



OFFICE OF THE AUDITOR GENERAL

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**VALUE FOR MONEY AUDIT REPORT
ON THE MANAGEMENT AND HANDLING
OF CHILD ADOPTION PROCESS IN UGANDA**

A REPORT BY THE AUDITOR GENERAL

M A R C H , 2 0 1 4

THE REPUBLIC OF UGANDA



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A REPORT BY THE AUDITOR GENERAL

MARCH, 2014

AUDITOR GENERAL

AUDITOR GENERAL'S MESSAGE

31ST MARCH 2014

The Rt. Hon. Speaker of Parliament
Parliament of Uganda
Kampala

VALUE FOR MONEY AUDIT REPORT ON THE MANAGEMENT AND HANDLING OF THE CHILD ADOPTION PROCESS IN UGANDA

In accordance with Article 163 (3) of the Constitution, I hereby submit my report on the value for money audit undertaken on the Management and Handling of the Child Adoption Process in Uganda.

My office intends to carry out a follow – up at an appropriate time regarding actions taken in relation to the recommendations in this report.

I would like to thank my staff who undertook this audit and the staff of Ministry of Gender, Labour & Social Development, the High Courts and Chief Magistrates Courts, and the Uganda Registration Services Bureau for the assistance offered to my staff during the period of the audit.

John F. S. Muwanga
AUDITOR GENERAL

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LIST OF ACRONYMS AND ABBREVIATIONS

CBO	Community Based Organisation
CSO	Community Society Organisation
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency
MOGLSD	Ministry of Gender, Labour and Social Development
NGO	Non-Government Organisation
SDIP	Social Development Investment Plan
SDS	Social Development Sector
SPWO	Senior Probation And Welfare Officer
UNCRS	United Nation Conventions of The Rights of the Child
UNICEF	United Nations Children's Fund
UBOS	Uganda Bureau of Statistics

EXECUTIVE SUMMARY

BACKGROUND

Uganda is the country with the youngest population in the world. According to the 2002 population census figures from Uganda Bureau of Statistics (UBOS), 78.4% of the population was below the age of 30 years, of this percentage, 22.3% (5.4 million) was aged between 18-30 years and 49.4% (12 million) aged less than 15 years. Currently (2012), about 6.5 million (21.3%) Ugandans are between 18 – 30 years of age of which 2.4 million are estimated to be orphans aspiring for various forms of services in terms of education, employment and family formation. According to figures from Uganda Bureau of Statistics (UBOS), in 2012 alone, close to 1.7 million babies were born. The number of young people (0-14 years of age) in Uganda is projected to grow to 7.7 million by 2015. This is the challenge which the country needs to address urgently.

It is documented in the base line survey report that the recent trend to adopt children from Uganda is increasing at an alarming rate. While other countries close international adoptions or tighten their systems and processes, Uganda is becoming a 'popular' choice for sourcing children for international adoption. The 400% increase in adoptions from Uganda from 2010 to 2011 outlines the growing demand for Ugandan children. Domestically, Ugandans fear that children leaving the country are leaving to be exploited or misused.

The aim of this audit was to assess how the Ministry of Gender, Labour and Social Development (MOGLSD) is handling the current adoption process of children leaving in a bid to protect their rights and welfare.

KEY AUDIT FINDINGS

Legal Framework for adoption process in Uganda

It was noted that the Ministry responsible for youth and children (MOGLSD) had not developed guidelines for the procedure and practice of courts in awarding Legal Guardianship Orders. The Uganda Children's Act provides safeguards for children's welfare, but omits legal guardianship. As a result, the courts continued to rely on their discretionary powers to exercise judicious decisions on matters relating to child adoption.

Eligibility requirements and legal custody process for child adoption Uganda

It was noted that prospective adoptive parents that do not meet the eligibility requirements for gaining legal custody of children are being granted adoption orders; this casts doubts on the manner in which applications of provisions relating to adoption are being effected by the relevant government agencies and affects the stability of relationships between the adopted children and the adoptive parents.

Performance of Probation and welfare officers in the adoption process

It was noted that districts did not prioritize activities on social welfare and children matters. On average, less than 0.02% of the total budget was allocated to District Probation and Social Welfare officers.

As a result, the government's alternative care framework has remained an idea on paper and not been implemented since the persons entrusted with the implementation have grossly neglected their roles.

