if this prohibition was removed.

The issue of whether Kenyan nationals living abroad or Kenyans who have taken foreign citizenship who are related to a Kenyan child they wish to adopt need to go through the same process as foreign nationals has also been raised primarily by lawyers. The fact that they are outside Kenyan jurisdiction raises serious questions as to whether any deviation from inter-country adoption should be allowed. It would also confuse the process in respect to inter-country adoption. Any reduction in the safeguards over a child's welfare in inter-country adoption would be retrograde and are unlikely to meet with the approval of the judiciary.

Interviews with Foster Parents, Adoptive Parents and an Ex-Foster Child.

Those who foster and adopt children tend to keep it a secret from their family and the child as they fear stigmatization. The type of remark made of parents who do not have children of their own is that they are not 'proper' men or women, implying sexual inadequacy and a child who has been adopted is referred to as a 'bought' child

In all one fostering couple was interviewed and two single women adoptees and a couple adopting (one was a resident adoption and the other two local ones), plus one foster child now a young man of 20 years. In the resident adoption it took 19 months to complete and for one of the single women's local adoption it took 12 months. The latter adoptee went for a second adoption and was successful. For the couple who adopted locally it was much quicker as they had only to wait for 3 months after the fostering period and this delay was largely because of the post-election crisis. They have also applied for a second adoption. It appears that inter-country adoptions often take between 8-12 months. In the fostering example below the couple do not seem aware of the temporary nature of a fostering order.

Experience of a Fostering Couple.

The husband is a physiotherapist and his wife is a nurse. They have two biological children. The DCO knows them and he informed them of a 2 and a half year old child who was being suspected of being in the process of being trafficked to Norway. The mother had given away the child. They took in the child as a fostered child and have been with him for 6 months. They signed papers with the DCO who is arranging for them to go to court for a foster care order.

The couple plans to reveal the history and status of the fostered child later in life. For them the boy will have the same inheritance rights like the two biological children. The parents say that the fostered child integrates well with the other two children as well as the clan. Their 2nd born (aged 9 years) even donated his bed to the fostered child, which to the couple was a very good gesture. The clan showed some resistance to start with but it is decreasing; this was helped by the couple informing the clan that they had picked the child from the hospital after her mother died.

They said they fostered in response to trying in a personal way to address the mushrooming of CCIs for economic gain and the danger of such children being trafficked.

Experience of a Single Adoptive Mother.

Edith (not real name) is a single Luhya woman working for an international organisation in Nairobi. She was interviewed by an adoption society at home and they choose a baby for her; as she is a single woman it had to be a girl. At the time Edith applied to adopt the baby was 4 months old; she had been abandoned in a market soon after birth. The baby had been checked for HIV but was negative. Before she fostered the child she went to the CCI where the baby was for a week or so to see if she and the baby bonded well. She was recommended a lawyer by a friend and had to pay 80,000KShs. Once the adoption society had agreed to the fostering period they visited once without telling her they were coming. She paid the adoption society 12,500 KShs. (500 for the form, 6,000 for second visit and 6,000 for the welfare of child and her care prior to adoption)

At the first court hearing she chose a close friend as guardian-ad-litem which the judge agreed to without complaint. The judge ordered a DCS report and so she went once to the DCS office for a 1 hour interview and then was later visited at home for 2 hours. The DCS report was ready in 2 weeks but the second hearing was put off and eventually the order was made exactly a year after it had begun. Edith obtained the adoption certificate a month later. She was fortunate to receive two months off from her organisation to help her during the fostering period. Since then she has adopted another child and the process was very similar. Edith thinks she will tell her children that they are adopted as otherwise they will probably learn of it from their relatives. She said she would be happy to talk openly about her experience of adoption with the media.

Comments by Young Person Fostered Informally to Non-Relative Foster Parents by St Camillus CCI, Nyanza Province.

John (not his real name) is 20 years old and living in a foster family with 9 boys, three of the boys are the foster parents' biological children and 6 are fostered informally. His parents have died and his uncle who took over his care did not look after him well such that he quit school and started casual work. He has one sister alive who he visits occasionally but she rarely visits him.

John says he feels he was well taken care of by the foster mother. The boys were listened to and they took the mother as their true mother/parent. To him the advantage of the foster home is that the boys experience the real issues which affect the family and the community as opposed to being "pampered" at the St. Camillus CCI where everything is done for the children and they may therefore not come out adequately socialized.

Implementation Issues.

There appears to be considerable misunderstanding among the public about the meaning of adoption as well as among CCIs, churches, even it is said some children officers. Many parents do not realize that by signing the consent form they are forfeiting all their rights over their children; they appear often to see it as a temporary arrangement while their child receives education or a better life not that their relationship with their child will be completely severed.

A recent development has been the self-representation by applicants in guardianship and local adoptions. We learnt of 9 adoption cases where applicants have successfully represented themselves (4 of these came from two adoption societies- CWSK and LAN- and 5 through training by a lawyer , supported by CWSK, on training on adoption cases at provincial High Courts); CWSK has another 8 self-representations on the pipeline. All of these applicants have had the benefit of lawyers' assistance.

Though self representation seems to offer solution for high financial implication of the process, it is a challenging task to train the prospective adoptive parents on the whole process. For instance, in 2007, CWSK trained 200 prospective adoptive parents on self representation. 24 of them showed interest in self representation and filed cases in court. 4 out of the 24 dropped from self representation due to various reasons such as fear of court process and their cases were taken up by lawyers. The total cost of self-representation to an applicant (joint or single) in one adoption society was. Though this was meant to cut cost, there was cost incurred by CWSK and th parents as follows;

3,500	for filing costs at High Court
+4,500	to lawyer for 4 individual sessions of counseling
+2,000	for the adoption society's report to court
KShs.10,000	Total cost.

This currently seems to be the cheapest way for a person to pay the costs of local adoption.

From the experience of self-representation so far it appears to work best where children have been abandoned and where the applicants are bold in presentation and articulate and not fazed by questions from the judge. All this requires considerable coaching. Judges appear very open to self-representation and the experiences of those who have been to court has been positive. Lawyers have a mixed response to it.

Repeatedly we were told that the expense of adoption, especially for hiring a lawyer, coupled with a fear of going to the High Court was what kept people away from adopting. One adoption society which dealt with non-affluent applicants reported that 60% of prospective adoption parents once they reached the 3 month fostering stage felt unable to carry on because of the cost of lawyers. This is sad as so many who want to adopt are poor. According to staff at the New Life Home in Mombasa

50% of adopters in their experience were from poor families. The maximum amounts that an adoption society may charge are laid down by the Adoption Committee, however, some charge less. The rates that were given to us are as given below. In addition to these charges would be the cost of lawyers unless the applicant was representing themselves. The rates adoption societies charge show that it is more lucrative to be involved in resident and inter-country adoption rather than local adoption. The same is true of lawyers. How much this skews adoption societies and lawyers to prefer resident and inter-country adoption is hard to determine but anecdotal evidence suggests that this is largely to be the case.

All adoption society expressed their willingness to support prospective adoptive parents through with adoption process, by training them in self representation and providing their services free of charge, but they all cited financial limitation as the major constraint. The team learnt that none of the adoption society is currently receiving any funding from government, although this had been provided up 1992 to CWSK which was the only adoption society by then. In addition, parents were given money to foster children as they awaited the adoption process to be complete.

Charges Set by AC and Charged by Adoption Societies

Type of adoption	AC	LAN	CWSK	KCH	KKPI
Local	12,500KShs. (US\$208)	12,500 KShs (5,000KShs for poor families)	12,500 KShs*	12,500 KShs (local kinship 10,000KShs)*	12,500 KShs* (KKPI pays 5,000KShs to CCI)
Resident	US\$ 1,000	US\$ 1,000	US\$ 750	54,000KShs (US\$ 900)	N/A at present
Inter- country	US\$ 2,000	US\$ 2,000	US\$ 1,500	US\$ 1,500)	N/A at present

CWSK, KCH and KKPI allow poor people to pay in instalments

The financial challenges and constraints encountered by both the adoption societies and the prospective adoptive parents calls for re-strategizing by government, where it may consider, funding adoption societies to carry on the work they are doing on behalf of the state and also funding the adoption process on behalf of parents who are willing to adopt children as these parents are helping the government to take care of its vulnerable children.

Data from 4 Adoption Societies.

Data was received from 4 of the 5 adoption societies in respect of 24 questions. Their responses are given in appendix 6. The data received gives some useful insights into a series of issues faced by the societies as well as some of the characteristics concerning applicants, some of which are mentioned below. A more in-depth analysis could prove useful to all stakeholders but before that can happen there needs to be further interaction with the societies as the coverage in years is different and there are questions with regard to responses that need clarification.

Given below is some consolidated data on the applications received by the 4 societies. The numbers of applicants who withdraw from the process even after they have fostered children is extremely high. For the 2 societies with the fullest data it ranges from 62-67%. The explanation that has been received concerns the cost of going on with their application. In the case of LAN and KCH there is about an equal number of local and inter-country adoptions. Very few cases that go ahead appear to be rejected by the High Court.

Data from Adoption Societies on Applications received & Adoption Orders granted by High Court up to August 2008 (Questions 1.1-1.7 in appendix 5)

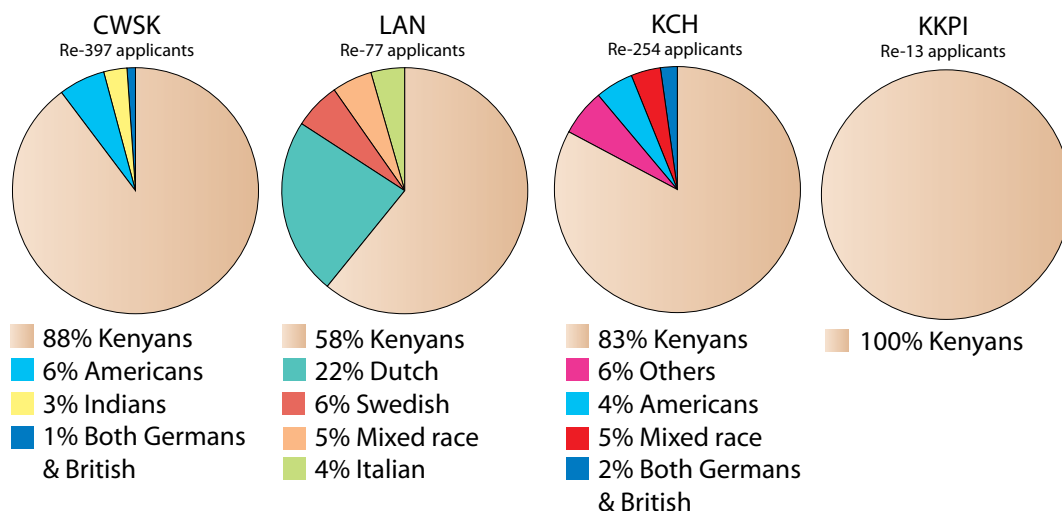
Total of applications to Adoption Societies for years given	Total of applications approved by Adoption Societies in years given	Total of applicants who fostered but did not proceed	Adoption Orders granted by High Court:		Number of applications rejected by High Court
			Local adoption	Inter-country Adoption	
CWSK (2003-2008) 967 applics.	488	304	80	25	1
LAN (2008) 77 applics.	50	12	30	27	0
KCH (2005-8) 254 applics.	234	169	27	32	1
KKPI (2008) 13 applics.	5	2	0	0	0

The only earlier figures obtainable from LAN obtained separately were for October 2005-September 2006 when of all their recorded adoptions 56% were local and 44% inter-country (34% resident and 10% inter-country).

An issue that the question 1.8 of the study revealed is that there has been over 600 cases over the years where adoption societies have provided a certificate clearing a child free for adoption when the applicant has been presented for this by an outside person, eg a lawyer, sometimes after the case has been filed in court. At least in the case of two adoption society those cases did not go through their Case Committee. To what extent this practice is with the other two adoption societies is unclear. The team learnt that such cases happened when lawyers went ahead to file an adoption case in court without going through an adoption society putting the adoption society in a compromising situation as they cannot assess the child or the prospective parent as the child is already placed with the parent. In such a situation, the only thing that an Adoption society can do is to assess the bonding. The team however learnt that such practice was widespread before the gazettment of the Adoption regulations in 2005 and immediately thereafter, but this practice is now on the decrease. . It is a practice that the Adoption Committee should stop.

The data also gives some characteristics concerning the applicants. Given below is data about their nationality. With regard to local Kenyan applicants most came from Nairobi, then Eastern, Central and Rift Valley; the least come from the NE, Nyanza and Western province. The few adoptions from Nyanza with its highest provincial rate of double orphans would seem to need attention. The ages for most female applicants is 30-39 years followed by 40-49 years. Between 44-70% of applicants have had tertiary education (college and university), then secondary and the least have primary, however this may have more to do with the more educated having the means to pay for the process than about being educated. About 75% of applicants are married and almost all are described as Christian (91-100% range for the 4 societies). About 40% applicants wanted a child between 0-12 months and about 30% between 1-2 years, interestingly in the case of CWSK 26% preferred a child 3 years and above. In relation to preferred gender for couples it was roughly equal but for single applicants there was a noticeable preference for girls though this may be because most applicants were single women and their adoption of boys is strongly discouraged. The reason most applicants (c. 60%) wished to adopt was because they were childless, other reasons given were that they wanted to provide a home for a child and to enlarge their family.

Characteristics of Applicants Nationality from the 4 Adoption Societies.



Lawyers feel that if there was a set of templates for adoption as there is with succession it would make the process easier and more transparent.

The cost of adoption is a major drawback to the many poor people who wish to adopt. The provision of legal aid to those applicants deemed suitable as adoptive parents who are means tested as being poor would be one way for such people to have reduced costs. The AC, DCS and LSK could promote this with government. The LSK and AC could also look to a systematized form of pro-bono services by lawyers to poor adoptees.

Duty Bearers.

Judiciary.

Judges take adoption very seriously. They are concerned about the commercialization of adoption by adoption societies and lawyers. From what they have heard and experienced they are concerned about whether parents have fully understood what giving their consent means and whether the implications have been properly explained to them. A judge reported a case in 2003 when an adoption was made after all the requirements were met only for the parent to come and complain that they had not been paid the money promised to them! There has even been a case of a final order having been made in an inter-country adoption having to be revoked when it transpired that both parents were alive not dead. Judges have expressed concerns as to whether through inter-country adoption they might be exposing children to trafficking and other forms of abuse.

Many cases of bad practice were reported. A judge related an example of how 17 children were brought to the magistrate's court by Italians for adoption orders and how these orders had to be cancelled by her. Sometimes adoption societies do not research adequately as when advising local adoption to adoptive parents who were going for divorce. In another case an adoption society showed a lack of judgement or diligence by putting forward one application for 3 children for adoption with one family when only two were siblings. A magistrate related how a lawyer tried to get her to change a foster care order to an adoption order. Lawyers occasionally use a Certificate of Urgency to hurry up High Court proceedings and have been accused of doing so to cover up discrepancies in the affidavits. Lawyers say themselves that they often write the guardian-ad-litem report for the judge which calls its authenticity into question. Because of judges concerns both about the adoption societies and lawyers they are increasingly turning to the DCS to write reports, although this is not mandatory, as they see them as more impartial advocates of the child's best interests. Are the DCS done at decentralized level or at the HQ level.

Judges would like to see copies of the progress reports done by foreign adoption societies which are sent to local adoption societies so they can review the success of their judgements. The Registrar has suggested that adoption societies send copies of these to her office. This is not provided for in the CA and adoption regulations. Not all provinces have a High Court, eg Garissa for the NE Province, this should be addressed.

Adoption Societies.

Emphasis on transparency and the child's best interests are more common than in the past. However, the fact that there is much more money to be made from inter-country and resident adoptions than from local ones and that there is pressure from foreign adoption societies to find babies for their applicants may well distort the emphasis placed on resident/inter-country adoptions as against local adoptions. This needs further research. In addition, it would be helpful to know how many local adoptions are kinship adoptions as opposed to by local adoptees who have no previous knowledge of the child. A further category would be those who know the child but are unrelated.

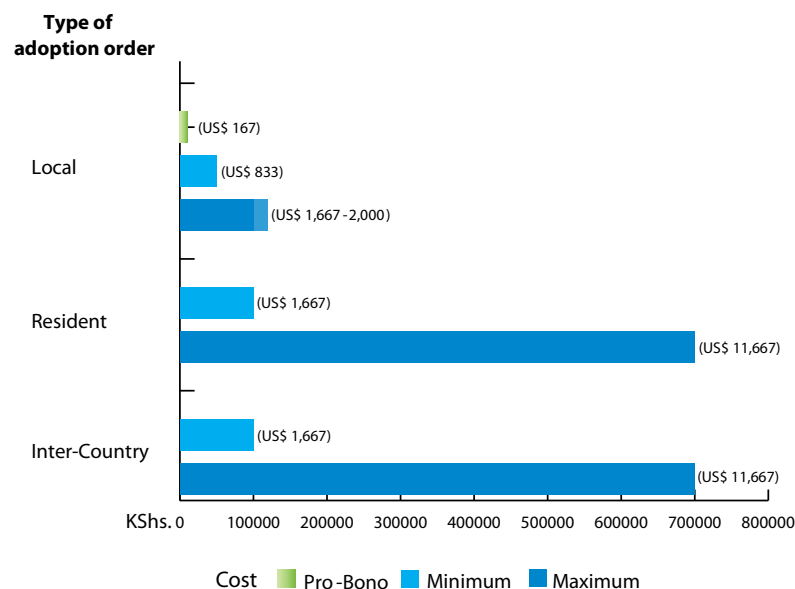
The AC registered 5 adoption societies for local adoptions of which 3 were designated also to carry out inter-country adoptions. One of those registered to undertake local adoptions was not contactable. Their existence and present suitability needs investigation.

Little Angels Network (LAN) of all the adoption societies has the most links with foreign adoption societies, totaling 15 partners; of these 3 are in Italy and Sweden, 2 in the USA and one each in the Netherlands (where 6 of its 12 inter-country adoptions were placed last year), Canada, Germany, Belgium, etc. CWSK and KCH both have 3 links which include between them Canada, Italy, Sweden and the USA. For some reason no local adoption society is allowed to link with a foreign adoption society already linked with a local one. There could be a problem if one adoption society concentrated on inter-country adoption. Those adoption societies who have decentralized offices in the provinces should have a greater impact in encouraging local adoptions.

