Research findings on Alternative care system in Kenya for children without parental care

Essay

By

Stephen Ucembe

7/04/2015

Introduction

This paper examines alternative care in Kenya. The focus will be on the genesis of alternative care; the non- prosaic multiple factors contributing to the situation, situational analysis on data, and child protection frameworks. What is more, it will highlight service providers, the role of the Government, last but not least deconstruct the practical realities of the eclectic forms of alternative care, and the legal socio-cultural, and economic contestations within each care model.

Alternative care is 'a formal or informal arrangement whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his/ her parent (s) or primary caregivers, or spontaneously by a care provider in the absence of parents' (Better Care Network Toolkit 2014). A child in Kenya refers to 'any human being under the age of eighteen years' (Children's Act: 2001: Par 2). There is presumed deductive dichotomy of childhood as an age of dependence, vulnerability and adulthood (above 18) as an age of 'independence' (Gough et al 2013: 3). Children not under supervised care of an adult are assumed to be in a precarious situation and in need of alternative care.

Background Information

The Children's Act 2001 (s. 6) provides that a 'child shall have a right to live with and to be cared for by his parents'. This has proven to be quintessential rather than feasible for many children. The number of orphans and vulnerable children is circa 2.4 million (KDHS 2009). Catastrophically, this will be a conscious reality to Kenya for some time because of the high number of impoverished people living with HIV/AIDS (UNICEF 2003). HIV/AIDS has ruptured the social bonds that protect the progenies. Despite emphasis by international guidelines that children should not be removed from families due to poverty; material poverty which infiltrates these families and which stands at 46 % in Kenya (World Bank 2008) is significantly mentioned by both professionals` and scholars as a major reason for children ending up in alternative care (CELCIS 2012). The multi-dimensional social exclusion from livelihoods, and lack of safety nets during adverse effects has left many families in precarious conditions (Silver 2007: 5). This predicament percolates to children who are further immiserated, and consequently end up being susceptible to loss of care and protection.

Besides HIV/AIDS and poverty, there is a myriad of other reasons why children end up in alternative care. This other factors include: abuse and neglect, disability, political and ethnic conflicts, harmful cultural practices, natural disasters and family breakdown (Government of Kenya 2014: 4). The orphan situation has been calamitous and has hence stimulated the intervention of various stakeholders including the Government to abate social exclusion of children.

Data on Children in Alternative Care

Table 1.1

Table 1.1 Number of children placed in formal alternative care in Kenya, 2012

KENYA	Girls	Boys	Total
1. Number of children living in residential care (state)	2,430	5,746	8,176
2. Number of children living in residential care (non-state)	16,150	24,080	40,230
3. Number of children living in formal foster care	541	179	720
4. Total children living in formal care (sum of 1, 2 and 3 above)	19,121	30,005	**49,126**
5. Number of residential care facilities including small group homes (state)			13 remand homes, 9 rehabilitation centres, and 4 rescue centres **Total 26 centres**
6. Number of residential care facilities including small group homes (non-state)			**700** charitable children institutions. Out of these, only 591 are legally registered by government while the rest are not **registered**
Source: Department of Children Services in Ministry of Gender, Children and Social Development, October 2012 NB. The figures on children in non-state residential care are from the 591 registered institutions. Data for children in 109 non-state residential care is not available.			

Source: (Stuckenbruck 2013)[1]

Table 1.1 above shows some significant statistics however it is important to have in mind that data on the alternative care discourse in Kenya is fragmented, scarce and unreliable. Hence, the above data set does not comprise children adopted, those living in kinship Care and guardianship. However, the Kenya Demographic Health Survey 2005/06 approximates that 13.1% of all children aged 0–14 live outside of parental care and majority live in kinship care.

Institutions of Protection

[1] Denise is the Child Protection Specialist (Protection, Care and Support) UNICEF Eastern & Southern Africa Regional Office (ESARO).