Registration of adopted children

Adoptions granted every year by the Courts of Uganda are not recorded by the state. This is because government has failed to enforce this provision of the law. Consequently, an accurate and reliable record of the numbers of adopted children in Uganda could not be established. This makes it difficult for government to ascertain whether the best interests of the adopted children are provided for since in the absence of reliable records, planned follow-ups on the adoptions granted to ensure that the conditions under which the orders granted are being met by the adoptive parents cannot be done.

Post adoption reporting

There are weaknesses in the post adoption reporting requirements from both the adoptive parent and government. It is not clear in the adoption process as to who is supposed to monitor the progress of adopted children while in the company of their new adoptive families. This is because the Ministry of Gender, Labour and Social Development (MOGLSD) has not established a tracking mechanism to monitor the welfare of these children considering that only 0.28% of its total funding was allocated to its relevant department responsible for children matters to use for this and all its other activities.

Consequently, it is difficult to have an assurance that the children's fundamental rights have been respected and thus abduction, sale or trafficking of children cannot be ruled out.

KEY RECOMMENDATIONS

- The Ministry should ensure that the relevant and appropriate rules and regulations regarding the adoption process are formulated.
- The Ministry should expedite its proposals with the National Framework for Alternative Care and ensure that all the necessary legal requirements for child adoption are complied with and establish a central coordination agency with clear roles and responsibilities for coordinating, monitoring and evaluating the performance of district probation and social welfare officers.
- The Ministry should sensitize all stakeholders especially the Local Governments about the importance of allocating adequate budgetary provisions for social welfare and probation activities in the districts.
- Uganda Registration Service Bureau should maintain an up to date register of all adopted

children, including all particulars pertaining to the respective adoptive parents.

- The Ministry should ensure that registration certificates for adoption are the last requirement for a legally recognized adoption of children in Uganda and that this should form part of the immigration clearance for international adoptions before such a child is allowed to leave the country.

OVERALL AUDIT CONCLUSION

Although the Ministry of Gender, Labour and Social Development and the related agencies are trying to ensure that child adoption in Uganda is carried out within the existing legal framework there are still loopholes and gaps in the laws governing child adoption that must be addressed by Government to ensure that the best interest of the child is kept paramount. The Ministry should pursue the proposed amendments to the law and regulations to ensure full protection of the rights of children.

CHAPTER ONE



INTRODUCTION

1.1 BACKGROUND

The Ministry of Gender, Labour and Social Development (MOGLSD) was formed in 1998 as a result of merging two ministries: the then Ministry of Labour and Social Welfare and Ministry of Community Development. As a lead agency in the social development sector (SDS), the Ministry is responsible for providing policy direction, national standards, supervision and coordination, of all matters concerning the rights of children (orphans and vulnerable children in Uganda) through the Department of Youth and Children's affairs. The role of this Department is to ensure care, protection and empowerment of children. It helps to ensure safety and the wellbeing of children in need of protective services, foster care and adoption services.

1.2 MOTIVATION

In Uganda there are estimated to be 2.4 million orphans of which about 1.1 million are due to the HIV/AIDS epidemic, this has created a great need to find permanent, living homes for these orphaned children¹.

When all efforts to enable reunification or kinship care for vulnerable children have been exhausted, domestic adoption may be considered. Due to the strength and emphasis on the extended family, Uganda has a long tradition of families caring for children of their extended family members; often this is referred to as informal fostering or informal adoption. It is true, however, that legally adopting children who are non-blood relatives is still a very new concept in Uganda².

As a result this has led to out-of-country families to provide permanent homes for some of these children referred to as international adoption since the Ugandan law leaves room for it.

However, the Ministry of Gender, Labour & Social Development (MoGLSD) supported by United Nations Children Fund (UNICEF) set up an Alternative Care Task Force in 2011 to investigate the state of childcare in Uganda and develop a national Alternative Care Framework.