Lawyers.

As can be seen from previous references to lawyers some have gone a long way to assist poorer clients applying for adoption by giving them counseling/coaching so that they can represent themselves and by doing pro-bono work. There is no Lawyers for Human Rights body in Kenya but there are various smaller groups who are looking into the interests of children. These include: the Child Law Practitioners Committee, which is formed under the Law Society of Kenya, Kenyan Christian Lawyers Fellowship in Mombasa and Nakuru, which provides legal aid to children. The fellowship in Nakuru made up of 20 lawyers though this may be largely for children in conflict with the law.

Given below is a rough breakdown of the minimum and maximum costs as far as we were able to find out of lawyers fees in respect to adoption.



Because of the cost of adoption the poor are often advised to go for guardianship but there are important differences. The lawyers' costs for guardianship are about 15,000 KShs. (US\$250).

DCS

The DCS adoption reports to the High Court received considerable praise from the judges and the High Court registrar. The DCS unit responsible for adoption undertakes all reports for the Nairobi High Court which includes all inter-country adoptions; the provincial DCS office compiles all the local adoption reports requested by for their high court. A good practice in one province was for the Provincial Children's Officer (PCO) to read each local adoption report and to take responsibility for it (presumably by also signing it) so as to ensure good standards were kept up, even when written by the DCO. There is a template that the DCS uses as guidance in compiling their reports. No comparison of the standard of adoption report writing between that done by the Family-Based Care Unit and that done in the provinces was undertaken.

Foster Parents and Adoptive Parents.

The impression gained from interviewing the fostering couple and adopting parents and children seen was of a very committed group of parents.

Recommendations.

Guardianship.

- The NCCS and all duty bearers emphasise the importance of people making wills through a culturally appropriate joint campaign including DCS, UNICEF and NGOs.
- A Certificate of Guardianship be drawn up which should be given to each guardian when it is determined by the court and be signed by the presiding magistrate
- A legal study be undertaken to establish the benefits of guardianship to children in kinship care and whether it gives them any right to a share in a carer's inheritance and could thus form a less costly alternative to local adoption.
- The DCS, NCCS and the Law Society of Kenya to review whether guardianship should be given to foreign residents and if so what the rules should be governing such orders and how they should be monitored.

Foster Care.

- Part XI of the CA be amended so that it is made clear that foster care placements can be made by the Children's Court without the necessity of a child first being placed in a CCI.
- A review be made as to whether it would be in the best interests of the child if when a foster care placement is made on a child with a care order to a CCI that the change of circumstances is brought to court for the making of a foster care order.
- The Director of DCS clarifies who has the oversight of any foster care placement and what it entails.
- A decision be made by the Director as to the minimum requirement as to home visits to a fostered child and his/her foster-parents during the first year and successive years.
- The DCS lead a campaign to promote formal temporary fostering and for the DCO at district level to establish a list of trained prospective foster parents
- DCS to establish a national data base of foster care placements and orders and to know how many trained foster parents exist in each district and how many do not have foster children currently with them.
- A situational analysis be conducted into the extent and forms of informal fostering.

Adoption.

- The DCS and NCCS take up with the police the importance of their taking a more proactive role in finding the mothers of abandoned babies. The DCS, NCCS and police to also look at alternative arrangements to trace parents so that other bodies e.g. NGOs (e.g. KRC, Goal Kenya and CWSK) and FBOs can legitimately take on this role.
- A campaign in the media and using 116 hotline, the hospitals and health clinics to persuade pregnant mothers and teenage and unmarried mothers who do not feel able to cope with a baby not to abandon it but to make arrangements through the DCS office, clinic, CCI to place the baby for adoption after it is born.
- DCS, NCCS and AC to lead a consultation review with judges, adoption societies and lawyers on how local kinship adoption can be made easier using a simplified system and considering the use of the Children's Court and a DCS report.
- Until the practice rules are promulgated the Family Division should decide whether a guardian-ad-litem can charge for their services, to whom and if so whether there should be a prescribed amount.
- Rules are needed for resident adoption.
- The NE province should have a High Court.
- The Director DCS and Chair AC to meet with the Presiding Judge of the Family Division to consider how to approach and arrange a meeting with the relevant UK and US embassy staff over their country's failure to recognize Kenyan inter-country adoption orders as adoption orders.
- Seek an amendment with all interested parties to the current prohibition of a single woman adopting a male child.
- A system to be established in which all CCIs who have child(ren) resident under 5 years who are not being considered for adoption to inform all the adoption societies of their presence at least annually.
- Adoption societies to exchange information on adoption applicants who have been turned down by the court as unsuitable to adopt so that if they apply to other adoption societies that fact is known.
- The AC to make clear to adoption societies that they are responsible for checking the well-being of the child and the satisfactory development of the relationship between the child and the foster parents while the child is fostered prior to possible adoption and that this should not be delegated to the CCI from where the child came. The same to hold true if the court orders monitoring of the adoption.
- The AC to ensure that no adoption society provides a certificate clearing a child free for local adoption until that child's case has been approved for adoption by its Case Committee.
- In an effort to promote local adoption, adoption societies be encouraged to set up provincial offices and start off community awareness on the same.
- The Provincial Children's Officer in each province to take responsibility for the standard of enquiry and presentation of local adoption reports by reviewing each one and counter signing them.
- The government to consider funding adoption societies to facilitate their work.
- The AC, DCS and LSK to promote the provision of legal aid by the government for those applicants deemed suitable as adoptive parents who are means tested as being poor and would otherwise not go ahead with a local adoption. The LSK and AC to also look at a systematized form of pro-bono services by lawyers to poor adoptees.

CHAPTER 11

GOVERNANCE AND ACCOUNTABILITY



Guardianship.

The accountability for guardianship orders being carried out correctly lies primarily with the Children's Court magistrate. In Kakamega the magistrate practiced a well organized approach to the making of such orders (22 in the first 6 months of 2008) and this was particularly necessary as there were no lawyers well versed in children's issues there. In the two other Children's Courts visited in Kisumu and Mombasa one and no orders respectively had been made in 2007 according to the magistrate and the register respectively (the magistrate in Mombasa had not been forewarned of our coming). A much more thorough assessment than we had time for would be needed to assess the situation nationally.

Foster Care.

In practice the DCS appears to be accountable for the managing of foster care placements since the CA. This is an area that the department needs to revisit as to its priorities with how it should be managed. At present the system is very ad hoc and lacks central leadership, probably because it has taken considerable time and effort to put adoption on a sounder footing. There is meant to be a system by which the provinces inform the centre of the number of foster placements made but with a few exceptions this is not happening. The governance in foster care seems to be placed mainly with the provinces, however, there appears to be a lack of policy as to the role of foster care in the DCS's strategic planning, which in turn affects provincial and district commitment to foster care. In general, foster care has a very low profile in the DCS.

Adoption.

The AC has as its prime current functions as laid down in the CA: the formulating of the governing policy in matters of adoption, effecting liaison between adoption societies and government and NGOs, responsibility for the annual registering and monitoring of adoption societies and the screening of inter-country applications. The ninth schedule of the CA lays down the groups from which the 10 members of the AC are to be made up. It is interesting that as a powerful body to cover this area of social work that no specified independent reputable social work expert is included as being one of the groups of people from which a member should be chosen. The Director as the person responsible for the unit in the department that acts as the Secretariat to the AC is an interested party and therefore

not independent. A social work lecturer from a university might fill this gap in the membership of the AC. Consideration should also be given to a Family Court judge being a member.

The conduct and regulations of the AC shall according to the CA (sect. 154(3)) be prescribed by the Minister. It was not established how the 4 representatives from CCIs are chosen. If not already the case, consideration should be given to having all those CCIs who are registered and provide care for babies and children under 5 years to elect who should represent them. The first AC ended its term on 8.5.2008 and the second will hopefully be gazetted soon. For the considerable sitting allowance provided the CCI representatives should be expected to be knowledgeable on up-to-date national and international principles concerning the protection of children.

The report writing by the adoption unit in the DCS was generally commended as being of a high standard. This indicates that a good supervisory system is in place; there are indications that the same is true in at least some provinces. The adoption unit needs to streamline its data collection and analysis (see section on monitoring). An analysis of all adoption societies responses on the annual report form on cases, staffing, etc would be most helpful in giving the AC a clear picture of the situation which they can provide to government and all duty bearers in their own annual report.

Inter-country adoptions are only heard in the High Court in Nairobi. Some provincial High Court judges would like to be able to hear those cases where the child resides in their province. Currently the three Family Division High Court judges in Nairobi hear inter-country and local adoption cases only on Friday and will not complete more than 6 cases each on that day. There may need to be a review to see if this is sufficient time for the number of cases awaiting hearing. If local adoptions increase considerably in the future this allocation of time will probably need to be reviewed so as not to prolong the adoption process unreasonably. While there are no practice rules from the Chief Justice and the system is bedding down it may be best that inter-country adoptions are kept to the High Court in Nairobi.

Recommendations.

- A clearer understanding on the use of guardianship orders nationally is required.
- The DCS to set out a clear policy as to how it wants foster care to be used after conducting the necessary consultations and looking at systems elsewhere in Africa.
- DCS if it is to act as the inspection arm of the AC needs to assess what this would entail and whether it has the capacity to do it.
- It would be helpful if the Ministerial regulations concerning the AC and the role of its members, especially the DCS Secretariat, was more widely known, eg on the DCS website.
- If not the case consideration be given to those CCIs who are registered and provide care for babies and children under 5 years to elect who should represent them on the AC.
- That inter-country adoption cases remain in the High Court in Nairobi for the time being.
- That an on-going assessment is made as to whether there are sufficient judges in Nairobi to deal with the number of adoption cases and this assessment be made by the Registrar and reported to the Presiding Judge and the AC every 6 months. Also whether there are enough knowledgeable lawyers for adoption and magistrates to deal with issues of foster care and guardianship.

CHAPTER 12

SUPPORT SYSTEMS



12.1 Internal to Alternative Care and Adoption

Informal Fostering.

The great majority of children not being looked after by one or both parents are in informal fostering. These number around 1.9 million of which 1.5 million have one or both parents alive. If it were not for informal fostering most of the 443,000 double orphans would be either on the street or in CCLs and also many other vulnerable children.

Magistrates.

The work of the Children's Court magistrate is often emotional and demanding and requires dedicated specialists. As important community figures they also have an important role, though not statutory, to encourage the CCLs, AACs and DCS to ensure the law is carried out and that all children in registered CCLs are committed. However, there is no special training for Children's Court magistrates. A Judicial Training College has been proposed. Judges and the Registrar are willing to assist with magistrates training on children's rights and issues like guardianship and foster care.

It would be helpful if the judiciary knew those magistrates interested in children's cases and so keep their gazettment as Children's Court magistrates when they move to another area. Currently it appears that sect. 73 (d ii) is not being followed so magistrates experience in children's matters is being lost ⁴¹.

Lawyers.

Lawyers have been helping poor clients especially with regard to adoption through: counselling and assistance to those doing self-representation, forming localized groups to try and improve matters for children including proposing amendments to the CA and practice rules to the Chief Justice, and by doing pro-bono work. There is as yet no national body with expertise in legal matters that is working to improve the condition of OVC children like the Lawyers for Human Rights in other countries.

High Court Judges.

They would welcome feedback from foreign adoption societies on inter-country adoptions being copied on to the Registrar.

⁴¹ Personal communication from the Registrar.

DCS.

The DCS could make matters easier for CCI by posting the 2005 regulations on their web site so they could easily download them and print as many as they wanted. Other material that could usefully be posted on a DCS website would be the Children Act 2001, the adoption regulations, the Hague Convention and other documents that would be useful to those who are working to protect the rights of children.

Although there has been 160 new DCS staff recently appointed, the amount of time taken up by maintenance issues (there were 6,000 maintenance cases in Mombasa between July 2007 and June 2008 which resulted after negotiation between the parties in 3-4 million KShs from fathers being deposited in the PCO's office to be collected by mothers over the year) and cash transfers programme for OVC where they have been instituted are very considerable. These demands plus increasing work with CCIs, foster care and local adoptions either requires more staff to be recruited or their better rationalization and specialization in the field so as to maximize the skills and time of current staff.

Training of Social Workers.

It seems that the civil service does not recognize social work as a profession. The only BA social work course is apparently at Nairobi University, Catholic, Kenyatta and other universities but few trainees graduate from these programmes. Nairobi University, for instance, takes only 25 students a year for its 4 year course. There are various diploma courses across middle level institutions as well as at the universities. However, the standards in these courses are unregulated and difficult to measure. If the standard of social workers is to improve and if all CCIs are to have trained social workers a review is needed of the numbers and standard required for both government and non-government agencies.

Training of Area Advisory Councils (AACs).

The AACs have a pivotal role in the social protection of OVCs and in child protection as set out in the booklet produced by the NCCS and World Vision⁴². It is meant to be operational at district, divisional and locational levels but in reality it is primarily at the district level that it exists and even there their degree of activity varies considerably. Their role is much broader than the overall supervision of CCIs, which has been mentioned frequently in this report. The seven AAC members met in Malindi informed us that their AAC had 4 sub-committees: for OVCs, CCIs, Child Trafficking and Advocacy and Participation. Training AAC members is critical if they are to make sound judgements for the better protection of children and to uphold the national policy on OVCs. Because of the more frequent changes among governmental staff on AACs training is needed on a regular basis. It is important that the frequency of AACs meetings is known and where irregular addressed.

A draft form exists for the AAC to report to the NCCS and the Director but we did not establish how much it is used nor how many are received centrally and whether the reports are analysed centrally and the findings tabulated to guide future planning.

Training of Other Agencies.

In 2007 the AC and DCS carried out a series of sensitizations on the adoption regulations and issues arising to the various duty-bearers in different parts of the country (Mombasa, Malindi, Nairobi, Eldoret, Machakos, etc.) Numerous organizations have done training in the area of guardianship and adoption, eg CSWK has done some training of police, chiefs and hospital workers and UNICEF with paralegals in Garissa, but much more needs to be done with all those whose work impinges on the social and child protection of OVCs.

The Police and Child Protection Unit (CPU).

The police and CPU particularly are involved in various areas of this assessment especially in receiving abandoned babies and abused girls. Babies are sometimes left with those who bring them but it

⁴² Guidelines for the Formation and Operation of Area Advisory Councils, 2006, NCCS and World Vision

seems that whether left with these 'good samaritans' or in a CCI there is often little follow-up to find the mother and during that time the baby does not receive the regular love and attention they need to thrive. If the mother was found and gave her immediate consent to adoption then once the child is 6 weeks old the adoption process can begin. Without the mother's consent the child will have to wait usually in a CCI for 6 months before the parents consent can be dispensed with. The police's proactiveness in finding the mother could be of great assistance to the child. For the police to work with other civil organizations in parents was mentioned in chapter 12. For abused girls who have to be removed from home the police would welcome being able to place the girl in a foster home rather than a CCI, if that is what the girl wanted.

Foster Parents and Parents of Adopted Children.

Some adoption societies have instituted meetings between adopted parents living near each other so they can share matters of concern. A similar scheme would be useful for foster parents. In August, 2008, Kenya launched a national association of adoptive parents that seeks to popularize local adoptions and assist parents and children to share experiences on adoption.

NGOs and Private Sector.

Some NGOs are already doing important work in the field of child protection, e.g. GOAL and its outreach support to 600 children and its Short Term Rescue Centre for abused and abandoned children and St Camillus with its outreach to 2,500 children. Such examples need to be more widely known and promoted. More government collaboration with the private sector and NGOs would be a way of strengthening a number of areas that are under-funded and could benefit from specialized skill inputs in various areas, including: data-base systems, foster care schemes, training courses, support to AACs, as for example done by World Vision, and to the NCCS, which is under staffed. The DCS could assist in this process by maintaining a list of NGOs and private sector bodies involved with children not living with their parents and the areas they cover and by promoting collaboration with them.

12.2 External to Alternative Care and Adoption

Cash Transfers.

The cash transfer programme to OVC households currently provides conditional cash payments on a two monthly basis of 3,000KShs. to 25,000 households in 37 districts by 2008/9. It prioritises child headed households and those with the oldest care-givers, often grandmothers. The aim is to be assisting 100,000 households by 2012 which translates to about 300,000 OVC. There is a plan to widen the role of the Location Advisory Councils currently involved in the selection process of beneficiaries by having them also refer children where appropriate to the social services departments; this could assist them in becoming more effective agents for child protection.

Currently, the basic objective of the cash transfer program is to ensure that OVC are retained within their current households and receive their basic needs. The cash transfers programme does not target children living outside families such as street children and children in CCIs, yet we know that for the latter the prime reason for their being there is family poverty. Cash transfers appropriately designed and linked to such children and to social services support could greatly assist in the reunification of these children.

Recommendations.

- The training of all those involved in the child protection process be reviewed and plans made with other interested players to fill the gaps identified. More sensitization meetings with the critical players to exchange views and promote good child care practice would be beneficial. These are relevant for High Court Judges, Children’s Court Magistrates, AACs and LACs, police and CPU, lawyers (especially those in groups set up to look after children’s interests), CCI staff, Children’s Officers and volunteer Children’s Officers, etc.
- Approaches be made to those universities offering social work BAs and Diplomas and others to increase their student intake, upgrade or start social work courses and to form a body with DCS and other major stakeholders to regulate social work degrees and diplomas.
- A recognized regulatory body be established to set the minimum social work qualification and practice required before a person can be designated a qualified social worker.
- The government to set the minimum social work related qualifications for staff working with children, both within government and non-government institutions.
- The Public Service Commission should recognize social work as a professional occupation.
- For lawyers to consider setting up a branch of Lawyers for Human Rights in Kenya.
- Progress reports from foreign adoption societies on inter-country adoptions be copied to the Registrar of the High Court and the AC by the local adoption societies.
- The DCS to use its web site to place important documents which should be in the public domain.
- The DCS consider maintaining a list of NGOs and private sector bodies involved with children not living with their parents and the areas they cover and promoting collaboration with them.
- Greater rationalization and specialization of field staff would help maximize quality standards and efficiency.
- Foster parents and parents who have adopted be encouraged by the DCS and adoption societies respectively to bring those in the respective groups who live nearby together to discuss their experiences and for self-support.
- DCS and other duty bearers to link with UNICEF, NGOs and the private sector to further develop financial, human resource skills and logistical support to facilitate better child protection services.
- Consideration be given as to how the cash transfer programme could help in the reunification of children from CCIs and from the street.