As a result of the orphan calamity as well as other childhood vulnerabilities that continue to bedevil Kenya, Kenya has institutionalized measures to try and create an inclusive caring and protective society. These institutions are both national and international, but they have also not failed to contend with socio-cultural norms, values, and malpractices. The International institutions include, the United Nations Convention on the Rights of the Child (UNCRC) ratified in 1990. Kenya also adopted the Africa Charter on the Rights and Welfare (ACRWC) of the Child in 2000. ACRWC endeavored to contextualize and situate the UNCRC; by creating a synergy and making an effort to address the diverse inimitable needs of the African children.

In addition, Kenya is a signatory to the Hague Convention on the Protection and Cooperation on Inter-country adoption. The national regulations and legislations include: the Children's Act, 2001, which heavily borrows from the UNCRC, Charitable Children Regulations 2005, and Adoption regulations 2005. Finally, and more recently the Guidelines for Alternative Care of Children, 2014 which have been finalized but yet to be launched officially[2] (United Nations 2010). Nevertheless, the rubicund achievements of statutes, policies and guidelines are tarnished by indolent efforts of implementation. These institutions are said to gather dust in office shelves, paraded in meetings, and lodged in computer files as trophies, their utility remains to be fully experienced in the arena of alternative care.

Actors in Alternative Care Provision

Although the government seems to be actively involved in development of the aforementioned frameworks, participation in actual service delivery and implementation is scarce. According to a country analysis by Boston University Center for Global Health and Development (2009), civil society organizations (NGOs, private/ not for profit/ multi-lateral organizations) provide around 91 % of services for orphans and vulnerable children as opposed to 9 % by the government. A research by Stuckenbruck (2013) emphasizes this point by showing that out of over 500 care institutions in the country, the government only runs 26 institutions. Nonetheless, the state retains the hegemony of 'providing an enabling environment for private provision while reducing its own expenditure on activities in the social sector' (Mkandawire 2001). However, Mkandawire notes that this type of intervention is more residual and social policy should be integrated as a central component to ensure sustainability. Lastly, informally, the extended family plays a critical social reproductive role through the care sector, this is normally without recourse to law or any formal guidelines/ regulations (Government of Kenya 2011: 26).

Configuration of Government in Relation to Alternative Care

Pertaining to the government structure. The Ministry of Labor, Social security and services, headed by a Cabinet Secretary, takes the lead role in all matters pertaining to children's welfare. The Department of Children Services is subsumed within 11 other departments which often subjugate the Children's department when it comes to funding and resources. The Cabinet Secretary is a political appointee and hence not always based on merit. The Cabinet Secretary appoints the Director of Children's Services (DCS). The DCS role is to 'safeguard the welfare of children and shall in

[2] These guidelines are a contextualization of the international guidelines on Alternative Care.

particular, assist in the establishment, promotion, co-ordination and supervision of services and facilities designed to advance the well- being of children and their families' (Children's Act 2001: s. 38). This is the department that is in charge of alternative care. Policy formulation is a function of the National Council for Children Services in Kenya (NCCS), which is constituted of government, civil society organizations, and the private sector. Its object and purpose is 'to exercise general supervision and control over the planning, financing and co-ordination of child rights and welfare activities and to advise the Government on all aspects thereof' (Children's Act 2001 s. 32). Having looked at the government's position within the guidelines this section is going to look at the various forms of alternative care.

Forms of Alternative Care

Kinship Care

First, according to EveryChild and Help age International (2012) Kinship care is 'family based care within the child's extended family or with close friends of the extended family, whether formal or informal in nature'. This is supposedly the predominant model despite the rupturing forces encircling the family institution. More often children end up in kinship care as a result of demise of the primary caregiver or breakdown of the family.