Despite government commitment to ensuring an alternative child care force in Uganda through MoGLSD, there has been continued increase in the international adoption industry which has led to a rapidly increasing number of baby and children homes, currently estimated to be over five hundred (500). However, these homes have been reported to be removing children out of families and communities and placing them into institutional settings under the watchful eye of the relevant institutions and gradually exploiting these children for economic reasons through child sponsorship

1 Baseline study on alternative care taskforce 2011 set by the MoGLSD and supported by UNICEF

2 Alternative care for children, Uganda ,a publication by government and civil society organisation

schemes.³

From 2010 to 2011, there was a reported 400% increase in international adoptions from Uganda alone outlining the growing demand for Ugandan children. This has been explained by a significant growth in inter country adoptions from Uganda over the last 10 years. In 2001, there was only 1 case of adoption from Uganda to the United States. It increased to 54 cases in 2007, 207 in 2011, and in 2012 there were 240 cases of Guardianship Orders to US citizens (based in the USA) granted by the Ugandan Courts and Visas issued. This indicates that the trend for adoptions in Uganda is on the rise while worldwide trends for international adoptions are reducing.⁴ Domestically, Ugandans fear that children leaving the country are being exploited or abused⁵.

There have been persistent media reports⁶ calling for immediate government intervention in the adoption process and tightening of laws on adoption since many adoptions have challenges when the proper precautions are not employed. It is imperative that prospective adoptive parents considering adoption are made aware of the risks concerning adoption. It is against this background that an independent assessment of the management and handling of child adoption in Uganda was undertaken in order to identify the performance gaps and possible causes, and suggest recommendations for the

3 Baseline study on Alternative care task force 2011 set by the MOGLSD and supported by UNICEF.

4 Challenges of inter country adoptions in Uganda (MOGLSD)

5 Baseline study on Alternative care task force 2011 set by the MOGLSD and supported by UNICEF.

6 The daily monitor September 19th 2013, New vision may 5th 2013, Watch "World's Untold Stories: Adopting Africa" on CNN International on Friday March 1 2013 at 11.30 ET, Saturday 9 a.m. ET and 4.30 p.m. ET, and Sunday at 5.30 a.m. and 11.30 p.m. 2013

1.3 DESCRIPTION OF THE AUDIT AREA

1.3.1 General Description

The Department of Youth and Children is mandated to provide overall guidance on orphans and vulnerable children in Uganda. It does this through the implementation of the National Orphan Policy (NOP) and the National Strategic Programme Plan for Intervention (NSPPI) for the orphans and vulnerable children with the goal of scaling up effective programmes (of which adoption and childcare institutions are options); interventions to reach orphans and vulnerable children, either directly or through the household and communities in which these children live.

1.3.2 Mandate of MOGLSD

The mandate of the Ministry of Gender, Labour and Social Development is derived from the 1995 Constitution of the Republic of Uganda, Chapters 4 and 16 which is to: "empower communities to harness their potential through skills development, labour productivity and cultural growth." The constitution advocates for protection and promotion of fundamental rights of the poor and other vulnerable groups as well as institutions of traditional or cultural leaders.

1.3.3 The Mission and vision of the Ministry

The ministry subscribes to the Mission of that of the Social Development Sector which is "creation of an enabling environment for social protection and social transformation of communities"

Vision

“The vision for the ministry, which states the ultimate long term goal of the sector, is: “a better standard of living, equality and social cohesion, especially for poor and vulnerable groups in Uganda.”

1.3.4 Objectives

The objectives of the Youth and Children Affairs Department are⁷:

To formulate and review relevant guidelines, programmes, policies and laws for the children;

To coordinate and network with stakeholders on issues related to children;

To promote participation of the children in national development programmes

To support training of children service providers;

To ensure that initiatives, programmes, policies and laws address concerns of children.

Activities of the Youth and Children Affairs Department

The activities related to children affairs include the following⁸:

- Keeping well-structured records.
- Doing own fact finding research.
- Report writing on the wellness of children.
- Attending court sessions.
- Enforcing the children home rules.
- Administering community service orders.
- Tracing and resettling of children and playing an active part in the procedures concerning fostering and adopting children as well as in probation service issues.

1.3.5 Organisational structure

The MOGLSD has four directorates which are: Community Mobilisation and Empowerment, Mainstreaming Gender and Rights, Promotion of Labour Productivity and Employment, Social Protection for vulnerable groups.

The Directorate of Social Protection for Vulnerable Groups is divided into two departments namely: Disability and Elderly, and Youth & Child Affairs which are headed by a Commissioner. Details of the MOGLSD structure are shown in **Appendix I**.