CHAPTER 13

AWARENESS CONCERNING GUARDIANSHIP, FOSTER CARE AND ADOPTION



Awareness Raising. The concepts of guardianship, formal foster care and adoption as set out in the CA and this report are not widely known in Kenya. There is, we were informed, no word in Bantu for adoption nor is adoption allowed in Muslim culture. Repeatedly we were told that people are not aware of these options nor why they should be used. Guardianship is probably least understood. As informal fostering is common in sub-Saharan culture not just with relatives but also

in clans and with neighbours formal fostering seems to many to be an unnecessary hindrance by the bureaucratic state. Adoption meets with resistance from many angles: disbelief over a parent consenting to give up all rights to their child, family and/or clan members not wanting to see some of their family's inheritance go to a child who is not biologically connected, attitudes to an abandoned child who may well have been born out of wedlock and could therefore bring a curse on the family⁴³, fear of going to the High Court, etc. There is also ignorance and malpractice with regard to the adoption process. Instances have been reported of chiefs writing small notes giving over children to those reporting them where the note is taken as being their authority to adopt. CCIs are said to carry out some adoptions illegally and some lawyers try to do it through the Children's Court. Biological parents think that consent is short term while their child for example receives an education. Judges, NGOs and others have spoken of the need to demystify adoption with the public and as so many of those willing to adopt are from poorish families this is very essential. In view of this lack of knowledge and resistance a great deal of awareness raising is required.

The AC particularly wishes to raise the public's awareness of local adoption which it sees as preferable wherever possible to inter-country adoption. The Chairman of AC hopes that the AC will soon use FM radio stations, TV talk shows, brochures to raise awareness as well as talking to chiefs at the Institute of Administration, the police at their Staff College and any other training centre for relevant duty-bearers. The AC would also like to raise corporate responsibility for these forms of family care among lawyers, the churches and the mosques. The AC needs to use all duty-bearers as supporters in this advocacy campaign.

⁴³ The DCO, Garissa, reported how illegitimate babies are often killed due to the cultural stigma associated with them, eg 9 were found dead in a garbage dumping place in June 2008 and the taboo babies in western Kenya?

Foster parents and the parents of adopted children.

From our meetings with foster parents and the parents of adopted children it was clear that they are themselves a potent force in the publicity of fostering and local adoption. One adopting parent told us that her aunt (a 50+ year old widow) had adopted a 2 year old child and also a Luyha friend and a colleague at work. She had also attended one meeting of adopting parents. She has said she would be willing to go on radio and TV to talk about her adopting experience showing that there are some adopting parents who are quite happy to be open about what they have done. This may well be of enormous encouragement to others. Below is an example of an adoptive parent who is publicizing adoption as a way of offering deserted children a caring home.

Good Practice Awareness Raising by Adoptive Parents

One adoptive couple (a Kamba husband and Luhya wife) interviewed who have two biological children wished to adopt before they married. The decision to adopt was later reached with the participation of their two children. They jointly agreed to adopt a child aged 2.5 years, which was successful and the family has now applied for a second adoption (a boy) from the same CCI.

The guardian for the two (the one with orders and the pending case) is their friend a pastor. He preaches to encourage adoptions. The couple is also doing informal awareness-raising through friends. As a result, they have managed to influence three of them, one of whom has now adopted a child. The couple plans to do more sensitization via the churches.

Another area where awareness is needed within government is with the Immigration Department over not giving travel documents for Kenyan children to foreigners or unrelated adults without the necessary supporting documents; such intervention could reduce trafficking.

Children.

Only one interview took place with a young person (20 years old) who had experienced one of these three processes. It would be very helpful to have a research study undertaken to have a better understanding of how children viewed these experiences.

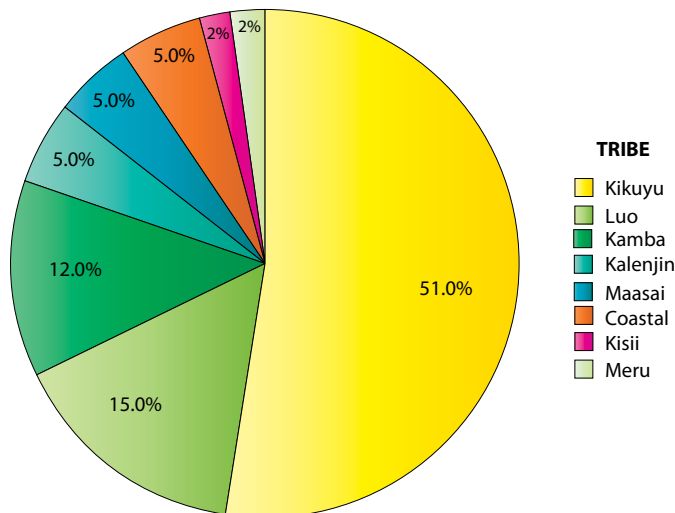
Community Attitudes and Beliefs.

This is a fascinating but very broad subject as attitudes and beliefs vary considerably from one ethnic group to another. With regard to guardianship and foster care most sub Saharan cultures have used informal fostering as a way to try and give children a better life, which would be the normative way of providing guardianship and fostering. Adoption is not traditional but it may be that the cultural systems of some ethnic groups make adoption more acceptable and promotable. For example, it may be that as Akamba children belong to the mother then husbands are more willing to accept the children the mother chooses to have, as he knows if he leaves the children will stay with the mother. Hence he will tend not to have an objection to her adopting.

This is where a more detailed annual report from the adoption societies and the DCS could be helpful in showing which ethnic groups are more willing to adopt and foster. The report from the Little Angels Network of 2005-6 gives percentages of ethnic groups adopting as given below, unfortunately it does not give the numbers. It would be interesting to discover why the Kikuyu are by a long way the majority adopters and then the Luo and why the Luhya have none, although we already know from an adoptive parent interviewed that adoption is now happening among the Luhya. Such a report format would enable the adoption societies and AC to determine any trends that are happening. It was reported to us that the Luo prefer to adopt boys than girls, which is useful information as there are more boys available for adoption than girls. If a number of ethnic groups are more willing to adopt

it is worth understanding why and unless inappropriate at least to start by concentrating publicity among those groups, so as to obtain the best return for the effort and money spent. There are also an increasing number of couples where the partners come from different ethnic backgrounds; it would be interesting to find out how active and willing this group is to be involved in adopting and fostering.

Ethnic Groups Involved in Adoptions by LAN in year 2005-6



In Vihiga district there are certain sub-ethnic groups of the Luhya who are not allowed to intermarry within certain nearby clans, as traditionally a young person was meant to marry into the clan of an enemy so as to try and keep the peace. If the Maragoli marry with the Avagonda, Avandongi or the Avamutembe or into their mother's clan they would traditionally be killed and nowadays abandoned. The same system exists with the Buhyole and they are restricted from having sexual relations with 10 other clans and their mother's and grandmothers clans. It is difficult therefore for these people to foster or adopt a child abandoned for these reasons as they will bring a curse and shame on your family. Those babies abandoned for these reasons are called 'taboo babies' and usually have to be cared for outside the area of those clans.

'Adoption' in Garissa is based on cultural perceptions and is done under verbal agreements usually kinship based, e.g. a brother may give their child to a brother if the latter has no children of their own or they have only girls and want to have boys or have few children. The Borana are pastoralists and need many children for labour purposes so they practice this form of 'adoption'. Among the Borana, the child who is "adopted" takes the name of the "adopting" family. Somalis don't do it this way as they are keen on preserving lineage identity. The "adopted child" among the Borana can inherit property but not the fostered ones or those under guardians. Even the "adopting family" has a right over the property of the child once the child is an adult.

Informal fostering for both Boranas and Somalis is done for children whose parents are poor or sickly or dead hence it's some form of assistance to the child – but the child still belongs to the biological parents. There are clan courts which deal with property and inheritance issues – they also appoint "guardians" in line with Somali/Borana customs and traditions.

An orphan among the Somalis is any child whose father has died since the mother is automatically presumed not to be able/obliged to take care of children. These children often end up in the CCIs and in fact some CCIs are taking advantage of this cultural belief to "recruit" children, who would otherwise be cared for by relatives and living mothers. These few examples show some of the differences and commonalities in child protection among two ethnic groups that live close together.

In Sharia law children born out of wedlock are seen as a curse. The female that becomes pregnant before marriage is supposed to be given a 100 lashes and as girls fear this they conceal their pregnancies and then abort, kill or abandon their baby. Sensitisation of Muslim religious leaders and elders is necessary so as to find a more humane way of caring for such girls and ensuring their babies survive.

Recommendations.

- In relation to informal fostering the DCS to review whether such placements should be registered with the local administration so as to form a basis from which consideration as to how to better protect children could proceed.
- Lawyers, DCS and NGOs collaborate to publicise how guardianship can help protect children and the extent to which it is a way for poor people to increase the protection they can give through kinship care.
- DCS to plan as to how to promote parents to come forward as formal foster parents.
- The AC to inform the public through a promotion campaign what is the procedure for local adoptions so as to boost the number of local adoptions as a proportion of all adoptions. The involvement of duty-bearers including adopting parents should be considered.
- Adoption societies, AC and DCS to promote ways by which adopting parents meet to discuss common issues and plan ways themselves to promote local adoptions.
- AC, DCS and police contact the Immigration Department about exercising caution in providing travel documents to adults with unrelated children.
- The attitudes of children to the experiences they went through during and as a result of guardianship, foster care and adoption should be researched.
- It would be useful to research which regions/ethnic groups are more willing to foster and adopt so as to encourage this trend and also to develop strategies for reaching out to ethnic groups that do not adopt or foster.
- DCS to open discussions with Muslim religious and community leaders, especially in the coastal and NE provinces as to how girls pregnant outside of wedlock can be treated more humanely and the survival of their babies ensured.

CHAPTER 14

MONITORING OF GUARDIANS, FOSTERCARE AND ADOPTION



A lack of centralized coordinated monitoring, which is analysed, shared and used to improve practice seems a generalized problem in child protection, from informal fostering to CCIs, guardianship, foster care placements and adoption. Any judgement concerning the effectiveness and trends in these areas and whether changes to policy and implementation should be made depends on centralized analysed data being available. The selection of families to benefit from social protection schemes would be greatly assisted if there was more accurate and inclusive data on OVCs.

The DCS centrally does not appear to have a rigorous data collection ethos within each of its units nor a functioning computerized data-base system which is necessary for the numbers involved. If this was happening it would be of great assistance in the DCS's role as the secretariat to the AC and in the assisting the NCCS. In addition, the DCS appears not to be pro-active in sharing information so that all duty bearers have the most reliable data available to them to assist them in their practice and in making decisions, e.g. AAC reports are not being chased up by the DCS or efficiently passed on to the NCCS. Despite efforts to study the DCS annual report we failed to locate a copy; the same was the case for an annual report from the AC and NCCS. We were unable to establish whether it is the practice of the DCS to produce a departmental report annually. Annual reports should be seen as a positive analytic tool and a vital way to establish trends and to monitor progress, and should be made easily accessible to the public so they can be abreast with developments.

Guardianship.

We did not interview anyone on a guardianship order. Nor is it anyone's responsibility to follow up on those who have received orders and from whom some idea of their level of satisfaction or otherwise could be obtained. We were not aware of their being any central data-base recording the number of guardianship orders made. There therefore appears to be a total lack of monitoring.

It is impossible from current information to make any judgement as to the usefulness of this order. Before it is promoted as a cheaper way to have custody of a child and to allow the child access to medical, educational and other benefits from the guardian's employer it would be worthwhile for a thorough review of guardianship to take place with interviews with guardians and children from a sample number of districts. This should be able to shed light on whether guardianship is primarily used where children have inherited considerable assets.

Foster Care Placements.

As has already been pointed out there is no central record at DCS headquarters of the number of foster care placements. If the one provincial annual report seen is the template used by all provinces there is no specific entry for foster care placements under the performance indicators section headed Operations. So there would be no way of collating nationally what those figures are. It is probable that this data is kept at district level, e.g. we know that Vihiga district had 4 non-kinship foster care placements in the year 2006-7. A better system of reporting non-kinship foster care placements needs to be set up and this requires clear directions from the centre and a designated person to manage the data analysis. However, if such analysis is to be useful there needs also to be a policy with regard to the DCS's position on foster care and how it wishes its use to be developed.

As mentioned earlier it is probable that most placements are monitored by the DCS although the CCI can do this too. However, the number of visits made to the foster parents and child are said to be only once a year which is grossly inadequate and hardly likely to be able to monitor abuse. Guidelines are required as to the regularity of visiting especially during the first week or so of the fostering with the intervals becoming longer as the child settles in and the Children's Officer becomes satisfied that the placement is satisfactory.

Adoption.

It is unclear how much inspection or analysis of the records and annual reports the adoption unit in the DCS does of the adoption societies and what would be the check list that they would be using when carrying out such inspections. Such a check list would need to be approved by the AC first. The DCS needs to be vigilant over the functioning of the adoption societies as is highlighted by the disappearance of the registered adoption society based in Kisumu.

The adoption unit needs to streamline its data collection and analysis. There appears to be a lack of comparative and analytical data on adoption as carried out by the different adoption societies and in relation to the data on adoptions held by the Registrar-General. The form of the annual report expected from adoption societies as set out in the ninth schedule of the regulations requires data that it would be useful to analyse, especially under section 6 and 7 on staff and the adoption process. The unit in conjunction with the AC and the adoption societies could usefully develop further the information that they provide annually under section 7, so that it is disaggregated by sex, age, ethnicity, etc. Analysis of all responses to the annual report form on cases, staffing, etc would be most helpful in giving the AC a clear picture of the situation which they can provide to government and all duty bearers in their own annual report.

As it is the AC who registers adoption societies on an annual basis it should be able to exert much greater control over those societies' reporting than seems the case at present.

Recommendations.

- Information sharing by DCS with other duty bearers in child protection needs improvement.
- DCS to establish an ethos of data collection and analysis within its departments and a central data-base.
- Annual reports by the DCS, AC and NCCS should be seen as a positive analytic tool and made easily accessible to the public.
- A record of all guardianship orders to be kept centrally to establish the annual numbers and the courts where they are being ordered.
- An assessment of the usefulness of guardianship orders to guardians and the children concerned would be instructive.
- A central record for all foster care placements and orders made is required with a system for reporting from the provinces.
- Guidelines established as to the expectations from Children's Officers in relation to visiting children on foster care placements.
- The AC to decide on the guidance and guidelines for the DCS unit responsible to use in the inspecting of adoption societies.
- The DCS unit responsible for adoption to streamline its data collection and analysis so as to have an authoritative data-base on adoption.
- The AC to ensure that adoption societies report as required by the ninth schedule of the CA, 2001 and this data is analysed and made public.

CHAPTER 15

FINANCIAL IMPLICATIONS OF THE ABOVE RECOMMENDATIONS



There is little financial data available from which to draw up estimates of costs and there was insufficient time to collect the costs that might be available. What is given below are the areas where financing will be required for the main aspects of what is recommended and a rough way to arrive at an estimate.

Registering Informal Fostering.

- To set up a system of recording at location level could be a task for the Location Advisory Council where they exist or for the chief. It would involve the cost of registers for each location and the administrative costs of informing the person(s) responsible of what to do through training, some supervision and the organizing of the collation of that material at district level for provincial and central collation.

CCIs.

- To inspect all unregistered CCIs and draw up a proforma in relation to each CCI would be quite costly as there may be between 1,000-1,500 in this category. A rough costing could be calculated by finding the cost of one AAC inspection and multiplying it by the number unregistered. World Vision might be willing to assist.
- To assess the status of all children in all the CCIs registered and unregistered is a major task and would be best started with those that are registered. The time involved would depend on the number of children in them; an idea of this would be possible once the CCIs inspections have been done. If university graduates were trained to do this the costs could be reduced. An arrangement with those universities with social work departments would reduce costs and be a good training exercise. UNICEF and a number of NGOs might work with the DCS on this.
- Funding so as to have a functioning data base and analysis system is needed. UNICEF has done this elsewhere in the world and would have an idea of the costs involved.

Guardianship.

- The recording of all guardianship orders from the Children's Court registers. Whose task is it to collate judicial information? If it is the Registrar who orders up this information would there be any expense to the DCS? Who would wish to be party to this information? The cost of analyzing the data would need to be estimated. Who would do this?
- A study on the legal and protection benefits of guardianship orders for children and the effectiveness of such orders from the viewpoint of the guardian and the child concerned. US\$5-10,000.

Fostering (non-kinship).

- The cost of setting up a pro-active approach of enlisting prospective foster parents in each district and training them so they are available as needed. The main cost would be the training process first of trainers and then of the prospective foster parents.
- Government should consider a modest contribution to offset the extra expenses a foster care order (i.e. from the court) incurs on foster carers. Payments would also seem appropriate for those who foster children in an emergency. The amount to be agreed through a consultative process.
- Cost of a quality service in visiting foster parents and children.
- Extra staffing required for training, court reports and visiting.
- To set up a coordinated system to get information from the district to province and centrally should primarily be an administrative matter.
- A functioning data-base and analysis system - the same one to be used for CCIs, guardianship and adoption – this will require a data-base operator and equipment.
- Media campaign to advertise fostering but to make clear its difference from adoption. It may be best if this came after the media campaign for local adoptions.

Adoption.

- Cost of a thorough inspection of adoption societies and their records on an annual basis.
- Cost of data-base on all local, resident and inter-country adoptions as part of the data-base systems set up above.
- Media campaign to promote local adoptions.
- Government budget allocation for legal aid to means tested poor families. This could be calculated initially by looking at the number of applicants in 2007 who fostered children through the adoption societies and then went no further because of the costs involved. From that information a profile of what corresponded to poor people could be developed.



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CHAPTER 16

CONCLUSION



This chapter looks at general areas for action under the transformative, prevention and protection social protection framework, while chapter 19 brings together all the specific recommendations made throughout the report

16.1 TRANSFORMATIVE STRATEGIES

LEGAL & POLICY.