Kinship care is not instituted in the Children's Act 2001, hence it is unregulated and limited data exists on its utility, which poses challenges in intervention and programming. It is thought that the government has been cautious in regulating and legislating this traditional approach to avoid disrupting a traditional system that has socially reproduced itself over time to protect children. In reality, families normally take over the responsibility of care are poor and marginalized (Government of Kenya 2011: 23). As a result, non-governmental organizations through a means tested approach have played a critical role in provisioning for children living in these families. The Government, through UNICEF and World Bank has also contributed through the cash transfer program initiated in 2009. Since inception, each year the program has targeted 130,000 households comprising of over 260, 000 orphans and vulnerable children (The Kenya CT-OVC Evaluation Team 2012: 2).

Several challenges bedevil the model. First, the targeted approach as opposed to an integrated universalized welfare approach has left out many that are needy, second the program retains an unsustainable status, relying heavily on external funding (The Kenya CT-OVC Evaluation Team 2012: 3). Last but not least, this model should not be celebrated, romanticized or exemplified as the only model; children under Kinship also experience abuse, neglect and exploitation.

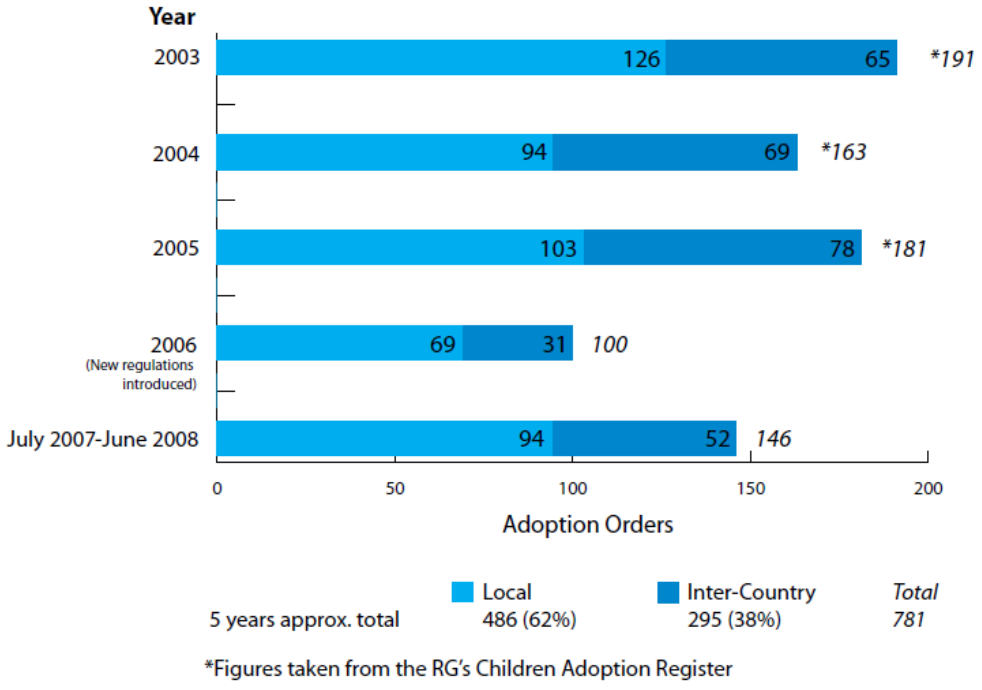
Adoption

Second, adoption is an instituted legal process that gives parental rights to a person or a couple to a child who is not their biological child (Adoption Regulations 2005). The process involves Government, Lawyers, Courts, prospective adoptive parents and Childcare institutions. Within the Government, there is an Adoption Committee that is established by the Cabinet Minister; it is in-charge of 'formulating the governing policy in matters of adoption' (Adoption Regulations 2005 s. 155). There are two

forms of adoption, local adoption (Process of adopting within Kenya by a citizen) and inter-country adoption (Process of adopting a Kenyan child from another country). Both forms are facilitated by 5 approved and registered adoption societies. For foreign adoptions, a part from the normal court processes that prospective adoptive parents are subjected to, to prove they meet the criterion; they have to be approved by the National Adoption Committee.