1.3.6 Funding

The Department of Youth and Child Affairs of MOGLSD is funded by GOU through the central government budget. During the period under review, a total of UGX 1.807 billion was released by government to address matters as detailed in **Table 1** below;

⁷ Ministerial Policy Statement 2011/2012

⁸ Operational Manual for Youth and Probation and Social Welfare Officers

Table 1: Expenditure of Youth and Child Affairs Department for financial years 2010/11 to 2012/13

YEAR	RECURRENT EXPENDITURE	DEVELOPMENT EXPENDITURE	TOTALS
2010/2011	57.7M	734M	791.7M
2011/2012	-	587.4M	587.4M
2012/2013*	28.92M	399.35M	428.27M
TOTAL	86.62	1720.75	1,807.37

Source: MOGLSD Draft and Audited Accounts

*** Draft accounts**

1.4 AUDIT OBJECTIVE

The main audit objective was to evaluate the oversight function of the Adoption process and assess the extent to which the child adoptions were undertaken in accordance with the existing legal framework.

The specific objectives of the audit were to establish whether the MOGLSD had:

- a) Formulated and reviewed the relevant guidelines, programmes, policies and laws to aid the adoption process of vulnerable children in Uganda.
- b) Coordinated and networked with all key stakeholders within and outside government on matters related to both local and international adoption of vulnerable Ugandan children.

1.5 AUDIT SCOPE

The audit covered: the Department of Youth and Children Affairs in the Ministry of Gender, Labour and Social Development which is directly responsible for monitoring and evaluation of children activities; High courts responsible for granting adoption orders; Uganda Registration Service Bureau responsible for the registration of adoption orders and legal guardianship; and the chief magistrate courts in selected districts which are responsible for issuing orders for domestic adoption.

The audit covered three (3) financial years, FYs 2010/11, 2011/12 and 2012/13.

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AUDIT METHODOLOGY

The audit was carried out in accordance with the International Organisation of Supreme Audit Institutions (INTOSAI) standards and guidelines and the Office of the Auditor General (OAG) Value for Money Audit Manual. The standards require that the audit is planned in a manner which ensures that an audit of high quality is carried out in an economic, efficient and effective way and in a timely manner.

2.1 SAMPLING

Six (6) High Courts in the districts of Kampala, Jinja, Kabarole, Mbale, Mbarara, Masaka; District Headquarters of Mityana, Wakiso, Bugiri, Arua, Mbale, Kabarole, Jinja and Lira; Magistrate courts of Lira and Arua were selected according to the number of children adopted.

2.2 DATA COLLECTION METHODS

Various methods were used for collecting data from the field and these included: document review, interviews and physical inspections.

Document Review

Documents were reviewed to obtain an understanding of the adoption process. For details refer to Appendix II.

Interviews

The audit team conducted 19 interviews which were aimed at assessing the management and handling of adoption process and also to corroborate information obtained from the other sources. Details of the interviews conducted are in **Appendix III**.

Observation/ Field inspections

Field inspections were conducted in different districts, magistrate courts, and adoptive parents' homes to establish the consent of the biological parents of the adopted children.

Data Analysis

The information collected was analysed to identify the key relationships that existed in the data obtained from the courts on adoption and guardianship cases over the last three financial years.

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SYSTEM AND PROCESS DESCRIPTION

3.1 ROLES AND RESPONSIBILITIES OF KEY PLAYERS

The Permanent Secretary- MOGLSD

The Permanent Secretary is the Accounting Officer of the Ministry and is assisted by three directors responsible for three subsectors in the operation and management of the ministry. He/she is responsible for the coordination of the Ministry's day to day activities and resources for effective management of the ministry funds including management of child care institutions and adoption of children in Uganda.

Director Social Protection

The Director is the Head of the Directorate of Social Protection and reports to the Permanent Secretary. The Director is responsible for: ensuring that the Directorate contributes to policy making, monitoring and evaluation of the performance of the departments in the Directorate; produces work plans; provides support supervision to the Commissioners within the Directorate; and ensuring coordination with the relevant stakeholders.

Commissioner, Youth and Children Affairs

The Commissioner is the Head of the Department of Youth and Children Affairs and reports to the Director Social Protection.