Greater priority be given to Family Support. A policy initiative is considered by the DCS, in conjunction with other ministries that provide basic social services, that emphasizes the priority role of DCS staff to liaise with other agencies to keep families together. It will stress that working with: schools, the MoH over ART provision, with home-based care providers, ECD schemes, community workers and leaders, NGOs, the cash transfer programme, etc are major planks in the priority work of assisting families to stay together in the best interests of the child.

Informal Fostering.

The requirement that any family informally fostering a child on a regular basis register this fact without payment to their local chief or a local government body is dependent on an attitude in government that views this as a way of assessing support to the child and family and is in some way able to deliver this. Such a system could usefully link in with social protection schemes. The numbers are large and the issues involved are wider than the DCS's mandate and therefore requires an inter-ministerial approach to ensure that such children receive their entitled basic services. Much would depend on the attitude of the ministries of Local Government, Education, Health and Gender and Children's Affairs. A joint policy is required if any progress is to be made in this area. The revised draft of the National Plan of Action on OVCs might wish to address this.

Guardianship.

A review is needed to assess whether guardianship is better protecting the rights of children, including those from poor households. Also an assessment should be considered of whether and in what circumstances guardianship or local adoption is the best course of action for the protection of children in kinship care. The DCS could be instrumental in approaching the Ministry of Justice to see how such a review and assessment would be done. The findings of such studies should be made known to the public.

Foster-Care (non-kinship).

The promotion of foster-care as a pre-emptive intervention for children in need of care and protection (which cannot be provided by or to their family) requires a policy decision by the DCS and the necessary adjustments to the CA and DCS practice. Such a policy decision would be one way of steering the DCS to a more family-based response to children who are in difficulty than is currently the case. Foster care should be viewed as providing a temporary family respite for a child before a more permanent solution is found by way of return to family, guardianship or adoption. Alternative forms of family care or adoption must be promoted instead of the current automatic resort to using residential care.

Adoption

There are almost half a million double orphans and some of these as well as other children have been abandoned. In policy the major need is to heighten the public's awareness of the benefits of local adoption for the many abandoned or fully orphaned children. This would reduce the number spending their lives in a CCI or being adopted abroad and leaving their culture and community. The policy needs to emphasise inter-country adoption as the less preferred adoption option. The Hague Convention states that an inter-country adoption 'shall take place only if the competent authorities of the State of origin...b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests'. The system of adoption needs to be demystified for the general public and their awareness raised of the better life that living in a caring family is for young children rather than residing in an institution. A campaign led by the AC and DCS to promote local adoption by Kenyans is a priority. Such a campaign supported by all stakeholders could bring a great increase in Kenyans applying to adopt.

Revision of Adoption Legislation.

Consideration should be given to changing the law with regard to:

- 1) Local kinship adoption by allowing kin who have looked after a child in the family for a set number of years to apply for adoption in the Children's Court and to be considered after a DCS report has been presented. The child's views must be taken into account. This would make local kinship adoption more accessible and affordable to the many relatives, especially the elderly and poor who wish to guarantee the inheritance of the children they are looking after. This system would cut out lawyers' costs and the need for a guardian-ad-litem.
- 2) Single women who are 21 years older than a male child should be allowed to adopt a male child. As single women are among the most frequent adopters this would enable the larger proportion of boys than girls who have been abandoned to find a home. The case of sexual harassment by women of young boys is rare as opposed to that of men on young girls.
- 3) The issuing of Practice Rules by the Chief Justice would lead to greater clarity and consistency in the way that adoptions are conducted by the High Court and would be welcomed by all involved. The use of templates for the documents the court requires would also be of assistance including to those who represent themselves.

Charitable Children's Institutions (CCIs). A moratorium by the NCCS on the building and establishing of new CCIs backed by sanctions should put an end to the mushrooming number of CCIs in the country. A date set by which all CCIs are to be inspected and either approved, put for further review

or closed is necessary. In addition, the DCS with outside assistance needs to discover the status of all children in CCIs so that a concerted effort at their reintegration can take place. These policies would at last put the Government of Kenya in some measure of control of the plethora of CCIs that exist and start to reduce the abuses that are taking place.

A paradigm shift by CCIs and the organizations that fund them to concentrate on the provision of outreach support to orphans and vulnerable children (OVC), their families and communities rather than that of residential care would bring inestimable benefits to children.

SERVICE DELIVERY, STRUCTURES AND DATA

Family Support. Training in family and community support to DCS and local government bodies and a significant allocation of resources is necessary so that there is a family support first approach. The support of families is not a task of the DCS alone but for the local government administration in which AACs have a vital role. AACs need to be adequately funded so as to undertake their duties.

Specialisation. The specialization of DCS field staff, with regard to family support, guardianship, foster-care, adoption and CCIs would improve child best interest decisions. This means identifying specific staff within districts who would be solely responsible to promote appropriate advice and practice concerning family support, guardianship, the setting up and managing of foster-care schemes, ensuring good adoption reporting in the districts and in the inspection and necessary action concerning CCIs. The specialization at DCS headquarters needs to be more comprehensive and assertive.

Finance: A modest grant to foster carers who receive children on a foster care order and the providing of legal aid to poor prospective adopters who otherwise could not afford the lawyer's fees would enable more children to be cared for within a chosen caring substitute family under these orders.

Data. From this assessment it is clear that quantitative data is not a priority within any of the areas studied and is seldom used as a tool for establishing current realities, measuring progress and for future planning. An ethos that sees data as a tool for assessing work done over a period of time so as to improve it in the future needs to be established in the DCS and with all those stakeholders with whom they work.

16.2 PROTECTION.

CCIs.

There is a real danger of trafficking and other abuses taking place in CCIs, particularly in the majority of unregistered CCIs. However, even in registered CCIs it seems that in some districts 100% and in others 60% of children have not been committed by the court and are there illegally and could be exploited. To rectify this situation is a major challenge for the NCCS, the AACs and the DCS.

Guardianship.

Clarification is needed as to how guardianship orders given to residents can be stopped from being used to remove children from the country illegally.

Foster-Care.

Well run foster care schemes would enable children to stay in family surroundings but to ensure a good standard of care requires that prospective foster parents are trained at district level before they are needed, and once selected as suitable and given a foster child the placement is monitored and the parents are assisted to support each other. Foster care schemes go hand in hand with stressing family-based solutions.

Adoption.

Foreign resident adoptions falling in between local and inter-country are a cause for concern among some stakeholders who claim they are being sought for the wrong reasons and children so adopted are being removed from the country without the necessary checks having been previously been done by a foreign adoption society.

16.3 PREVENTION.

Family Support.

Family support is the key to prevention and everything that can be done to keep families together and mothers alive assists children. A campaign that emphasizes the fundamental importance to a child's growth and development of belonging to a caring family and community is essential as some parents seem to genuinely think they are benefiting their children by sending them to a CCI. Everyone needs to know that a caring family home outweighs almost any other advantages that can be gained elsewhere. It is the task of the State and NGOs to do whatever they can to assist families, unless severely abusive, to stay together. This is why the outreach services of NGOs has been highlighted in this report.

NGOs that assist in the unnecessary separation of children from their families should be questioned by the community and the local government authorities and if they continue, be banned by the AAC from the district and reported to the NCCS. Donors that support the expansion of CCIs should be informed that it is against government principles but that instead they should support OVC children to stay within their families rather than support their institutionalization. The type of local priorities in need of funding include: ARV schemes, home-based care, voluntary counselling and testing centres, cash transfer schemes for OVCs, ECD, training of community workers or school feeding in the poorest areas. Parents need to be assisted to understand that poverty should not be the basis for sending a child to a CCI nor should a CCI be used for primary education as it is free. Families who know their children are having difficulties should seek assistance from those bodies that should be providing services and all government servants should see it as their duty to assist them.

Social Protection Initiatives.

There are various forms of social protection interventions assisting children including the government's Core Poverty Programmes with its school equipment scheme and bursary programme for primary school, other programmes that build schools in the slums and in-kind transfers including free primary education, school feeding and emergency food aid programmes. Free ARVs keep mothers and children alive and families together for longer. All these and others provided by government, donors and NGOs support family cohesion. The Kenya National Social Protection Strategy by the Ministry of Gender, Sports, Culture and Social Services in 2007 advocates cash transfers for the core social protection intervention in Kenya. Cash transfers to all OVCs in need on a national scale would have enormous impact in the prevention of vulnerability as it would improve the lives of so many children who are at risk.

Cash Transfers for OVCs.

Currently these reach about 25,000 households and by 2012 it is planned to reach 100,000 households. From early evaluations it seems cash transfers are enabling more children to go to school and is raising immunization levels, both of which are conditionalities for receiving cash transfers. Going to school is one of the most preventive strategies that exist for children, as it is something they seek and it reduces the chance for abuse and exploitation, e.g. child labour. There is a plan to widen the role of the Location Advisory Councils currently involved in the selection process of beneficiaries by encouraging them to use the scope of their child protection mandate to refer children who they meet who are in need, even if they are not selected for a cash transfer, to the relevant government department or neighbourhood group who could give them the necessary assistance, whether it be education, health care, home-based care, ART, shelter, ECD, counselling or neighbourly support.

CHAPTER 17

COLLATION OF ALL THE SPECIFIC RECOMMENDATIONS ALREADY SET OUT IN THE REPORT



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17.1. SPECIFIC RECOMMENDATIONS CONCERNING CURRENT AVAILABLE DATA ON ADOPTION.

The Registrar-General reviews the way that orders are referred to the RG's office and as to whether it would be better for notification of adoption orders to be sent directly by the court and acknowledged. The Registrar-General to consider a reference being made in the registering of each adoption order as to whether it refers to a local, resident or inter-country adoption.

17.2 SPECIFIC RECOMMENDATIONS CONCERNING CCIs.

- The NCCS should consider placing a moratorium/freeze on the opening of any new CCIs from now until further notice. This notice to be advertised in the media and all government publications. Punitive action should be considered for those who ignore this order.
- The NCCS should set a date by which all CCIs need to be inspected and a decision made to register if they meet the criteria. CCIs can be given 6 months to meet it, or to be closed. Those consulted broadly concurred that 12 months was sufficient time for this process.
- The Department of Social Services in the Ministry of Gender, Children and Social Development and other relevant ministries, the NGO Coordinating Bureau, all NGOs, donors, AACs, churches and other stakeholders should be informed that a CCI may only be registered by the DCS after inspection by the AAC and approval by DCS.
- Children's Court Magistrates should proactively ensure in conjunction with the DCO that CCIs do not keep children as residents unless committed by the court.
- Children's Court Magistrates should be incorporated into AAC CCIs inspection teams.
- Data should be collected on all CCIs using a set format (example given below) and copies left with the CCI, the district Area Advisory Council (AAC) and DCS and sent to DCS HQ to be collated and analysed.
- Data should be collected on all children in each CCI using a set format (example given below) and copies left with each CCI and held at the DCS district office and centrally for district and national collation and analysis. A system should be devised that require CCIs to provide annual

reports which includes the number of children they have received during the year, those that HIV+ and the number they have re-integrated back to families.

- Information on the numbers of HIV+ children in a CCI should be passed on to the local relevant medical bodies to ensure appropriate support is given including ART.
- The authorised persons who can place a child in a CCI or place of safety in an emergency should be limited to the court, a Children's Officer or the police.
- Unless a child is returned to their parents/carers, all children placed in a CCI in an emergency should be taken to court/magistrate within a stipulated period (1 week would seem reasonable).
- Trainings should be given to AACs and district DCS staff on inspection methods.
- The CCI regulations are minimum legal standards, in addition, the DCS in collaboration with the AAC should work with CCI managements and staff on agreeing on quality standards that they would wish as CCIs to aspire to.
- The question of the size of a CCI as set down in the third schedule of the CA should be reviewed bearing in mind the need to make a distinction between a CCI and a foster home. It is necessary to decide what is the maximum number of children it is felt reasonable for one family to foster then a CCI would be any residential place that cares for children full time above that number. It would be helpful if the DCS in consultation with registered CCIs stated what it saw as the optimum number range of children for a CCI to have so as to promote a family atmosphere and a similar level of caring.
- The DCS to clarify what is meant by a 'Child Welfare Programme'.
- CCIs in conjunction with DCS be encouraged to primarily support children within their families or substitute families through outreach support so avoiding the need for committals and children entering their CCI or where this has already happened by speedy reintegration wherever possible.
- CCIs should be prohibited from providing primary and secondary education within their premises instead children should be sent to the schools in their neighbourhood unless none exist or where special education is being offered by the CCI and is not available within the neighbourhood.

17.3 SPECIFIC RECOMMENDATIONS CONCERNING EMERGENCIES IN RELATION TO GUARDIANSHIP, FOSTER-CARE AND ADOPTION.

- As a part of disaster management preparedness it needs to be known who will organise the coordination of government, UN and NGO players with regard to child protection and specifically with regard to the placement of children in foster care and wherever possible only in registered homes. The principles to ensure the maximum cooperation between all parties should be jointly agreed so as to establish a system of best practice drawing on the experience from elsewhere in the world.
- Better preparation in disaster management in relation to children; a joint planning exercise should take place with immediate effect between DCS, the Kenya Red Cross, UN agencies, eg UNICEF, UNHCR, WFP and WHO and NGOs that are active in this field, eg Save the Children.
- There is need to prepare for the IDTR process for unaccompanied and separated children in order to respond effectively should another disaster occur. This is especially to ensure immediate coordination, agreed practice and the different roles to be undertaken by the various main players. The documentation to be used should be agreed upon between the main players as soon as possible.
- Registration of all unaccompanied and separated children should be done immediately any emergency occurs. Who does this needs to be part of the preparedness plans of government and other relevant stakeholders.
- The proposal by the Kenya Red Cross to set up a Child Protection Unit at their headquarters will enable the KRC to be better prepared to contribute to better child protection practices.
- A foster care register of potential foster carers should be promoted and established in each district by the district DCS office.

- As part of a preparedness policy, government should give consideration in times of emergency to paying foster parents to look after children until they can be returned to their parents, which should be as soon as possible.
- No unregistered CCI should be allowed to receive children in an emergency.
- No Remand Home should receive children in an emergency unless its whole role is altered.
- Registered CCIs who are asked to take children in an emergency should receive financial assistance from government.
- Once the law/policy is changed concerning who can place children in CCIs in emergencies (courts, police and DCS) managers or personnel from a CCI recruiting children to their CCIs during an emergency should be prosecuted.
- The method for reporting and recording abuse in an emergency needs to be strengthened and all IDPs notified and a body set up in each camp to investigate complaints.

17.4 SPECIFIC RECOMMENDATIONS CONCERNING NATIONAL LEGISLATION ON ALTERNATIVE CARE AND ADOPTION

- Part XI of the CA be amended so that it is made clear that foster care placements can be made by the Children's Court without the necessity of a child first being placed in a CCI.
- A review be made as to whether it would be in the best interests of the child if when a foster care placement is made on a child with a care order to a CCI that the change of circumstances is brought to court for the making of a foster care order.
- The Director clarifies who has the oversight of any foster care placement and what it entails.
- A decision be made by the Director as to the minimum requirement as to home visits to a fostered child and his/her foster-parents.
- Consideration be given by the DCS and relevant stakeholders to the making of a modest payment by government to formal foster carers approved and proposed to the court by the DCS and for which a foster care order has been made by the court.
- The AC, NCCS and the Director after appropriate consultations eg with Family Division judges in Nairobi, the Law Society of Kenya and the Child Law Practitioners Committee to write to the Chief Justice requesting him to issue Practice Rules for adoption listing areas of concern.
- DCS to seek legal advice as to the domestication of recently ratified international instruments.
- Investigate how to incorporate 'kefala', a form of guardianship used by Muslims and part of the Kahdi court's jurisdiction as an amendment in the CA and to ensure that a system is in place for all such orders/decisions to be recorded and that data held provincially and centrally.
- The removal of children from Kenya by guardians, other than a mother or father, to be addressed as proposed by the draft Amendment Bill, 2007.
- Review of Act to emphasize family based placement as opposed to CCIs.
- The law concerning local kinship adoption needs to be made easier for adoptees who have been caring for a family child (see proposals in chapter 12).

17.5 SPECIFIC RECOMMENDATIONS CONCERNING IMPLEMENTATION AND PROCESS WITH SPECIAL REGARD TO THE ROLE AND RESPONSIBILITIES OF DUTY-BEARERS.

Guardianship.

- The NCCS and all duty bearers emphasize the importance of people making wills through a culturally appropriate joint campaign including DCS, UNICEF and NGOs.
- A Certificate of Guardianship be drawn up which should be given to each guardian when it is determined by the court and be signed by the presiding magistrate
- A legal study be undertaken to establish the benefits of guardianship to children in kinship care and whether it gives them any right to a share in a carer's inheritance and could thus form a less costly alternative to local adoption.
- The DCS, NCCS and the Law Society of Kenya to review whether guardianship should be given to foreign residents and if so what the rules should be governing such orders and how they should be monitored

Foster Care.

- Part XI of the CA be amended so that it is made clear that foster care placements can be made by the Children's Court without the necessity of a child first being placed in a CCI.
- A review be made as to whether it would be in the best interests of the child if when a foster care placement is made on a child with a care order to a CCI that the change of circumstances is brought to court for the making of a foster care order.
- The Director of DCS clarifies who has the oversight of any foster care placement and what it entails.
- A decision be made by the Director as to the minimum requirement as to home visits to a fostered child and his/her foster-parents during the first year and successive years.
- The DCS lead a campaign to promote formal temporary fostering and for the DCO at district level to establish a list of trained prospective foster parents
- DCS to establish a national data base of foster care placements and orders and to know how many trained foster parents exist in each district and how many do not have foster children currently with them.
- A situational analysis be conducted into the extent and forms of informal fostering.

Adoption.