The hegemony of institutional care pervades to adoption; children can only be adopted from care institutions. Hence all children abandoned in public hospitals, trenches, streets, pit latrines have to be taken to care institutions by the social workers, community workers, police or the children officers. This approach is against the popular professional and scientific understanding that institutional care should be scarcely used. Some of the institutions tend to masquerade as 'care centers' where in fact they are 'centers for illegal-adoptions and trafficking'. The controls meant to curb illegal adoptions seem not adequate; recently, the Government banned inter-country adoption in Kenya, which is the one citing prevalence of illegitimate adoptions (Nation Media 2014). The relatively high number of inter-country adoption (38%) shown on Graph 1.2 is a point of concern bearing in mind that Kenya is signatory to the Hague convention that accentuates local adoption over international adoption through the subsidiarity principle (ISS 2007: 1).

Graph: 1:2 Adoption orders[3]



Source: (Williams and Njoka 2008: 16)

Adoption is obfuscated with socio-economic and cultural contestations. According to Stuckenbruck (2013: 46) some cultures believe that a child who is not from their blood line is a bad omen, this often results to stigmatization of the adoptee and the

[3] Data provided by the department of children services for 2003-2008 June

adoptive parent. Second, some relate adoption to those who are 'infertile'. Besides the socio-cultural, the process lacks financial regulation, setting it up to be perceived as a practice for the wealthy. And rightly so, the cost of local adoptions range from 15, 000 Kenya shillings - 120,000 (Ksh) and an average of 250,000 Ksh (Capital Lifestyle 2013) for foreign adoption.

Additional important point is the intersection of age and gender as critical determinants of adoption. Young children below the age of 5 tend to be adopted more than older children, and girls more than boys. It is often presumed that toddlers and infants are not conscious of their parental history, and hence quickly adapt to become the adoptive parents 'biological child'. On gender gradation, this is both a cultural issue as well as legal loophole. The Children's Act 2001 (s. 158) provides that only on special statuses can a single man adopt a girl and a single woman adopt a boy. Realistically, it's a rare occurrence to find single men adopting. On the contrary more single women adopt, hence they end up adopting female children even in instances where they would have wished to adopt male children. The repercussions are blatant grievous, more adoptable boys are left without families. On gender-culture nexus; culturally boys are entitled to inheritance, something that some adoptive parents may not want to bequeath to the adopted child and hence a preference to adopt girls. Lastly, geospatially a study has shown that most adoptions take place in the capital of Kenya, Nairobi, more than any other city in Kenya (Williams and Njoka 2008: 16), this could be attributed to cultural contestations and levels of awareness in the contexts.