Assistant Commissioner, Children Affairs

The Assistant Commissioner is the Head of the Children Affairs Section and reports to the Commissioner, Youth and Children Affairs. The roles of the Commissioner and the Assistant commissioner are the same except that the Assistant Commissioner is answerable to the Commissioner; these officers carry out the same activities as shown below:

- Spearheading policy development and programmes in the implementation of activities for youth and children affairs.
- Prepare policy guidelines, laws and regulations and standards on vulnerable groups.
- Carry out advocacy and networking.
- Carry out monitoring and evaluation of programmes for vulnerable groups
- Oversee training and skills development.
- Provide empowerment support care and protection of vulnerable children.

Probation and Welfare Officer Ministry

The Probation and Welfare Officer's activities are laid out in the Children's Act Cap 59. These include: keeping of well-structured records, doing fact finding research, attending court sessions and tracing and resettling of children.

District

District Probation and Welfare Officers supervise fostering of the child by prospective adoptive parents during the statutory period

as provided for in the Children's Act Cap 59. They also prepare and submit reports to assist the court in considering the applications before court.

Chief Magistrate court

The Children's Act provides for the Chief Magistrate courts to receive applications for adoption orders within the jurisdiction of which the applicant or the child resides where both the child and the applicant are citizens of Uganda.

High Court

The High court is vested with the power to grant International Adoption orders based on the best interest of the child in accordance with the relevant laws governing the adoption process in Uganda.

Uganda Registration Service Bureau (URSB)

The Uganda Registration Service Bureau receives adoption orders from the High court and issues adoption certificates upon registration of the said adoption and maintains an adoption register in which all particulars of adoptions within and outside the country are recorded.

3.2 DESCRIPTION OF THE CHILD ADOPTION PROCESS

The process for adopting a child from a non-Convention country differs in some key ways from that of a Convention country and, to date, about 75 countries have joined the Hague Adoption Convention.

Completion of the adoption process means that the child will have full legal rights within the new family, and the adoptive parents become the child's legal guardians. The processes for

adopting a child from Uganda generally include the following steps:

- Assessment of eligibility,
- Gaining legal custody of a child,
- Obtaining consent and adoption order,
- organizing the adoption documentation,
- bringing a child home,
- registering the adopted child, and , finally,
- post adoption reporting.

Eligibility for prospective adoptive parent

The prospective adoptive parent identifies an attorney to help him/her to apply for eligibility to adopt from Uganda using Form I-600A. After applying for eligibility, the high court then assesses the prospective adoptive parent's eligibility based on the following criteria:

Residency: The prospective adoptive parent is required to foster the child for a period not less than 36 months. For a foreign prospective parent, he/she must have stayed in Uganda for a period of 3 years.

Age: The prospective adoptive parent must be at least 25 years old, and 21 years older than the child they plan to adopt. In case of a married couple, it is sufficient for one spouse to meet the above requirement.

Marriage: Married couples are required to adopt jointly. Single parents may adopt, but they may not adopt a child of the opposite sex (unless an exception is made).

Income: prospective adoptive parents must prove financial stability. There are no specific income requirements for Ugandan adoption.

Others: Foreign adoptive parents must demonstrate that they have no criminal record, and that they have been approved by their country of nationality to adopt.

After the eligibility assessment is met and a

prospective adoptive parent found eligible to adopt, they can then be matched to a specific child in accordance with the Uganda adoption laws and regulations.

After the adoptive parent has been matched with a child, he/she is then expected to foster this child for a period not less than 36 months before they can actually gain legal custody of the child.

Gaining Legal Custody of a child

Before any court action is taken, a child placed for adoption is legally recognized as an orphan or, in the case where a parent is living, is legally and irrevocably released for adoption in a manner provided for by law.

After the child is legally recognized and/or released for adoption, the Probation and Welfare Officers are assigned to the magistrate court where the child is residing to monitor and record the progress of the adoptive family during the 36 months of fostering.

The Probation and Welfare officer then submits a report including his/her recommendations to court for consideration before the final decision is made for the adoptive parent.

The process is then concluded with the High Court judge exercising discretion in granting legal guardianship, which permits an orphan to emigrate from Uganda for full and final adoption abroad.

Taking the Child Home

After gaining legal custody of a child, the adoptive parent then applies for all the necessary documents required to enable the child travel. These documents are, the original court ruling, the adoption order or legal guardianship order, the petition filed before the High court by the prospective

adoptive parent and clearance from the MOGLSD. Ugandan Immigration authorities require these documents before adjudicating a passport application submitted on behalf of the child.