- The DCS and NCCS take up with the police the importance of their taking a more proactive role in finding the mothers of abandoned babies. The DCS, NCCS and police to also look at alternative arrangements to trace parents so that other bodies eg NGOs (eg KRC, Goal Kenya and CWSK) and FBOs can legitimately take on this role.
- A campaign in the media and using 116 hotline, the hospitals and health clinics to persuade pregnant mothers and teenage and unmarried mothers who do not feel able to cope with a baby not to abandon it but to make arrangements through the DCS office, clinic, CCI to place the baby for adoption after it is born.
- DCS, NCCS and AC to lead a consultation review with judges, adoption societies and lawyers on how local kinship adoption can be made easier using a simplified system and considering the use of the Children's Court and a DCS report.
- Until the practice rules are promulgated the Family Division should decide whether a guardian-ad-litem can charge for their services, to whom and if so whether there should be a prescribed amount.
- Rules are needed for resident adoption.
- The NE province should have a High Court.
- The Director DCS and Chair AC to meet with the Presiding Judge of the Family Division to

consider how to approach and arrange a meeting with the relevant UK and US embassy staff over their country's failure to recognize Kenyan inter-country adoption orders as adoption orders.

- Seek an amendment with all interested parties to the current prohibition of a single woman adopting a male child.
- A system to be established in which all CCI who have child(ren) resident under 5 years who are not being considered for adoption to inform all the adoption societies of their presence at least annually.
- Adoption societies to exchange information on adoption applicants who have been turned down by the court as unsuitable to adopt so that if they apply to other adoption societies that fact is known.
- The AC to make clear to adoption societies that they are responsible for checking the well-being of the child and the satisfactory development of the relationship between the child and the foster parents while the child is fostered prior to possible adoption and that this should not be delegated to the CCI from where the child came. The same to hold true if the court orders monitoring of the adoption.
- The AC to ensure that no adoption society provides a certificate clearing a child free for local adoption until that child's case has been approved for adoption by its Case Committee.
- In an effort to promote local adoption, adoption societies be encouraged to set up provincial offices and start off community awareness on the same.
- The Provincial Children's Officer in each province to take responsibility for the standard of enquiry and presentation of local adoption reports by reviewing each one and counter signing them.
- The AC, DCS and LSK to promote the provision of legal aid by the government for those applicants deemed suitable as adoptive parents who are means tested as being poor and would otherwise not go ahead with a local adoption. The LSK and AC to also look at a systematized form of pro-bono services by lawyers to poor adoptees.

17.6 SPECIFIC RECOMMENDATIONS CONCERNING GOVERNANCE AND ACCOUNTABILITY.

- A clearer understanding on the use of guardianship orders nationally is required.
- The DCS to set out a clear policy as to how it wants foster care to be used after conducting the necessary consultations and looking at systems elsewhere in Africa.
- DCS if it is to act as the inspection arm of the AC needs to assess what this would entail and whether it has the capacity to do it.
- It would be helpful if the Ministerial regulations concerning the AC and the role of its members, especially the DCS Secretariat, was more widely known, eg on the DCS website.
- If not the case consideration be given to those CCIs who are registered and provide care for babies and children under 5 years to elect who should represent them on the AC.
- That inter-country adoption cases remain in the High Court in Nairobi for the time being.
- That an on-going assessment is made as to whether there are sufficient judges in Nairobi to deal with the number of adoption cases and this assessment be made by the Registrar and reported to the Presiding Judge and the AC every 6 months. Also whether there are enough knowledgeable lawyers for adoption and magistrates to deal with issues of foster care and guardianship.

17.7 SPECIFIC RECOMMENDATIONS CONCERNING SUPPORT SYSTEMS.

- The training of all those involved in the child protection process be reviewed and plans made with other interested players to fill the gaps identified. More sensitization meetings with the critical players to exchange views and promote good child care practice would be beneficial.

These are relevant for High Court Judges, Children's Court Magistrates, AACs and LACs, police and CPU, lawyers (especially those in groups set up to look after children's interests), CCI staff, Children's Officers and volunteer Children's Officers, etc.

- Approaches be made to those universities offering social work BAs and Diplomas and others to increase their student intake, upgrade or start social work courses and to form a body with DCS and other major stakeholders to regulate social work degrees and diplomas.
- A recognized regulatory body be established to set the minimum social work qualification and practice required before a person can be designated a qualified social worker.
- The government to set the minimum social work related qualifications for staff working with children, both within government and non-government institutions.
- The Public Service Commission should recognize social work as a professional occupation.
- For lawyers to consider setting up a branch of Lawyers for Human Rights in Kenya.
- Progress reports from foreign adoption societies on inter-country adoptions be copied to the Registrar of the High Court and the AC by the local adoption societies.
- The DCS to use its web site to place important documents which should be in the public domain.
- The DCS consider maintaining a list of NGOs and private sector bodies involved with children not living with their parents and the areas they cover and promoting collaboration with them.
- Greater rationalization and specialization of field staff would help maximize quality standards and efficiency.
- Foster parents and parents who have adopted be encouraged by the DCS and adoption societies respectively to bring those in the respective groups who live nearby together to discuss their experiences and for self-support.
- DCS and other duty bearers to link with UNICEF, NGOs and the private sector to further develop financial, human resource skills and logistical support to facilitate better child protection services.
- Consideration be given as to how the cash transfer programme could help in the reunification of children from CCIs and from the street.

17.8 SPECIFIC RECOMMENDATIONS CONCERNING AWARENESS ABOUT GUARDIANSHIP, FOSTER CARE AND ADOPTION

- In relation to informal fostering the DCS to review whether such placements should be registered with the local administration so as to form a basis from which consideration as to how to better protect children could proceed.
- Lawyers, DCS and NGOs collaborate to publicise how guardianship can help protect children and the extent to which it is a way for poor people to increase the protection they can give through kinship care.
- DCS to plan as to how to promote parents to come forward as formal foster parents.
- The AC to inform the public through a promotion campaign what is the procedure for local adoptions so as to boost the number of local adoptions as a proportion of all adoptions. The involvement of duty-bearers including adopting parents should be considered.
- Adoption societies, AC and DCS to promote ways by which adopting parents meet to discuss common issues and plan ways themselves to promote local adoptions.
- AC, DCS and police contact the Immigration Department about exercising caution in providing travel documents to adults with unrelated children.
- The attitudes of children to the experiences they went through during and as a result of guardianship, foster care and adoption should be researched.
- It would be useful to research which regions/ethnic groups are more willing to foster and adopt so as to encourage this trend and also to develop strategies for reaching out to ethnic groups that do not adopt or foster.
- DCS to open discussions with Muslim religious and community leaders, especially in the coastal and NE provinces as to how girls pregnant outside of wedlock can be treated more humanely and the survival of their babies ensured.

17.9 SPECIFIC RECOMMENDATIONS CONCERNING MONITORING.

- Information sharing by DCS with other duty bearers in child protection needs improvement.
- DCS to establish an ethos of data collection and analysis within its departments and a central data-base.
- Annual reports by the DCS, AC and NCCS should be seen as a positive analytic tool and made easily accessible to the public.
- A record of all guardianship orders to be kept centrally to establish the annual numbers and the courts where they are being ordered.
- An assessment of the usefulness of guardianship orders to guardians and the children concerned would be instructive.
- A central record for all foster care placements and orders made is required with a system for reporting from the provinces.
- Guidelines established as to the expectations from Children's Officers in relation to visiting children on foster care placements.
- The AC to decide on the guidance and guidelines for the DCS unit responsible to use in the inspecting of adoption societies.
- The DCS unit responsible for adoption to streamline its data collection and analysis so as to have an authoritative data-base on adoption.
- The AC to ensure that adoption societies report as required by the ninth schedule of the CA, 2001 and this data is analysed and made public.

17.10 FINANCIAL IMPLICATIONS OF THE ABOVE RECOMMENDATIONS.

Registering Informal Fostering.

- To set up a system of recording at location level could be a task for the Location Advisory Council where they exist or for the chief. It would involve the cost of registers for each location and the administrative costs of informing the person(s) responsible of what to do through training, some supervision and the organizing of the collation of that material at district level for provincial and central collation.

CCIs.

- To inspect all unregistered CCIs and draw up a proforma in relation to each CCI would be quite costly as there may be between 1,000-1,500 in this category. A rough costing could be calculated by finding the cost of one AAC inspection and multiplying it by the number unregistered. World Vision might be willing to assist.
- To assess the status of all children in all the CCIs registered and unregistered is a major task and would be best started with those that are registered. The time involved would depend on the number of children in them; an idea of this would be possible once the CCIs inspections have been done. If university graduates were trained to do this the costs could be reduced. An arrangement with those universities with social work departments would reduce costs and be a good training exercise. UNICEF and a number of NGOs might work with the DCS on this.
- Funding so as to have a functioning data base and analysis system is needed. UNICEF has done this elsewhere in the world and would have an idea of the costs involved.

Guardianship.

- The recording of all guardianship orders from the Children's Court registers. Whose task is it to collate judicial information? If it is the Registrar who orders up this information would there be any expense to the DCS? Who would wish to be party to this information? The cost of analyzing the data would need to be estimated. Who would do this?
- A study on the legal and protection benefits of guardianship orders for children and the effectiveness of such orders from the viewpoint of the guardian and the child concerned. US\$5-10,000.

Fostering (non-kinship).

- The cost of setting up a pro-active approach of enlisting prospective foster parents in each district and training them so they are available as needed. The main cost would be the training process first of trainers and then of the prospective foster parents.
- Government should consider a modest contribution to offset the extra expenses a foster care order (ie from the court) incurs on foster carers. Payments would also seem appropriate for those who foster children in an emergency. The amount to be agreed through a consultative process.
- Cost of a quality service in visiting foster parents and children.
- Extra staffing required for training, court reports and visiting.
- To set up a coordinated system to get information from the district to province and centrally should primarily be an administrative matter.
- A functioning data-base and analysis system - the same one to be used for CCIs, guardianship and adoption – this will require a data-base operator and equipment.
- Media campaign to advertise fostering but to make clear its difference from adoption. It may be best if this came after the media campaign for local adoptions.

Adoption.

- Cost of a thorough inspection of adoption societies and their records on an annual basis.
- Cost of data-base on all local, resident and inter-country adoptions as part of the data-base systems set up above.
- Media campaign to promote local adoptions.
- Government to consider funding adoption societies to carry out their work, as they are taking up responsibilities on behalf of the state.
- Government budget allocation for legal aid to means tested poor families. This could be calculated initially by looking at the number of applicants in 2007 who fostered children through the adoption societies and then went no further because of the costs involved. From that information a profile of what corresponded to poor people could be developed.

Sources

- African Union**, 'Livingstone Call for Action', 2006
- Afro-Media Initiatives**, Review of Children's Homes and Orphanages in Kenya', 2002 ANPPCAN, 'Assessment of AIDS Related Orphans', 2006
- Child Welfare Information Gateway**, 'How many children were adopted in 2000 and 2001', USA, 2004
- Devereux S. & Sabates-Wheeler R.**, Transformative Social Protection, IDS Working Paper 232, October, 2004, IDS, Brighton, Sussex, UK
- Dunn, A & Parry-Williams, J.** 'Assessment of Capacity to Manage Alternative Care for Children in Southern Africa', UNICEF, 2007
- Dunn, A. & Parry-Williams, J.** 'Children's Home Assessment Form' sent to Kenya UNICEF office, 2008,
- Dunn, A. & Parry-Williams, J.** 'Children's and Babies' Homes Child Case Record' sent to Kenya UNICEF office, 2008,
- Government of Kenya**, 'First Kenya report on the implementation of the UN Convention on the Rights of the Child', 1998.
- Hague Convention**, Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993
- IATT**, Social Protection for Vulnerable Children in the Context of HIV and AIDS, 2008.
- IOM**, Human Trafficking in Eastern Africa, 2008
- Jones, C.** 'The extent and effect of sex tourism and sexual exploitation of children in the Kenyan coast', UNICEF & Government of Kenya, 2006
- Kenya Christian Homes Adoption Society**, Local Adoption Process document, tbh@wananchi.com
- Kenya Demographic Health Survey**, Preliminary Report, 2005/6
- Kenya National Bureau of Statistics**, Central Bureau of Statistics projections from 2005-6
- Kenya Integrated Budget Household Survey, 2007**
- Kenya National Bureau of Statistics**, 'Basic Report on Well Being in Kenya', based on Kenya Integrated Household Budget Survey, 2005/6
- Kenya Women's Judges Association**, 'Bench Book on Family Law', 2007
- Kiarie, S.** 'An analysis of the Children Act 2001, the Draft Rules & Recommendations', undated.
- Law Society of Kenya**, "The Hope" A report on the status of the Children Act 2001', 2003.
- MoGSCSS**, The Kenya National Social Protection Strategy (Draft), Government of Kenya, Nov., 2007
- MoGCSD**, Revised Draft National Plan of Action on OVC, 2008
- MoGCSD**, Dept. of Children's Services, 'List of Charitable Institutions'
- MoGCSD**, Dept. of Children's Services, 'Strategic Plan', 2008-12
- MoHA**, Dept. of Children's Services, 'Rules & Regulations for the Administration & Management of Voluntary Children's Institutions in Kenya'
- MoHA**, Dept. of Children's Services, 'Basic internal regulatory procedures and requirements for Approved Schools, Juvenile Remand Homes & Nairobi Children's Home', 1996
- MoHA**, Dept. of Children's Services, 'The Manual for Children's Officers, Staff of Children's Institutions & Volunteer Children's Officers' (2nd revised version)
- Munyithya, J.** 'An Overview of Adoption Laws in Kenya and Emerging Challenges', 2006
- National AIDS Control Council Director**, 2006 National Prevalence as released by ACC Director on 13/8/2007
- National AIDS Control Council**, 'Report to UNGASS on HIV & AIDS', 2008
- National AIDS Control Council**, 'Final report on assessment of the socio-economic impact of HIV and AIDS on key sectors in Kenya', ACC, 2006.
- National AIDS Control Council**, Joint AIDS Programme Review, ACC, 2005
- National AIDS Control Council and the National AIDS and STI Control Programme**, Epidemic Review Report, Nairobi, Kenya, June 2007
- National Council for Children's Services (NCCS)**, Draft Strategic Plan 2004-8.
- NCCS and World Vision**, 'Guidelines for the Formation and Operation of Area Advisory Councils', 2006,
- Parry-Williams, J.** 'Review of Policy, Legislation & Practice with regard to Institutionalisation in Kenya, for SCUUK, 2004
- Parry-Williams, J.** 'Evaluation of SCISL programme 'New Beginnings for Children Affected by Violence and Conflict' in Jaffna District and Southern & Western Provinces & Suggestions for a 3 Year Strategy 2008-11', 2008
- Registrar-General, Kenya**, Children Adoption Register
- Republic of Kenya**, The Children Act, 2001.
- Republic of Kenya**, The Children (Adoption) Regulations, 2005
- Republic of Kenya**, The Children (Charitable Children's Institutions) Regulations, 2005
- Republic of Kenya**, The Children Act (Amendment) Draft Bill, 2007
- Republic of Kenya**, National Policy on Orphans & Vulnerable Children, Office Vice-President & MoHA, 2005
- Republic of Kenya**, 'National Programme Guidelines on Orphans & Other Children made Vulnerable by HIV/AIDS' March 2003
- Republic of Kenya**, 'Kenya Vision 2030', July, 2007
- Sala, M.** 'The Provision of Orphan Care to Orphaned Children in Kibera Slums in Kenya', 2006.
- Save the Children**, 'A Last Resort', (Save the Children's position on residential care),
- SC(UK)**, 'A situational review of District children's Advisory Committees and other community based structures...' by **Lundi, A**, undated.
- Sellick, C. & Howell, D.** "Innovative, tried and tested – A review of good practice in fostering", Social Care Institute for Excellence, Nov. 2003.
- Sphere**, Humanitarian Charter and Minimum Standards in Disaster Response, 2004.
- Tolfree, D.** 'Community-Based Care for Separated Children', **Save Children Sweden**, 2003
- UN draft Guidelines** 'For the Appropriate Use and Conditions of Alternative Care for Children', 2007, presented by the Government of Brazil
- UNAIDS, UNICEF, UNESCO, WFP, Global Fund, DANIDA, DfID and many NGOs** 'The Framework for the Protection, Care and Support of OVCs Living in a World with HIV and AIDS', 2004
- UNICEF and the inter-agency reference group**, 'Enhanced Protection for Children Affected by AIDS', 2007,
- UNICEF**, 'Review of Children's Homes & Orphanages in Kenya', 2002.
- UNICEF**, Social Protection in Eastern and Southern Africa: A Framework and Strategy for UNICEF, 2008.
- UNICEF**, 'Humanitarian Action Kenya in 2008.'
- UNICEF**, Projection from UNICEF, State of the World's Children, 2007
- UN Population Division**, World Population Prospects: the 2006 Revision
- United Nations Development Programme**, 2006

Appendix 1.

ABBREVIATED TERMS OF REFERENCE.

The Purpose of the Assessment

UNICEF is looking for consultancy service to undertake assessment in the area of alternative care for orphans and other vulnerable children, including children separated during emergencies. The consultancy should comprise of a team of one international and one national expert. This will enable the assessment to have the advantage of a comparative global experience and at the national level a comprehensive understanding of the national context.

The scope of the assessment will be on the alternatives family-based and non-family care practices in Kenya that exist for children without parental care including orphans and other vulnerable children. This will cover the practice of guardianship, foster-care and adoption during non-emergency and in emergency times. Of specific concern will be to assess the role played by CCIs in contributing to the separation of children from their parents, relatives and communities. The scope of work will include assessment of;

- Existing legal provisions and regulations,
- Existing processes of re-integrating children with their families/relatives and/or placing them in alternative family-based care,
- Existing implementation and monitoring mechanism and structures as they relate to the practice of guardianship, foster care and adoption of children.
- Levels of public awareness on the three areas
- Financial implications of the processes
- The role played by different stakeholders and specifically by CCI in terms of promoting separation and/or integration and placement.

Programme area and Specific project

Involved

Child Protection: Social Protection Systems for most vulnerable children

Basic Project Objective to which the consultancy is related

Social protection systems for the vulnerable children strengthened and implemented in selected districts

SPECIFIC TASKS TO BE ACCOMPLISHED

Focusing on the three care practices of guardianship, foster care and adoption, the specific task of this assessment will be to;

A. Legislative Review:

What laws are there?

What is working well?

What does not work well?

What needs improvement?