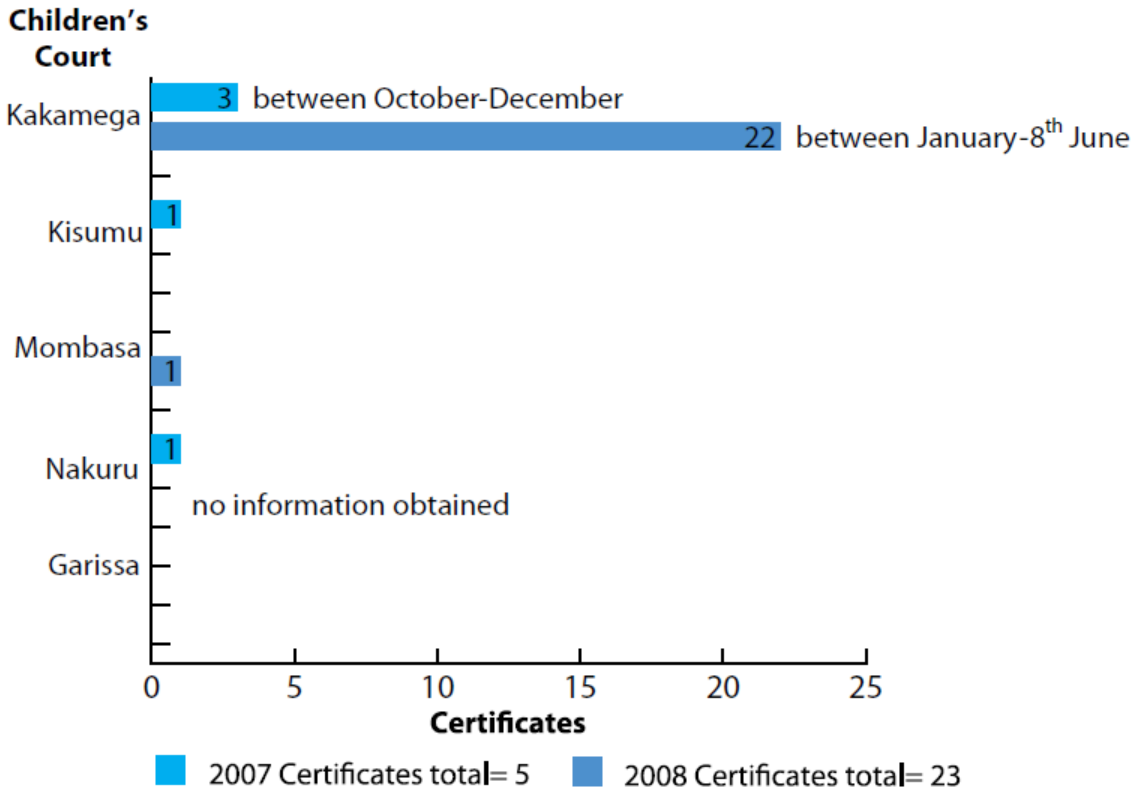
Foster Care

Third is foster care, foster care placement means 'the placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child' (Children's Act 2001: Article 141). The function of foster care is on the District Children's Office and the Managers of institutions. Children who are without care (abandoned), or adequate care (neglected or exploited) may be taken to care institutions by police, community member's community or by Children's Officers. It is in the institutions where pprospective/ interested foster parent (s) go and express interest to foster a child, and to be assessed if they meet the criterion.

The modus operandi of foster care in Kenya is as a process towards permanency, this means that the model is relational, it is viewed as a process towards a permanent care option, normally adoption and guardianship (Williams and Njoka 2008). Foster care has its challenges. Just like Kinship care, some of the people who foster children tend to claim permanent parental rights to children. This is presumed to be as a result of ignorance of the due process and lack of sensitization. Another critical challenge is the nexus with institutional care; that a child can only be fostered after placement in institutional care (Children Act 2001 s. 147), this creates a need for care institutions that can facilitate foster care. Children hence will always end up in institutional care; this legal clause contradicts the overall intention of ending institutionalization of children in Kenya.

Guardianship

Fourth is guardianship, according to the Children's Act 2001 (s. 102), 'one or both parents could 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'. Similarly to adoption, the process is significantly legalistic, but a phobia for legal processes seems to exist within the realm of Guardianship and Adoption- specifically because of the bureaucracy that can be time consuming and financial implications. The principal actors are the parent(s) and the courts. However, the agency of the child is taken into consideration (s. 9), the child can terminate or initiate the process. Research by Williams and Njoka (2008) unearths serious fissures within the process; first, a principal database does not exist. Second, there is a dearth of usable data, where existing data is fragmented. Thirdly, figure 1.3 shows that, although children who are in guardianship arrangements it is informal; those who are already guardians rarely seek certificates.



Source: (Williams and Njoka 2008)

Residential care

Third is residential care, residential care is provided under what is legally known as charitable children's institutions. The Children's Act 2001 (s. 58) defines a charitable children's institution (CCI) as 'a home or institution which has been established by a

person, corporate, or un-incorporate, a religious organization or a non-governmental organization and has been granted approval by the council to manage a programme for the care, protection, rehabilitation or control of children.' Although for some children this type of care is ideal, for most it should be temporal and a measure of last resort. The social, psychological and emotional effects associated with institutionalization of children have created an anathema to the model.