Registering adopted Children

Once the adoption is finalized, the adoptive parents then register the adoption with the Registrar General's Office in Kampala. The Registrar General then informs the Ministry of Foreign Affairs about the adoption. The Ministry of Foreign Affairs will then maintain the adopted child's records, which will later be available to the child in future.

Post Adoption reporting

After registration has been done, and the child has travelled say for international adoption, post adoption reports describing the child's development and progress adjustment to the new family is then provided by the adoptive parents to the High Court (family division). In case of domestic adoptions the requirement is to furnish the post adoption reports to the Magistrates Courts to obtain assurance that the child is receiving the necessary care and protection.

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FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.1 LEGAL FRAMEWORK FOR ADOPTION PROCESS IN UGANDA

Uganda is a signatory to the United Nations Convention on the Rights of a Child and to the African Charter on the rights and welfare of the child⁹ which both state that every child shall be entitled to the enjoyment of parental care and protection and shall whenever possible, have the right to reside with his or her parents. The said legislation further requires signatory member states to undertake the necessary steps, in accordance with their Constitutional processes, to adopt such legislative or other measures as may be necessary to give effect to the provisions of the Convention and Charter aimed at recognizing the rights, freedom and duties of its children.

The Constitution of the Republic of Uganda, 1995 (as amended) recognises that children ought to be cared for by their parents or those entitled by law to bring them up. This provision gave birth to the enactment of the Children's Act Cap 59¹⁰ which is intended to promote and protect the welfare and rights of children in Uganda. The Act¹¹ gives the Minister responsible for children's welfare the mandate to make regulations, generally, to operationalize the Act and for carrying out the provisions and purposes of the said Act better.

4.1.1 Rules and Regulations to guide the adoption process

The audit findings noted that whereas the Ministry had managed to develop regulations for approved homes, the regulations particularly referring to the adoption¹² of children in Uganda had not been developed by the time of audit (February 2014). A case in point shows that out of the possible nine (9) parts of the Act, regulations had only been developed for part eight (8) of the Act relating to approved homes as illustrated in Table 2 below:

Table 2: Status of regulations formulated for parts of the Act Cap 59

NO.	PARTS OF THE ACT	REGULATIONS DEVELOPED
1	Rights of the child – part ii	NO
2	Support for children by local authorities – part iii	NO
3	Family and children court – part iv	NO
4	Care and protection of children – part v	NO
5	Foster care placements – part vi	NO
6	Adoption - part vii	NO

9 OAU Doc. CAB/LEG/24.9/49 (1990)

10 Laws of the Republic of Uganda; Revised Edition, 2000

11 Section 110

12 PART VII – Section 44-55 (ADOPTION)

7	Approved homes – part viii	YES
8	Parentage of children – part ix	NO
9	Children charged with offences – part x	NO

Source: OAG Analysis of the Children’s Act Cap 59

Management attributed the failure by the Ministry to derive regulations specific to child adoption to the fact that adoption in its current form in Uganda recognises the best interest of the child, and, therefore, would be very difficult to quantify violations that did not consider the best interest of the child before sanctions can be defined for the purpose of this Act.

Audit, however, attributed the absence of regulations to the Ministry’s reluctance to formulate the regulations as there were no records of attempt by the Ministry to have such regulations. For example, for the last sixteen (16) years,¹³ the Act has been in force, no documented evidence was availed by the Ministry showing steps or initiatives, such as: consultative meetings with stakeholders, existence of a relevant working committee: draft regulations and minutes stating commitment from management towards developing the necessary regulations, by the time of audit (February 2014).

As a result of the failure to develop regulations, the Ministry has not been able to develop procedures or guidelines on key provisions within the Act relating to child adoption. A case in point is where Guardianship Orders are being used as an input to determine what constitutes the best interest of the child; courts continue to rely on their discretionary powers to exercise judicious decisions to the persons being granted child adoption.

4.1.2 Governing Principles for legal guardianship

Audit noted through documentary reviews that the Ministry had not formulated governing principles for legal guardianship¹⁴ despite there being applications in the family courts for legal guardianship orders by prospective adoptive parents to foster vulnerable children. The governing principles, if formulated, would have set the procedures and/or guidelines upon which the courts awarding the legal guardianship orders would have based their decisions.