- 1) Establish the existing legal provisions and regulations in the country in relation to international instruments.
- 2) Identify gaps in the legal provisions and regulations.
- 3) Review implementation process and identify obstacles to implementation of legal provisions and regulations.
- 4) Establish if there are clear guidelines that determine which child should be placed under guardianship, or foster family or adoptive family.

B. Implementation: (process review)

- 5) Outline the processes for guardianship, foster care and adoption; pointing out where major hurdles are faced.
- 6) Establish if there are mechanism in place within these three processes, which ensure that children who come into contact with these processes are protected; and if not, clearly identify at which point children are vulnerable to abuse/ lack of protection.
- 7) Identify major duty bearers in all the processes and assess their performance in their duties including obstacles they face in implementation of their duties (duty bearers to include courts, adoption societies, charitable institutions, communities, hospitals, police, social workers, Children officers among others)

C. Awareness Levels

- 8) Establish the levels of awareness of duty bearers on their roles.
- 9) Establish if children in these processes have information required.
- 10) Establish if there are mechanisms that inform communities of these options (i.e. guardianship, foster care and adoption of children) and the processes involved; therefore assessing the levels of communities awareness in this area.
- 11) Highlight community attitudes, beliefs and perceptions as they relate to guardianship, foster care, adoption and placement of children in CCI.

D. Governance and accountability

- 12) Review the governance and transparency issues of the National Adoption Committee, adoption societies and the judiciary.
- 13) Recognising the important role played by adoption societies in international adoption of children, review the processes by which the Kenyan Adoption Societies enter into agreements with foreign Adoption Societies
- 14) Establish if there are support systems in place for parents/families that are guardians or have fostered or adopted children.

E. Monitoring

- 15) Assess the capacity of the government to coordinate and monitor these processes including home visits once the children have gone through the legal processes.
- 16) Assess the role and effectiveness of social workers in monitoring of children in foster or adoptive homes including those under guardianship.
- 17) Establish if there is a systematic process/ mechanism that documents children who are under guardianship, foster care and adoption. If such a system exists review its efficiency and effectiveness.

F. Financial Implications

- 18) Give an indication on the monetary implications of these processes to various stakeholders and where available indicate the source of funding for the stakeholders to cater for these costs.
- 19) Outline financial implications of the current system/ processes and give recommendations for sustainability.

G. Recommendations for Future

- 20) Provide recommendations on gaps identified in all the above areas.
- 21) Highlight on 'best practices'.

End product of the assignment

- i) A process report containing details of persons met and deliberations undertaken as part of the assessment.
- ii) A draft and final report as per agreed format with UNICEF

Appendix 2.

LIST OF ALL PERSONS CONTACTED

	NAME	AGENCY	TITLE/DESIGNATION
1.	Jacqueline Mwangi	KKPI Adoption Society	Project Officer
2.	Nankali Maksud	UNICEF	OVC Specialist
3.	Marleen Korthals Altes	Save The Children	Child Protection Manager
4.	Apollo Muinde	Apollo Muinde & Associates	Legal Practitioner
5.	Wanjiku Joyce	Department of Children Services	Chief Children Officer
6.	Irene Muriithi	Child Welfare Society of Kenya	Executive Director
7.	Ochieng Celestinne	The Cradle- The Children Fund	Legal Assistant
8.	Rachel W. Muthoga	Law Society of Kenya	Programme Officer
9.	Linda Dougherty	US Embassy, CIS	Field Director & Adoptive Parent
10.	Rich Appleton	US Embassy Consular General	Consul General
11.	Muteru Njama	Little Angels Network	Associate Director, Administration
12.	Marie de la Soudiere	UNICEF	Advisor
13.	Grace Kimani	CLAN	Programme Officer- Legal
14.	Catherine Tongoi	Tongoi & Co. Advocates	Advocate
15.	Jane Odiya	CWSK	Child Protection Officer
16.	Felistus Mwikali	CWSK	Senior Programme Officer
17.	Alice Kimani	IOM	CT Programme Officer
18.	Viola Yego	DCS	DCS- Children Officer
19.	Cornel Ogutu	Goal Kenya	Team Leader
20.	Catherine Kimotho	UNICEF	Child Protection
21.	Birgithe Henriksen	UNICEF	Chief, Child Protection
22.	Rautta Athiambo	Rautta & Company Advocates	Advocate
23.	Alex Wamakobe	Children's Department	Children's Officer
24.	Sarah Wakiugu	Tongoi & Co. Advocates	Lawyer
25.	Anastasia Maina	A.W. Maina & Co. Advocates	Advocate
26.	Nyambura Musyimi	Musyimi & Co. Advocates	Advocate
27.	Judy Ndung'u	DCS	Senior Assistant Director, AFC
28.	Leah Ambwaya	Childlife Trust	CEO
29.	Hussein Ahmed	DCS	Director, Department of Children Services
30.	Carlos Alviar	UNICEF KCO	Cash Transfers Programme
31.	Anthony Lundi	SFRTF	CEO/Secretary
32.	Margie de Monchy	UNICEF ESARO	Child Protection
33.	Jacqueline Oguye	DCS	Sen. Assistant Director, Institutions
34.	Edward Ouma	CLAN	Director, Programmes
35.	Andrew Odete	CLAN	Project Coordinator
36.	Danika Mutiga	CLAN	Head, Social Department in MoGCSD
37.	Priscilla M. Kowino	KAACR	Policy, Advocacy, Legal Matters
38.	Japheth Njenga	Shangilia Mtoto wa Africa	Director

	NAME	AGENCY	TITLE/DESIGNATION
39.	Gaciku Kangari	KKPI Adoption Society	Executive Director
40.	Salome Muthama	DCS/AAC Kibera	District Children Officer
41.	Reuben Ogenda	AAC Kibera/GOAL project	Project Officer
42.	Denis Moriasi	SFRTF	Projects Coordinator
43.	Joyce Ndung'u	Kenya Christian Homes	Social Worker
44.	Nicholas Makutsa	Kenya Red Cross	Tracing Officer
45.	Janet Mwiti	Mama Ngina Children's Home	Director
46.	Diana Watira	The Cradle	Child Rights Assistant
47.	Melanie Ochieng	The Cradle	Legal Aid Assistant
48.	Ruth Chepkemboi	The Cradle	Legal Aid Assistant
49.	Patricia Josepit	The Cradle	Policy, Research & Documentation
50.	Susan Kiragu	UNICEF	M&E Specialist
51.	Susan Otuoma	Little Angels Network	Associate Director
52.	Brian Weke	The Cradle	Projects Officer
53.	Penelope Wanjiku	CWSK	Adoption Officer
54.	Rhoda Misiko	DCS	Children officer- Institutions section
55.	Virginia Whittacker	Save the Children	Programmes
56.	Charles Odongo	DCS	PCO Nyanza
57.	Johnstone Wanyama	Kenya Police	OCS/Chief Inspector Kisumu
58.	Sarah Malicha	Kenya Police	CPU/Constable Kisumu
59.	Ruth Muthoni	Kenya Police	CPU/Constable Kisumu
60.	Odhiambo Ndiege	Kenya Police	CPU/Constable, Kisumu
61.	John Odeche	New Life Homes, Kisumu	Administrator
62.	Ann Onginjo	Children's Court Kisumu	Principal Magistrate
63.	Gilbert Mutai	Kisumu District Hospital	Social Worker
64.	Jane Rono	DCS	DCO Kisumu
65.	George Nthuka	DCS	PCO Western
66.	George Wanyonyi	DCS	DCO Kakamega
67.	Sr. Angeline Misati	Divine Providence CCI	Management
68.	Sheikh Ibrahim Sadala	AAC Kakamega	Member
69.	Mary Goretty Chepseba	Children's Court Kakamega	Senior Principal Magistrate
70.	Aggrey Ambwaya	DCS	DCO Vihiga
71.	Herman Kibunja	OP/Area Chief	Chief, Vihiga (Wamuluma)
72.	John N. Mwinzi	Kenya Police	Kakamega OCPD (SSP)
73.	Hashim Mloso	Save the Children UK	Child Protection Coordinator, Eldoret
74.	Abdi Sheikh Yusuf	DCS	PCO Rift Valley
75.	Clement Gesore	DCS	Deputy PCO, Rift Valley
76.	Mary Muthumbi	DCS	DCO Nakuru
77.	Martha Koome	Judiciary	High Court Presiding Judge, Nakuru
78.	Elizabeth Tanui	Judiciary	Resident/Childrenmagistrate, Nakuru
79.	Sally Mbeche	Juvenile Justice Programme	Founder and Advocate

	NAME	AGENCY	TITLE/DESIGNATION
80.	Safari Chea	Kenya Police	Children Desk Officer, Nakuru
81.	Grace Muriithi	Kenya Police	Children Desk Officer, Nakuru
82.	Christine Mweteli	Freelance Consultant	Former CEO, Little Angels Network
83.	Rose Mbanya	R.W. Mbanya Advocates	Partner
84.	Joram Mwenda	Mwenda Advocates	Partner
85.	Jael Olang	Adoptive Parent	Adoptive Parent
86.	Justus M. Munyithya	National Adoption Committee	Chairman
87.	Bakala Wambani	DCS	PCO Coast
88.	Tom Ochieng	DCS	Senior Children Officer, PCO's office
89.	Charity Muinde	DCS	DCO Kilifi
90.	Peter Mutua	New Life Home Mombasa	Administrator/Adoptive Parent
91.	Selpher Mutua	New Life Home Mombasa	Administrator/Adoptive Parent
92.	Antony Onyango	Kenya Police	Deputy OCPD/SP
93.	Wilberforce Charani	Kenya Police	Chief Inspector
94.	Justice Sergoy	Judiciary	High Court Judge Mombasa
95.	Ali Maro Mkame	Children's Court Mombasa	Senior Clerical Officer
96.	Erick Mugaisi	DCS	DCO Malindi
97.	Caroline Nyambura	AAC Malindi	Member/SOLWODI
98.	Jane Kamau	AAC Malindi	Member/SHAPE
99.	Hydar Msuo	AAC Malindi	Member/PHO Malindi
100.	Rony Mwaluan	AAC Malindi	Member/SWAK
101.	Vivian Hamisi	AAC Malindi	Member/District Probation Officer
102.	Justice Lawal	Judiciary	High Court Presiding Judge, Nairobi
103.	Justice Onyancha	Judiciary	High Court Judge, Nairobi
104.	Judy Ragot	Judiciary	Deputy Registrar, Family Division
105.	Kellen Karanu	NCCS	Head of Secretariat
106.	Ezekiel O. Abang	KLRC	Chief State Counsel/Secretary
107.	Catherine W. Munyao	KLRC	Senior Principal State Counsel
108.	Josephine Sinyo	KLRC	Deputy Chief State Counsel
109.	Hellen Eshiuwa	Nyumbani Children's Home	Social Worker
110.	Bishar Abdullah	DCS	DCO Garissa
111.	Jude Nalianya	CLAN	Legal/Programs Officer, Garissa
112.	Sheikh Abdis Salaam	Young Muslims Children's Home	Manager
113.	Farida Wanjuki	Mama Hani Children's Home	Founder/Manager
114.	Osman Ashuria	Kadhi Court	Kadhi, Garissa
115.	Zeinab Ahmed	UNICEF Garissa	FGM Programme
116.	Hussein A. Golicha	UNICEF Garissa	Resident Programme Officer
117.	Idris Mohamed	Al Farouk Children's Home	Deputy Manager
118.	Maxwell N. Gicheru	Judiciary	Principal/Children's Magistrate Garissa
119.	Mr. & Mrs. Abdi Dagane	Foster parents	Foster parents
120.	Mohamed Sebul	EMACK Garissa	Field Director
121.	Stella Kavinya	Ummar Kheir/Womankind	Administrative Assistant

	NAME	AGENCY	TITLE/DESIGNATION
122.	Khatra Ali	Garissa Prov. Gen. Hospital	Nursing Officer In-Charge
123.	Charles Naam Otieno	Garissa Child Protection Centre	Manager
124.	Fr. Emillio Balliana	St. Camillus Dala Kiye	CEO
125.	George Otieno	St. Camillus Dala Kiye	Programme Social Worker
126.	John Ogeyo	St. Camillus Dala Kiye	Finance & Administrative Assistant
127.	George L.O. Oditi	St. Camillus Dala Kiye	Foster child/youth
128.	Mildred Gimonge	DCS	Deputy DCO, Migori
129.	Ken Wanjale	DCS	Volunteer Children's Officer, Migori
130.	Muthui Peter Kamau	KCH	Programme Officer
131.	Kate Vorley	USAID Kenya	Staff
132.	Elizabeth Mugwanga	DCS	Staff
133.	Reuben Ogolla	Goal Kenya	Staff
134.	Jelita Lung'ng'u	Childlife Trust	Staff
135.	Margarita Janika	UNICEF KCO	Child protection
136.	Judy Tuda Oduor	DCS	Staff
137.	Jacynter A. Omondi	DCS	Staff
138.	Jackie Oreta	ANPPCAN Kenya	Staff
139.	Wamaitha Kimani	CLAN	Staff
140.	Dan Ochieng	Ministry of Foreign Affairs	Legal Division
141.	Sara Chege	ANPPCAN Regional	Staff
142.	Lilian Njeru	CRADLE	Staff
143.	Saad M. Khairallah	National Adoption Committee	Member
144.	Ruth Akelola	WFP Kenya	Staff
145.	Rachel Muthoga	LSK	Staff
146.	Mary Wanjiku	Imani Children Home	Social Worker
147.	Carol Njogu	Imani Children Home	Secretary
148.	2 Anonymous Sisters	Missionaries of Charity	Sisters
149.	Clifford Mulamula	Association of Adoptive Parents in Kenya	Chairperson

DETAILED PRESENTATION OF THE ACTIVITIES IN THE ASSESSMENT

- At the latter part of May 2008, the International Consultant (IC) and National Consultant (NC) were exposed to the TOR by UNICEF and DCS. National Consultant begins process of preliminary secondary review and developing a list of possible interviewees based on briefing meetings by Child Protection Officer at UNICEF KCO.
- On 28th May 2008, NC and UNICEF KCO Child Protection Officer meets DCS officers in-charge of Alternative Family Care at DCS headquarters and discuss the TOR, role of DCS in the assessment, possible districts to be covered and stakeholders for the first consultative meeting of stakeholders as well as those who can be contacted in the future.
- On 28th May 2008, NC and Child Protection Officer meets Child Welfare Society, the oldest Adoption Society to begin discussions on CCI data gathering and some hints on possible areas of field visits.
- Between 29th and 31st May 2008, IC and NC review literature. NC develops a methodological outline to share with the IC.
- IC arrives on 31st May 2008.
- IC and NC meet on 1st June 2008 for the first time and share the understanding of the TOR, methodology and a listing of those to be interviewed as well as provisional proposals for districts to be visited.
- 2nd June 2008, more literature review.
- 3rd June 2008, meeting at UNICEF with key child protection personnel (from ESARO and KCO) for a clarification of the TOR and UNICEF concerns in the assessment in the light of future possibilities.
- 3rd June 2008, meeting at DCS to develop a tentative field itinerary.
- 4th June 2008, first stakeholder meeting at DCS to get proposals on priority districts and issues. Nyanza and Western emerge as top priorities thus concurring with initial discussions and the methodological outline from the consultants.
- 4th – 9th June 2008, interview in Nairobi with GOAL Kenya, a child rescue agency in Nairobi, DCS, UNICEF Cash Transfer programme, CLAN, KAACR, Kenye to Kenya for Peace Adoption Society, Kibera AAC/DCO, Shangilia Mtoto wa Africa, Little Angels Network, Child Law Practitioners Committee (two key members who are also active advocates in adoption), Child Welfare Society of Kenya, US Embassy Immigration Department, Street Families Rehabilitation Trust Fund, Kenya Christian Homes, The Cradle, IOM, Kenya Red Cross, Save the Children UK and Mama Ngina Children's Home.
- 5th June 2008, consultants observe a donor working group meeting on trafficking and child protection issues held in Gigiri. This helps to share agenda and get possible contacts for further follow up.
- 10th June 2008, field visit in Nyanza (Kisumu District). Interviews with PCO, DCO, Police/CPU, Children's Magistrate, district hospital social work section and visit to New Life Homes Kisumu.

- 11th June 2008, field visit of Western Province (Kakamega and Vihiga Districts). Interviews with PCO, DCO Kakamega, DCO Vihiga, Children's Magistrate in Kakamega, Kakamega OCPD, and AAC members (Divine Providence CCI and a Sheikh).
- 12th June 2008, meeting with Save the Children in Eldoret on emergency.
- 12th June 2008, meeting in Nakuru with High Court Judge, PCO, DCO, Children's Magistrate, Police and advocates offering probonal services.
- 13th June 2008, more interviews in Nairobi with advocates and former head at Little Angels.
- 14th June 2008, visited an adoptive parent in Nairobi and interacted with her and the two adopted children.
- 16th – 17th June 2008, visited Coast Province (Mombasa and Malindi Districts) and interviewed PCO, DCOs, High Court Judge in Mombasa, Chair of National Adoption Committee, Police and Malindi AAC. Visited New Life Homes in Mombasa and Malindi Rehabilitation Home. Also interviewed a adoptive couple who are also the administrators of New Life Home in Mombasa.
- 18th June 2008, more meetings in Nairobi with High Court, NCCS, Kenya Law Review Commission, DCS and UNICEF.
- 19th June 2008, second stakeholder's meeting held at the Hilton Hotel in Nairobi to discuss emerging issues and findings as well as possible recommendations pending detailed data analysis and report writing.
- 20th – 29th June 2008, data processing, more secondary review and beginning of report writing (process by NC and findings by IC).
- 30th June 2008, NC visits Nyumbani Children's Home and interviews social worker. Debrief with UNICEF Child Protection Officer and planning for Garissa trip.
- 1st – 4th July 2008, NC undertakes field work in Garissa with interviews with the DCO, 4 CCIs (Young Muslims, Mama Hani, Al Farouk and Ummarkheir/Womankind), a local NGO on children's education (EMACK), Children's Magistrate, Kadhi, a fostering couple, CLAN, UNICEF Garissa office, provincial hospital and child protection centre manager.
- 11th – 12th July 2008, further field work in Nyanza (Migori District) to learn more about a successful reintegration programme at St. Camilla CCI.
- 13th July – 12th November 2008 - follow up in filling data gaps at DCS and the adoption societies as well as getting data on adoption at the Office of the Registrar General.
- 11th September 2008 - stakeholders workshop held in Nairobi in which the draft report was presented by the NC. Discussions were held with input for preparation of the final report by IC and NC.
- Second half of September 2008 to Mid October 2008 – preparation and submission of the final report to UNICEF KCO.
- Mid October – 12th November 2008 – follow up interviews with two baby centers (Imani Children Home and Missionaries of Charity) and the Association of Adoptive Parents of Kenya.
- 12th November 2008 – submission of final report.