Browne (2009: 1) referring to a wide body of research expresses that children in institutional 'have reduced intellectual, social and behavioral abilities compared with those growing up in a family home'. The deleterious effects can effortlessly percolate from childhood to adulthood; affecting their potential to negotiate social interactions and denting their capacity as productive citizens in the economy.

Moreover, some institutions have taken a deviant market dimension. Some have been reported taking a commercial outlook by supplanting children against their will from parent (s), and hence contravening UNCRC (Article 9) that underscores children's agency and best interest determination in decision making and interventions. Children suffer severe forms of exclusion, and disrespect in this cagey categorizing and stereotyping institutions. The survival of these institutions is hinged on foreign donors (Stuckenbruck 2013: 71), who are often lured to the misery and predicament of the children stories and in exchange provide financial assistance. Subsequently, resulting to social reproduction of an exploitative and damaging system.

These institutions seem to prey on the ignorance and compassion of donors to attract funding that they snaffle, and exploit the desperation and innocence of children for their depravity. Furthermore, the 'rescue' interventions are habitually from a 'needs discourse' (Kehily 2004: 128), often disenfranchising these children from a right to a family, sense of belonging and identity. During placement and care in institutions, children are treated as passive recipient of care, with no agency, as opposed to active participants. These findings on institutions continue to create acrimony to the model, and unearthed numerous international and local campaigns against institutionalization of children.

Conclusion

To summarize; this paper has shed some light on the whys and wherefores of Alternative care in Kenya. Clearly showing each models interaction with wider society structures, and exposing altercations with the various systems. Also, the paper has deconstructed adoption, kinship-care, guardianship and institutional care; clearly showing the practical applications and imperfection within service delivery. Above all, irrespective of models seem to achieve better outcomes for children than others and challenges still exist, ranging from policy gaps to malpractices in implementation by the actors. The role of the government, civil society and the families cannot be underestimated in each of the models. However a great need remains to create synergy, improve practice and address malpractices.

References

Beegle, K., D. Filmer, A. Stokes and L. Tiererova (2010) 'Orphanhood and the Living Arrangements of Children in Sub-Saharan Africa', *World Development* 38(12): 1727-1746.

Better Care Network (Last updated 2014) 'Better Care Network Toolkit' (a webpage of Better Care Network). Accessed 12/3 2014 <http://www.bettercarenetwork.org/BCN/Toolkit/Glossary/index.asp>.

Browne, K. (2009) *The Risk of Harm to Young Children in Institutional Care.* London, UK: Save the Children.

Capital Lifestyle (Last updated 2014) 'Is Adoption the Answer to Kenya's Abandoned Children?' (a webpage of Capital Lifestyle). Accessed 12/19 2014 <http://www.capitalfm.co.ke/lifestyle/2013/04/17/is-adoption-the-answer-to-kenyas-abandoned-children/>.

CELCIS, ISS, Oak Foundation, SOS Children's Villages and UNICEF (Last updated 2012) 'Moving Forward. Implementing the 'Guidelines for the Alternative Care of Children'). Accessed 11/14 2014 <http://www.alternativecareguidelines.org/Portals/46/Moving-forward/Moving-forward-implementing-the-guidelines-ENG.pdf>.

Government of Kenya (2001) 'The Children's Act of Kenya'. Kenya

EveryChild and Help Age International (2012) *Family First: Prioritising Support to Kinship Carers, especially Older Carers.* London: Every Child and Help AGE International.

Gough, V., T. Langevang and G. Owusu (2013) 'Youth Employment in a Globalizing World', *International Development Planning Review* 35(2): 91-100.