In the period (2009 to 2012) there were seven hundred and ninety six (796) applications for legal guardianship orders in the High Court Family Division – Kampala alone as seen in table 3 below representing 85.7% of the total petitions this court received in matters relating to adoption and guardianship.

¹³ Act come to force 1st August 1997

¹⁴ The Act has no express provisions empowering courts to make legal guardianship Orders

Table 3: Total petitions to the family court division on children matters

NO. OF COURT CASES	2009	2010	2011	2012	TOTALS	%AGE	AVERAGE
ADOPTION CASES	29	62	16	26	133	14.3	33
GUARDIANSHIP CASES	177	155	253	211	796	85.7	199
TOTAL	206	217	269	237	929		

Source: OAG Analysis of family court adoption/legal guardianship files

From the above table, there was an average of one hundred and ninety nine (199) applications for guardianship as opposed to the thirty three (33) annual applications for outright adoption per year.

Audit attributed the Ministry's failure to derive governing principles for legal guardianship to its perception that the Children's Act (Cap.59) had reformed and consolidated the law¹⁵ relating to children and that it had made sufficient provisions for the care, protection and maintenance of children and therefore saw no need for guidelines.

Consequently, there is no uniform issuance of the guardianship orders currently being awarded to applicants. For instance, document review of twenty two (22) adoption applications filed with the family division court of Kampala alone revealed that the conditions in the guardianship orders awarded in the period under review differed from each other as illustrated in the **Appendix IV**. Similarly, in the absence of legal provisions for the procedure and practice of courts and all people involved in the grant and eventual use of Legal guardianship Orders it has become a venture full of risks for children¹⁶. For instance, Audit established that Legal guardianship had allowed people that do not qualify for adoption orders to proceed and get adoption orders outside the country. From the table above, 70% of the total guardianship orders awarded were for an onward grant of permission to proceed and adopt in the original country of the prospective adoptive parent/ applicant.

Management Response

The Ministry acknowledges the gaps identified in the rules and regulations for child adoption, new rules and regulations will be developed as soon as possible.

15 i. Fostering of children by their relatives

ii. Fostering of children by people resident in Uganda whether citizens or non-citizen in Uganda

iii. Adoption of children by families of people whether citizens or non-citizens of Uganda but who have stayed in Uganda for at least three years.

16 "LEGAL GUARDIANSHIP OUTSIDE UGANDA, A DILEMMA FOR COURTS" - The prospect of a needy child enjoying benefits but with no assurance of protection by Hon. Justice Moses Mukiibi, Deputy Head – Family Division High Court of Uganda, Kampala

Conclusion

Whereas the Act provides for safeguards¹⁷ for children's welfare, legal guardianship was omitted by the legislature during its initial formulation. The Act as it is has no express provisions empowering courts to make legal Guardianship Orders. The Ministry responsible for Youth and Children has failed to develop legal provisions for the procedure and practice of courts in awarding legal Guardianship Orders despite the Act having been in force for 16 years by the time of audit (March 2014).

In the absence of regulations to operationalize the Act and guidelines on key provisions within the Act, reliance on discretionary powers to exercise judicious decisions on matters relating to child adoption and thus guardianship orders being granted on different conditions will continue to abound, which could be exploited by unscrupulous people for their own and not the children's benefit.

Recommendation

The Ministry should ensure that the relevant and appropriate rules and regulations regarding the child adoption process are formulated to operationalize the Children's Act.

4.2 ELIGIBILITY REQUIREMENTS AND LEGAL CUSTODY PROCESS FOR CHILD ADOPTION IN UGANDA

4.2.1 Following of Adoption procedures

Sections 45 to 46 of the Children's Act Cap 59, spells out the conditions which must

¹⁷ Made provisions for the care, protection and maintenance of children

be fulfilled by prospective adoptive parents before filing for an adoption order and these include: Age: One should be 25 years old and 21 years above the child; Residency: One should have resided in Uganda for a period of at least 36 months, in case of international adoption; Marriage: Married couples should adopt jointly; one should show proof of financial stability and should not have a criminal record.