DOCUMENTS REQUIRED FOR LOCAL AND INTER-COUNTRY ADOPTIONS.

The documents required for inter-country adoption is set out in the tenth schedule of the Adoption regulations, 2005. There is no comprehensive list for local adoption in those regulations but those below are, we understand, usually sufficient.

The following documents are required by the court in local adoptions:

- Application from prospective adoptive parents and translator certificate if not in English,
- Consent of Legal Guardian,
- Social enquiry report from an official agency detailing preferences of the child to be adopted
- Social Enquiry report on adoptive family by approved Adoption Society,
- Medical Certificates concerning the child and the applicants (including information on fertility of adopters and HIV status),
- Copies of Marriage Certificate (if any) or divorce certificate,
- Birth Certificates of prospective adoptive parents and their children if any,
- Two references from responsible persons preferably local religious leader, advocate or government servant,
- Copy of identity card/passport,
- Photographs of prospective adoptive parents and their children if any,
- Curriculum Vitae
- Affidavit of a reliable person to take charge of the child in case of the death or incapacitation of adoptive parents,
- A report on financial means supported by official documents, eg latest pay slips, bank statements, etc,
- Certificate of non-objection from government (police),
- Letter from employer indicating duration of contract and remuneration,
- Religious affiliation of applicants,
- A report on fixed assets,
- Adopters signature on Certificate of Acknowledgement of explanatory memorandum for adopters as set out in seventh schedule,
- Certificate of good conduct,
- Record of convictions if any by way of police clearance report.

In foreign adoptions the requirements are set out in the tenth schedule of the Adoption Regulations, 2005, these are largely as for local adoptions plus the following additional documents:

- Consent from competent court or government authority permitting adopter(s) to adopt a foreign child,
- Undertaking by foreign adopter in the manner prescribed in the eleventh schedule of the Adoption Regulations, 2005,
- Undertaking by foreign adopter in the manner prescribed in the twelfth schedule of the Adoption Regulations, 2005,

Children's Home Assessment Form

(This assessment to be carried out by a person authorised by the responsible Children's Ministry with the Administrator or a senior staff carer at the Home and then as appropriate double checked with a range of children of different age and sex resident at the Home. A copy of this form to be left with the Home)

Information re -Interview

Name of interviewer:

Name(s) of adult interviewees:

Position of interviewees in the Home:

Numbers, age and sex of children interviewed:

Date of visit:

General Information re- the Home

Name of the Home:

Address of the Home:

Telephone Number:

Date founded:

About the Home

Who owns the premises?

Type of construction of building:

Number of floors:

Separate Sleeping accommodation for boys and girls? Describe

Is there a fire escape?

Number of working fire extinguishers?

Number of toilets for boys

Number of toilets for girls

Number and type of washing facilities

Are there separate washing facilities for boys and girls? Y/N

Water supply: Tap

Other please state

Facilities

Number of children per bedroom/dormitory

Number, type and condition of beds

Number of TVs

Number of computers that work

Availability of toys and books

Where do the children eat?

What leisure and play facilities are available?

List Names of Care Staff	Type of Training Gained and level Degree, diploma,certificate,	Length of time spent training	Position Held

Food

What meals are provided?

Times of meals

Who does the food preparation?

What is the hygiene standard like?

Is there drinking water available?

Finance

Does the Home receive a MoLHSSS subvention?

Give other sources of funding with amounts in cash or kind:

Source	Amount
1.	
2.	
3.	

Management

Name of Person in Charge/Administrator

Management Committee Members

1.
2.
3.
4.
5.
6.
7.

With which authority is the home registered? (circle that which is correct)

- with the responsible government Children's Ministry
- as a Company
- NGO
- Private

Discipline

Are any rules for the Home written up for all to see? Y/N

How are the breaking of the rules dealt with?

Comment

Is staff beating of a child allowed? Y/N

Is the isolation of a child allowed? Y/N

Information on the Children

Number of children in residence today:

Number of Children seen

Current Total Number of Boys :

Current Total Number of Girls:

Age range of boys:

Age range of girls:

How many children have disabilities?

How many Children of school age do not attend school?

Does schooling take place in the community or in the Home? If both explain the breakdown

.....
.....

Case Records

Is there a separate case record for each child?

What of the following is in that file: √ = yes X=no

1. birth certificate,		
2. medical card,		
3. school reports,		
4. photo of child,		
5. photo of parent(s),		
6. home address,		
7. mementoes from home,		
8. case report notes,		
9. 6 monthly review		
10. address of parent or relative or caregiver		

Is there a care plan for each child? Y/N

Number of other paid staff (eg cooks, guards, clerks, etc)

Give numbers of : cooks
guards
clerks
other paid staff

Authority for keeping the children

When a child is received at the Home is there a document signed by the parent or guardian placing the child that they authorise your looking after the child? Y/N _____

How many children have these documents? _____

How many children have written authorisations by the court? _____

How many have written authorisations by the Probation/Social Work Department? _____

How many times did a Probation Officer/ Social Worker visit in 2006? _____

Health and Safety _____

Do you have a first aid box? _____ Check condition _____

Do you have a sick bay? _____

Do you have a trained medical person on the staff? _____ Name _____

Where do you take children with minor ailments and injuries _____

How far away is it? _____

Where do you take children who have a serious medical condition? _____

How far away is it? _____

How many children are HIV infected _____

Do they receive ARV drugs and food supplements? _____

What are the homes external contacts? _____

How frequently may parents/relatives visit their child? _____

Who else visits the home and when _____

Religious services attended and by whom _____

Do children go to scouts, youth clubs, sports clubs, discos _____

Overall Impression _____

Comments

Signed _____

ADOPTION SOCIETIES' STATISTICS

CHILD WELFARE SOCIETY OF KENYA – 2003-2008

WITHOUT PREJUDICE

1.1 Number of Applicants by resident status.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	59	0	1	0	5	65
2004	169	8	53	2	38	270
2005	174	1	25	1	39	240
2006	98	3	1	2	4	108
2007	164	5	14	7	3	193
2008	82	3	3	1	2	91
TOTAL						967

1.2 Number of approved applications by the Adoption Society

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	59	0	1	0	5	65
2004	41	8	22	1	10	82
2005	48	1	13	1	9	72
2006	64	0	1	0	0	65
2007	99	2	12	3	0	116
2008	80	0	3	4	2	89
TOTAL						488

1.3 No. of applications that were not approved by your adoption society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	-	-	-	-	-	0
2004	3	-	1	-	1	5
2005	-	-	-	-	-	0
2006	1	-	-	-	-	1
2007	-	-	2	-	1	3
2008	2	-	-	-	-	2
TOTAL						11

Provide reasons why your adoption Society declined to approve applications for adoption.

- o The applicants had reached the age above 65 years
- o Marital status was not clear

1.4. Number of approved applicants for adoption (above) who have foster child(ren) and have not proceeded for court process for completion of adoption process.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	-	-	-	-	-	-
2004	6	8	22	1	10	47
2005	40	1	13	1	9	64
2006	58	0	1	0	0	59
2007	78	2	12	3	0	95
2008	33	0	3	1	2	39
TOTAL						304

NB: The needs assessment was held with this group trying to find out why they had not proceeded to legalize adoptions. The meeting was attended by 112 prospective adoptive parents who were still fostering children.

These among others were the ones targeted and trained twice as groups and severally as individuals for self presentation in court

1.5 Number of freeing certificates declaring children free for adoption NB. This number could include previous years that had not proceeded (i.e. from the table above 1.3) and started in the reporting year.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	-	-	-	-	-	-
2004	21	-	15	-	9	45
2005	31	-	1	-	11	43
2006	35	-	1	-	-	36
2007	46	-	1	4	3	54
2008	3	-	1	2	1	7
TOTAL						178

1.6 Number of adoption orders granted by the High Court for cases cleared by the Adoption Society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	-	-	-	-	-	-
2004	11	1	-	-	2	14
2005	15	1	1	-	6	23
2006	28	-	-	-	8	36
2007	25	1	1	-	-	27
2008	1	-	-	4	0	5
TOTAL						105

1.7 Number of recommended/cleared cases by adoption society but rejected by High Court. (adoption order not granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003						
2004						-
2005						-
2006						-
2007					1	1
2008						-
TOTAL						1

Please list some of the reasons why the cases were rejected by the Court.

1. Kinship adoption – The applicant was a single male applicant who is a resident in USA. He was applying to adopt two orphans (Nephew & Niece).

1.8 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	-	-	-	-	-	-
2004	125	-	30	1	27	183
2005	126	-	12	-	30	168
2006	34	3	-	2	4	43
2007	65	3	2	4	3	77
2008	-	3	-	-	-	3
TOTAL						474

NB: These cases came from other sources, mainly lawyers. They were already filed in court and they only came to CWSK to ask for the certificate declaring the child free for adoption. They therefore did not go through the adoption case committee for approval.

The children were being placed for adoption by anyone (i.e. the charitable children's home managers in collaboration with some lawyers)

1.9 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society and were accepted by the High Court (Adoption Order granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003	52	-	20	-	16	88
2004	35	-	7	1	15	50
2005	23	-	-	-	3	26
2006	13	-	-	-	1	14
2007	-	-	-	-	-	0
2008	-	-	-	-	-	0
TOTAL						178

1.10 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society but were rejected by High Court (Adoption order not granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003						
2004						
2005						
2006		1				1
2007		1				1
2008						
TOTAL						2

1.11 Number of adoption cases that originated from other sources (other than the Adoption Society) that were denied certificates of freeing and not recommended by the adoption society

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2003						
2004					1	1
2005					3	3
2006	-	-	-	-	-	
2007	2	2	1	1		6
2008	1					1
					TOTAL	11

1.12 Give reasons for not freeing the child and not recommending the adoption?

1. The child was not in need of alternative family care since both parents were alive and able. The child was also being separated from its siblings.
2. The parents did not consent to adoption after being made to understand the implication of an adoption order
3. The necessary consents for adoption were not provided e.g. consent from the biological father if his name appears on the child's birth certificate. In case of married applicant who is applying to adopt the child as sole applicant –consent from the spouse.
4. The applicants had come from another country with the child and were not ready to follow the laws of that country in order to harmonize the adoption with the Kenyan laws.
5. The mother was able to care for her child and there were no clear reasons why she was giving out her child for adoption.
6. These were older children and there was no good reason why they were giving their late sister's children to international adoption yet they all seemed able.
7. Sole female foreign applicant
8. Sole male foreign applicant
9. This was a case of a foreign male applicant, who was married to a Kenyan lady who already had a biological son born out of wedlock. The two had a marriage certificate. The Kenyan lady was also married to a Kenyan man. She was working for the foreign man but she was living with the Kenyan man. She had a baby girl with the Kenyan man. She was giving up her firstborn son who was born out of wedlock to the sole foreign male for adoption. By the time an assessment was conducted, the child was already living with the foreign man. The foreign man who was a resident in Kenya was 65 years old and the boy he was intending to adopt was only 9 years old. When they realized that we were not going to free the child for adoption, they withdrew the matter.

CHARACTERISTIC OF APPLICANTS

1.13 Applicants by Nationality

NATIONALITY	NUMBER OF APPLICANTS	PERCENTAGE (%)
Kenyans	348	87.66
Americans	22	5.54
Germans	6	1.51
British	4	1.01
Canadians	3	0.76
Australians	-	
Guinean	2	0.50
Indian	12	3.02
Irish	-	
Belgian	-	
Mixed race	-	
Others(specify)	-	
Total	397	100

1.14– Applicants by tribe (Kenyan nationals only) (Cumulative for years reflected in above tables)

TRIBE	NUMBER (for non- married)	MARRIED COUPLE	
		Male	Female
Kikuyu	47	99	104
Luo	6	22	20
Kamba	22	45	47
Kalenjin	0	3	3
Maasai	1	2	2
Coastal	2	3	3
Kisii	3	14	13
Meru	1	3	3
Luhya	4	14	6
Others (specify)	1	3	1
Total	87	6	202

1.15– Applicants by province of residence (Kenyan nationals only) NB. Breakdown could be provided by district if possible.

TRIBE	NUMBER (for non- married)	MARRIED COUPLE		TOTAL
		Male	Female Total	
Nairobi		95	120	215
Nyanza		22	18	40
Western		6	6	12
Rift Valley		37	50	87
Central		30	48	78
Eastern		56	58	114
North Eastern		1	5	6
Coast		34	18	52
Total		281	323	604

1.16 - Applicants by age of female applicant

AGE BRACKET	NUMBER	PERCENTAGE
25-29	154	22.3
30-39	299	43.3
40-49	238	34.4
50 -59	-	
60-65	-	
65 and above	-	

1.17 - Applicants by education level

EDUCATION LEVEL	NUMBER	PERCENTAGE
University level	131	24.7
College Level	179	33.7
Tertiary level	-	-
Secondary level	154	29.0
Primary level	67	12.6
Other (specify)	-	
	531	100%

1.18 – Applicants by marital status

MARITAL STATUS	NUMBER	PERCENTAGE (%)
Married	293	71.5
Single	105	25.6
Widowed	5	1.2
Divorced	7	1.7
Total	410	100

1.19– Applicants by Religious Affiliation

RELIGION	NUMBER	PERCENTAGE (%)
Christian	356	97.0
Muslim	2	0.5
Hindu	5	1.4
Others(specify)	4	1.1
Total	367	100

1.20 – Applicants by preferred age of children

AGE BRACKET	NUMBER	PERCENTAGE (%)
0-12 Months	159	43.0
1-2 years	81	21.9
2-3 years	34	9.2
Above 3 years	96	25.9
Total	370	100

1.21 – Applicants by preferred gender of child (ren)

GENDER	NUMBER (for non- married)	MARRIED COUPLE		PERCENTAGE (%)
		Non Married	Married	
Female	88	126	41.1	58.9
12.6	87.4			
Male	26	180	13.9	
Total	114	306		

1.22 Applicants' other children (NB: children the adoptive parents are responsible for)

RELATIONSHIP WITH CHILD	NUMBER	PERCENTAGE (%)
Has no biological children	512	80.3
Has biological child(ren)	89	13.9
Has adopted child(ren)	13	2.0
Has both biological and adopted children	3	0.5
Has fostered child(ren)	12	1.9
Has child (ren) who are relative i.e. kinship foster care.	5	0.8
Biological child(ren) deceased	A	0.6

1.23 Applicants by number of previous adoptions

PREVIOUS ADOPTION(S)	NUMBER	PERCENTAGE
First adoption	9	69.2
Second Adoption	4	30.8
Third adoption	0	
Other (specify)	0	

1.24 Reasons for adoption

REASONS FOR ADOPTION	NUMBER	PERCENTAGE
Cannot have Children	161	49.2
Wants a child to have a family	86	26.3
Wants a different sex	25	7.7
Others	55	16.8
Total	327	100

LITTLE ANGELS NETWORK ADOPTION STATISTICS - 2008

1.1 Number of Applicants by resident status.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	45	-	28	0	4	77

1.2 Number of approved applications by the Adoption Society

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	30	-	17	-	3	50

1.3 No. of applications that were not approved by your adoption society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	8	-	0	-	0	8

Provide reasons why your adoption Society declined to approve applications for adoption (Briefly)

1.4. Number of approved applicants for adoption (above) who have foster child(ren) and have not proceeded for court process for completion of adoption process.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	6	-	5	-	1	12

1.5 Number of freeing certificates declaring children free for adoption NB. This number could include previous years that had not proceeded (i.e. from the table above 1.3) and started in the reporting year.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	49	-	21	-	9	79

1.6 – Number of adoption orders granted by the High Court for cases cleared by the Adoption Society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	30	-	16	-	11	57

1.7 Number of recommended/cleared cases by adoption society but rejected by High Court.
(adoption order not granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	-	-	-	-	-	0

Please list some of the reasons why the cases were rejected by the Court.

Not Applicable

1.8 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	25	2	0	0	0	27

1.9 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society and were accepted by the High Court (Adoption Order granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	4	-	-	-	-	4

1.10 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society but were rejected by High Court (Adoption order not granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	-	-	-	-	-	0

1.11 Number of adoption cases that originated from other sources (other than the Adoption Society) that were denied certificates of freeing and not recommended by the adoption society

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	-	-	-	-	1	1

1.12 Give Reasons for not freeing the child and not recommending the adoption?

- The child's maternal grandmother did not consent to the adoption and it seem the child was taken from her forcefully.

CHARACTERISTIC OF APPLICANTS

1.13 Applicants by Nationality

NATIONALITY	NUMBER OF APPLICANTS	PERCENTAGE (%)
Kenyans	46	58.4%
Americans	1	1.2 %
Germans	-	
British	-	
Canadians		-
Australians		-
Guinean	-	
Indian	-	
Irish	1	1.2 %
Belgian	-	
Mixed race	4	5.1 %
Dutch	17	22 %
Swedish	5	6.4 %
Italian	3	3.89 %
Total	77	

1.14– Applicants by tribe (Kenyan nationals only) (Cumulative for years reflected in above tables)

TRIBE	NUMBER (for non- married)	MARRIED COUPLE	
		Male	Female
Kikuyu	7	16	17
Luo	-	3	3
Kamba	-	4	5
Kalenjin	1	-	--
Maasai	-	-	-
Coastal	3	2	
Kisii	4	3	
Meru	-	-	-
Luhya	4	1	1
Others (specify) Asian	2	2	
Total	12	33	33

1.15– Applicants by province of residence (Kenyan nationals only) NB. Breakdown could be provided by district if possible.