Government of Kenya, 2014. Guidelines for the Alternative Care of Children in Kenya. Guidelines on Alternative Care edn. Nairobi: Government of Kenya.

Government of Kenya (Last updated 2011) 'Kenya National Social Protection Policy' (a webpage of Government of Kenya). Accessed 12/15 2014 <http://www.africanchildforum.org/clr/policy%20per%20country/kenya/kenya_socialprot_2011_en.pdf>.

Government of Kenya (2005) 'The Children (Adoption) Regulations'. Kenya.

International Social Service (ISS) (Last updated 2014) 'Intercountry Adoption: The Principle of Subsidiarity' (a webpage of International Reference Centre for the Rights

of Children Deprived of their Family (ISS/IRC)). Accessed 12/16 2014 <http://www.iss-ssi.org/2009/assets/files/thematic-facts-sheet/eng/35.Subsidiarite%20eng.pdf>.

Kehily, M.,J. (2004) *An Introduction to Childhood Studies.* Berkshire England: Open University Press.

Kenya National Bureau of Statistics 'Kenya Demographic and Health Survey 2008-09' (a webpage of Kenya National Bureau of Statistics). Accessed 12/15 2014 <http://dhsprogram.com/pubs/pdf/FR229/FR229.pdf>.

Nation Media (Last updated 2014) 'Cabinet: No More Foreign Adoptions' (a webpage of Nation Media). Accessed 11/27 2014 <http://www.nation.co.ke/news/Cabinet-No-more-foreign-adoptions/-/1056/2537564/-/feyt4qz/-/index.html>.

Silver, H. (2007) *The Process of Social Exclusion: The Dynamics of an Evolving Concept.* Rhode Island, USA: Department of Sociology Brown University.

Stuckenbruck, D. (2013) 'Advancing the Right of Children Deprived of Parental Care: Domestic Adoption of Children in Kenya -', Masters of Advanced Studies in Children's Rights. Fribourg: Institut Universitaire Kurt Bosch- University of Fribourg.

The Kenya CT-OVC Evaluation Team (2012) (2012) 'The Kenya CT-OVC Evaluation Team (2012): The Impact of Kenya's Cash Transfer for Orphans and Vulnerable Children on Human Capital, Journal', 4(1): 11/12/2014-39. Routledge, Taylor and Francis Group. Accessed 15/12/2014 <http://interactions.eldis.org/sites/interactions.eldis.org/files/database_sp/Kenya/Cash%20Transfer%20to%20Orphans%20and%20Vulnerable%20Children%20%28CT-OVC%29/CT-OVC%202.pdf>.

UNICEF (Last updated 2010) 'Resolution Adopted by the General Assembly, Guidelines for the Alternative Care for Children: On the Report of the Third Committee (A/64/434). United Nations Sixty-Fourth Session Agenda Item 64' (a webpage of UNICEF). Accessed 12/15 2014 <http://www.unicef.org/protection/alternative_care_Guidelines-English%282%29.pdf>.

UNICEF (Last updated 2003) 'Africa's Orphaned Generation' (a webpage of UNICEF). Accessed 11/16 2014 <http://www.unicef.org/sowc06/pdfs/africas_orphans.pdf>.

USAID, Boston University- Centre for global Health and Development, Nairobi University - Institute for Development Studies (Last updated 2009) 'OVC-Care ' (a webpage of USAID). Accessed 11/15 2014 <http://www.bu.edu/cghd/files/2009/12/Kenya-Research-Situation-Analysis-Country-Brief.pdf>.

Williams, J., P and J. Njoka M. (Last updated 2008) (a webpage of Government of Kenya). Accessed 11/16 2014 <http://resourcecentre.savethechildren.se/sites/default/files/documents/6399.pdf>.

World Bank (2008) 'Kenya Poverty and Inequality Assessment- Synthesis Report.', Kenya Poverty and inequality Assessment, No. 44190-KE, pp. 10.