TRIBE	NUMBER (for non- married)	MARRIED COUPLE		TOTAL
		Male	Female	
Nairobi	9	17	17	43
Nyanza	-	-	-	-
Western	-	-	-	-
Rift Valley	-	3	3	6
Central	2	6	6	14
Eastern	-	1	1	2
North Eastern	-	-	-	-
Coast	-	6	6	12
Total	11	33	33	77

1.16 - Applicants by age of female applicant

AGE BRACKET	NUMBER	PERCENTAGE
25-29	1	1.29 %
30-39	16	20.77 %
40-49	8	10.38 %
50 -59	3	3.89 %
60-65	-	-
65 and above	-	-

1.17 - Applicants by education level

EDUCATION LEVEL	NUMBER	PERCENTAGE
University level	23	29.87 %
College Level	11	14.28 %
Tertiary level	-	-
Secondary level	2	2.59 %
Primary level	1	1.29 %
Other (specify)	40	51.94 %

1.18 – Applicants by marital status

MARITAL STATUS	NUMBER	PERCENTAGE (%)
Married	63	81.8 %
Single	11	14.28 %
Widowed	1	1.29 %
Divorced/Separated	2	2.59 %
Total	77	

1.19– Applicants by Religious Affiliation

RELIGION	NUMBER	PERCENTAGE (%)
Christian	70	90.9 %
Muslim	1	1.29 %
Hindu	1	1.29 %
Others(specify) Non-Practising	5	6.4 %
Total	77	

1.20 – Applicants by preferred age of children

AGE BRACKET	NUMBER	PERCENTAGE (%)
0-12 Months	34	44.15%
1-2 years	22	28.57 %
2-3 years	10	12.98 %
Above 3 years	2	2.59 %
Total	68	

1.21 – Applicants by preferred gender of child (ren)

GENDER	NUMBER (for non- married)	MARRIED COUPLE	PERCENTAGE (%)
Female	11	16	35.06 %
Male	1	18	24.67 %
Total	12	34	

1.22 Applicants' other children (NB: children the adoptive parents are responsible for)

RELATIONSHIP WITH CHILD	NUMBER	PERCENTAGE (%)
Has no biological children	60	77.99 %
Has biological child(ren)	22	28.57 %
Has adopted child(ren)	2	2.59 %
Has both biological and adopted children	1	1.29 %
Has fostered child(ren)	43	55.84 %
Has child (ren) who are relative i.e. kinship foster care.	1	1.29 %
Biological child(ren) deceased	2	2.59 %
Total	77	

1.23 Applicants by number of previous adoptions

PREVIOUS ADOPTION(S)	NUMBER	PERCENTAGE
First adoption	74	96.1 %
Second Adoption	3	3.89 %
Third adoption	-	-
Other (specify)	-	-
Total	77	

1.24 Reasons for adoption

REASONS FOR ADOPTION	NUMBER	PERCENTAGE
Childlessness	50	63.93 %
Enlarge Family	12	15.58 %
Help a needy child	11	14.28 %

LITTLE ANGELS NETWORK ADOPTION STATISTICS-OCT. 2005 TO SEPT. 2006

1.1 Applicants by resident status

STATUS	NUMBER	PERCENTAGE (%)
Local		56%
Residents		34%
International		10%
Total		

KEY

Local

Includes Kenyan citizens living and working within the republic

Residents

Non- Kenyans living and working in Kenya and having lived within the republic for at least one year prior to the making of an adoption application. Resident visas and work permits must be produced. Also includes Kenyans living and working abroad.

International

Includes non-Kenyans living and working abroad and who come to the country purposely for the adoption. Usually holders of a visitors' or tourist visa.

1.2 - Applicants by Nationality

NATIONALITY	NUMBER OF APPLICANTS	PERCENTAGE (%)
Kenyans	5	6%
Americans		14%
Germans		11%
British		2.0%
Canadians		4.0%
Australians		1.0%
Guinean		1.0%
Indian		1.0%
Irish		1.0%
Belgian		1.0%
Mixed race		2.0%
Total		

1.3 – Applicants by tribe (Kenyan nationals)

TRIBE	NUMBER	PERCENTAGE (%)
Kikuyu		51%
Luo		15%
Kamba		12%
Kalenjin		5.0%
Maasai		5.0%
Coastal		5.0%
Kisii		2.0%
Meru		2.0%
Luhya		00
Total		

1.4 - Applicants by age of female applicant

AGE BRACKET	NUMBER	PERCENTAGE
25-29		
30-39		
40-49		
50 -59		
60-		

1.5 – Applicants by marital status

MARITAL STATUS	NUMBER	PERCENTAGE (%)
Married		86%
Single		10%
Widowed		1%
Divorced		1%
Total		

1.6 – Applicants by Religious Affiliation

RELIGION	NUMBER	PERCENTAGE (%)
Christian		95%
Muslim		2.0%
Hindu		1.0%
Total		

1.7 – Applicants by preferred age of children

AGE BRACKET	NUMBER	PERCENTAGE (%)
0-12 Months		62%
1-2 years		28%
2-3 years		7.0%
Above 3 years		1.0%
Total		

1.8 – Applicants by other children in the family

RELATIONSHIP WITH CHILD	NUMBER	PERCENTAGE (%)
No children		44%
Biological		33%
Adopted		11%
Biological and adopted		1.0%
Fostered	--	--
Relative		5.0%
Only child deceased		2.0%
Total		

1.8 Applicants by number of previous adoptions

PREVIOUS ADOPTION(S)	NUMBER	PERCENTAGE
First adoption		86%
Second Adoption		11%
Third adoption		1.0%
Other		00
Total		

KENYA CHRISTIAN HOMES ADOPTION SOCIETY STATISTICS – 2005-2008

1.2 Number of Applicants by resident status.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	13	0	4	0	4	21
2006	65	0	0	0	11	76
2007	83	0	5	0	5	93
2008	47	0	11	1	5	64
Total	208	0	20	1	25	254

1.2 Number of approved applications by the Adoption Society

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	13	0	4	0	4	21
2006	61	0	0	0	11	72
2007	81	0	5	0	05	91
2008	38	0	7	1	04	50
Total	193	0	16	1	24	234

1.3 No. of applications that were not approved by your adoption society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	0	0	0	0	0	0
2006	4	0	1	0	0	5
2007	2	0	0	0	0	2
2008	9	0	3	0	1	14
Total	15	0	4	0	1	21

Provide reasons why your adoption Society declined to approve applications for adoption (Briefly)

- A majority did not return the requisite application forms / needed documents
- Indecisiveness -might have moved to another society or given up altogether

1.4. Number of approved applicants for adoption (above) who have foster child(ren) and have not proceeded for court process for completion of adoption process.

NB:

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	6	0	0	0	1	7
2006	36	0	3	0	0	39
2007	67	0	5	0	3	75
2008	34	0	8	1	5	48
Total	143	0	16	1	9	169

1.5 Number of freeing certificates declaring children free for adoption

NB: This number could include previous years that had not proceeded (i.e. from the table above 1.3) and started in the reporting year.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	15	0	1	0	1	17
2006	63	0	8	0	7	78
2007	79	0	8	0	4	91
2008	29	0	6	0	6	41
Total	186	0	23	0	18	227

1.6 – Number of adoption orders granted by the High Court for cases cleared by the Adoption Society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	4	0	1	0	1	6
2006	15	0	12	0	12	39
2007	8	0	3	0	3	14
2008	0	0	0	0	0	0
Total	27	0	16	0	16	59

NB: It is worth noting that in 2008 there has been lots of adoption hearings (whose applications were lodged in previous years) that have yielded positive results(positive judgments).

1.7 Number of recommended/cleared cases by adoption society but rejected by High Court. (Adoption order not granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	0	0	0	0	0	0
2006	0	0	0	0	0	0
2007	0	1	0	0	0	0
2008	0	0	0	0	0	0
Total	0	1	0	0	0	1

Please list some of the reasons why the case(s) were/was rejected by the Court.

- It was an interfamily adoption where the parents to the minors were alive and an aunt wanted to adopt the children. The verdict was not positive, since it was felt that the children should be supported under their parent's custody. Adoption was not a priority.

1.8 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	3	0	2	0	1	6
2006	29	2	4	0	2	37
2007	29	1	9	0	0	39
2008	11	0	5	0	3	19
Total	72	3	20	0	6	101

1.9 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society and were accepted by the High Court (Adoption Order granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	2	0	1	0	1	4
2006	10	0	0	0	11	21
2007	3	0	0	0	3	6
2008	0	0	0	0	0	0
Total	15	0	1	0	15	31

1.10 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society but were rejected by High Court (Adoption order not granted)

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	0	0	0	0	0	0
2006	0	0	0	0	0	0
2007	0	0	0	0	0	0
2008	0	0	0	0	0	0
Total	0	0	0	0	0	0

1.14 Number of adoption cases that originated from other sources (other than the Adoption Society) that were denied certificates of freeing and not recommended by the adoption society

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2005	0	0	0	0	0	0
2006	0	0	0	0	0	0
2007	0	0	0	2	1	3
2008	0	0	0	0	0	0
Total	0	0	0	2	1	3

1.15 Give Reasons for not freeing the child and not recommending the adoption?

- Another adoption society had given an un-favorable response to the application.
- Lack of consents from the family – the children could be taken care of within the local family setup. Lack of enough documentation for the freeing of the child/ children for adoption
- The prospective adopters found to be unfit (not meeting the requirements for adoption as per the children’s act)

CHARACTERISTICS OF APPLICANTS

1.16 - Applicants by Nationality

NATIONALITY	NUMBER OF APPLICANTS	PERCENTAGE (%)
Kenyans	208	83 %
Americans	11	4 %
Germans	6	2 %
British	1	0.4 %
Canadians	6	2.0 %
Australians	2	0.8 %
Guinean	0	0 %
Indian	4	1.0%
Irish	2	0.8%
Belgian	0	0 %
Mixed race	0	0 %
Others(specify)	14	6.0 %
Total	254	100 %

Others: Swiss, Swede, Congolese and Ethiopian

1.14– Applicants by tribe (Kenyan nationals only) (Cumulative for years reflected in above tables)

TRIBE	NUMBER (for non- married)	MARRIED COUPLE	
		Male	Female
Kikuyu			
Luo			
Kamba			
Kalenjin			
Maasai			
Coastal			
Kisii			
Meru			
Luhya			
Others (specify)			
Total			

1.15– Applicants by province of residence (Kenyan nationals only) NB. Breakdown could be provided by district if possible.

TRIBE	NUMBER (for non- married)	MARRIED COUPLE		TOTAL
		Male	Female	
Nairobi	42	71	71	184
Nyanza	1	2	2	5
Western	2	3	3	8
Rift Valley	2	2	2	6
Central	12	29	29	70
Eastern	2	34	34	70
North Eastern	0	1	1	2
Coast	1	4	4	9
Total	62	146	146	354

1.16 - Applicants by age of female applicant

AGE BRACKET	NUMBER	PERCENTAGE
25-29	8	3.2
30-39	104	41.6
40-49	109	42
50 -59	30	12
60-65	2	0.8
65 and above	1	0.4
Total	254	100%

1.17 - Applicants by education level

EDUCATION LEVEL	NUMBER		PERCENTAGE	
	M	F	M	F
University level	59	65	37.3%	29%
College Level	46	92	29.1%	41.1%
Tertiary level	4	3	2.5%	1.3%
Secondary level	30	34	19%	15.2%
Primary level	19	28	12.1%	12.5%
Other (specify)	0	2		0.9%
Total	158	224	100%	100%

1.18 – Applicants by marital status

MARITAL STATUS	NUMBER	PERCENTAGE (%)
Married	187	73.6%
Single	53	20.8%
Widowed	9	3.6%
Divorced	5	2%
Total	254	100%

1.19– Applicants by Religious Affiliation

RELIGION	NUMBER	PERCENTAGE (%)
Christian	248	97.6%
Muslim	4	1.6%
Hindu	2	0.8%
Others(specify)	0	0%
Total	254	100%

1.20 – Applicants by preferred age of children

AGE BRACKET	NUMBER	PERCENTAGE (%)
0-12 Months	91	35.8%
1-2 years	77	30.3%
2-3 years	59	23.3%
Above 3 years	27	10.6%
Total	254	100%

1.21 – Applicants by preferred gender of child (ren)

GENDER	NUMBER (for non- married)	(%)	MARRIED COUPLE	(%)
Female	51	81%	90	47.1%
Male	12	19%	101	52.9%
Total	63	100%	191	100%

1.22 Applicants' other children (NB: children the adoptive parents are responsible for)

RELATIONSHIP WITH CHILD	NUMBER	PERCENTAGE (%)
Has no biological children	224	69.8%
Has biological child(ren)	30	9.3%
Has adopted child(ren)	22	6.9%
Has both biological and adopted children	8	2.5%
Has fostered child(ren)	19	5.9%
Has child (ren) who are relative i.e. kinship foster care.	14	4.4%
Biological child(ren) deceased	4	1.2%
Total	321	100%

1.23 Applicants by number of previous adoptions

PREVIOUS ADOPTION(S)	NUMBER	PERCENTAGE
First adoption	232	91.3%
Second Adoption	20	7.9%
Third adoption	2	0.8%
Other (specify)	0	0%
Total	254	100%

1.24 Reasons for adoption

REASONS FOR ADOPTION	NUMBER	PERCENTAGE
No Child (Childless)	224	88.2%
Care of child(Have children but want to reach out to needy children)	30	11.8%
Total	254	100%

KENYAN TO KENYAN PEACE INITIATIVE ADOPTION SOCIETY STATISTICS -2008

1.3 Number of Applicants by resident status.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	12	1				13

1.2 Number of approved applications by the Adoption Society

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	4	1				5

1.3 No. of applications that were not approved by your adoption society. NONE

Provide reasons why your adoption Society declined to approve applications for adoption (Briefly)
N/A

1.4. Number of approved applicants for adoption (above) who have foster child(ren) and have not proceeded for court process for completion of adoption process.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	1	1				2

1.5 Number of freeing certificates declaring children free for adoption NB. This number could include previous years that had not proceeded (i.e. from the table above 1.3) and started in the reporting year.

Year	Local (Kenyan citizens resident in Kenya)(Total for the year)	Locals (Kenyan citizens resident abroad)(Total for the year)	Foreigners (International residents) (Total for the year)	Foreigners (of Kenyan origin & have assumed different citizenship) (Total for the year)	Foreigners (Non Kenyan citizens resident in Kenya)(Total for the year)	Total
2008	1	1				2

1.6 Number of adoption orders granted by the High Court for cases cleared by the Adoption Society. N/A

1.7 Number of recommended/cleared cases by adoption society but rejected by High Court. (adoption order not granted) NOT YET REACHED COURT PROCESS

Please list some of the reasons why the cases were rejected by the Court.
N/A

1.8 Number of adoption cases that originated from other sources (other than the Adoption Society)that were given certificate of declaring the child free for adoption by the Adoption Society. NONE

1.9 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society and were accepted by the High Court (Adoption Order granted) NONE

1.10 Number of adoption cases that originated from other sources (other than the Adoption Society) that were given certificate of declaring the child free for adoption by the Adoption Society but were rejected by High Court (Adoption order not granted) NONE

1.17 Number of adoption cases that originated from other sources (other than the Adoption Society) that were denied certificates of freeing and not recommended by the adoption society NONE

1.18 Give Reasons for not freeing the child and not recommending the adoption?
N/A

CHARACTERISTIC OF APPLICANTS

1.19 - Applicants by Nationality

NATIONALITY	NUMBER OF APPLICANTS	PERCENTAGE (%)
Kenyans	13	100%
Americans		
Germans		
British		
Canadians		
Australians		
Guinean		
Indian		
Irish		
Belgian		
Mixed race		
Others(specify)		
Total	13	100%

1.14 Applicants by tribe (Kenyan nationals only) (Cumulative for years reflected in above tables) WE DO NOT ASK FOR THE APPLICANTS TRIBE

1.15 Applicants by province of residence (Kenyan nationals only) NB. Breakdown could be provided by district if possible.

TRIBE	NUMBER (for non- married)	MARRIED COUPLE		TOTAL
		Male	Female	
Nairobi	1	11		12
Nyanza				
Western				
Rift Valley	1	1		
Central				
Eastern				
North Eastern				
Coast				
Total				13

1.16 - Applicants by age of female applicant

AGE BRACKET	NUMBER	PERCENTAGE
25-29	1	7.6
30-39	5	38.4
40-49	5	38.4
50 -59	1	7.6
60-65	1	7.6
65 and above		

1.17 Applicants by education level

EDUCATION LEVEL	NUMBER	PERCENTAGE
University level	4	30.7
College Level	3	23
Tertiary level		
Secondary level	6	46.1
Primary level		
Other (specify)		

1.18 – Applicants by marital status

MARITAL STATUS	NUMBER	PERCENTAGE (%)
Married	12	
Single	1	
Widowed		
Divorced		
Total		100

1.19– Applicants by Religious Affiliation

RELIGION	NUMBER	PERCENTAGE (%)
Christian	13	100
Muslim		
Hindu		
Others(specify)		
Total	13	100

1.20 – Applicants by preferred age of children

AGE BRACKET	NUMBER	PERCENTAGE (%)
0-12 Months	7	53.8
1-2 years	5	38.4
2-3 years	1	7.6
Above 3 years		
Total	13	99.9

1.21 – Applicants by preferred gender of child (ren)

GENDER	NUMBER (for non- married)	MARRIED COUPLE	PERCENTAGE (%)
Female	1	8	69.2
Male	4	30.7	
Total	1	12	99.9

1.22 Applicants' other children (NB: children the adoptive parents are responsible for)

RELATIONSHIP WITH CHILD	NUMBER	PERCENTAGE (%)
Has no biological children	6	46.1
Has biological child(ren)	6	46.1
Has adopted child(ren)	1	7.6
Has both biological and adopted children	0	
Has fostered child(ren)	0	
Has child (ren) who are relative i.e. kinship foster care.	0	
Biological child(ren) deceased	0	
Total	13	99.8

1.23 Applicants by number of previous adoptions

PREVIOUS ADOPTION(s)	NUMBER	PERCENTAGE
First adoption	12	92.3
Second Adoption		
Third adoption	1	7.6
Other (specify)		
Total		99.9

1.24 Reasons for adoption

REASONS FOR ADOPTION	NUMBER	PERCENTAGE
To start a family	5	38.4
To give a home to a child	1	7.6
To expand the family	7	53.8



Department of Children's Services
Ministry of Gender, Children and Social Development