Section 46 of the Act specifically provides that in exceptional circumstances, a person who is not a citizen of Uganda may adopt a Ugandan child if he or she (prospective adoptive parent) has stayed in Uganda for at least 3 years, and/or has fostered a child for at least 36 months under the supervision of a probation and welfare officer who is required to submit a written report to court on the fostering period.

Audit noted, through document review, that adoption orders were granted to adoptive parents who did not necessarily meet all the eligibility requirements as set out in the Children's Act. Twenty nine (29) out of ninety six (96) application files for adoption orders reviewed for the period 2009, 2010 and 2011 representing 30% of adoption orders granted by the family division of High Court in Kampala, did not meet all the eligibility requirements as shown in **Appendix V**.

The adoption files reviewed had no evidence of Care Orders¹⁸ issued by court to prospective adoptive parents proving initial fostering of the said children in the adoption application. It was also very difficult for audit to establish whether the period stated in the application file was what it took the prospective adoptive parent to foster a given child because there

¹⁸ Usually issued by Court for a period running up to a maximum of 36 months

was no record on file to prove so. However, on average, it took an adoptive parent 19 days to foster a child and be granted an adoption order for a given child as indicated in **Appendix VI** with an exception of an application¹⁹ that stretched to 123 days.

Audit attributed the granting of adoption orders to ineligible prospective parents by the courts to the Probation and Welfare Officers who were not thorough and vigilant in ensuring that all the eligibility requirements and evidence for child adoption were in place prior to adoption orders being granted by the courts. The reports from the Probation and Social Welfare Officers²⁰ ought to have been a result of thorough investigation on the background of the child to ascertain his or her true biological parents, or where they are dead, the child's blood relatives and should have clearly stated recommendations as to what amounted to the best interest of the child but this was not the case.

For instance, of all the twenty nine(29) applications that were granted adoption orders in the period 2009,2010 and 2011, only thirteen (13) adoption applications had written reports from the Probation and Social Welfare Officers, thirteen (13) had sworn affidavits in the place of the required reports while three (3) had neither. The Ministry has not prescribed the roles its Department of Youth and Children Affairs ought to have played in as far as verification of eligibility of prospective adoptive parents are concerned and, more so, when it comes to international adoption of Ugandan children.

¹⁹ HCT-00-FD-FC-0092-2010 applied for on 21/5/2010 and granted on 22/9/2010

²⁰ In adoption cases, the District Probation and Social Welfare Officer has an important role in investigating and submitting a report to the court (including recommendations in the best interest of the child)

Consequently, children in need of protection and welfare could be denied the right to;-

- The enjoyment of parental care and protection and, whenever possible, the right to reside with their parents and or blood relatives since investigations which should have been conducted on the background of the child to ascertain his or her true biological parents, or, where they are dead, the child's blood relatives are not being done.

Similarly, where an adoptive parent was granted an adoption order without necessarily going through the period, of having stayed in Uganda for at least 3 years, and/ or having fostered the child for at least 36 months under the supervision of a Probation and Welfare Officer, as prescribed in the Act, it becomes very difficult for government to gain assurance of the stability of the relationship between the adoptive parent and the child.

Management Response

- The Ministry has developed the National Framework For Alternative Care which is pending approval by the Ministry's Top management; besides the legal mechanism for the framework has been integrated in the children's amendment bill which is being drafted by the parliamentary council.

- Carrying out thorough investigation into a child's background prior to the formal adoption process is the mandate and core function of Probation officers; however the officers face challenges in implementation of their mandate arising from inadequate budgetary provisions and logistical support by the districts, the Ministry intends to lobby the districts to ensure that welfare services under which the function of child adoption falls is given due attention.

Conclusion

Applications of provisions relating to adoption within the Act are not being effected. The Ministry that should have picked up on such occurrences has remained silent as the courts continue to make prudent judgments based on the inadequacies within the information being provided by the Probation and Welfare Officers who are an integral part of the adoption process. As a result, prospective adoptive parents who do not meet the eligibility requirement are being granted adoption orders.

Recommendations

- The Ministry should expedite its proposals with the National Framework for Alternative Care and ensure that all the necessary legal requirements for child adoption are complied with.
- The Probation and Welfare Officers should carry out thorough and transparent investigation into the child's background to ensure that all eligibility requirements have been complied with and the child's best interest taken care of. Thus the Ministry should continuously sensitise the district officials on the importance of facilitating the functioning of the Welfare services in their districts so as to enable the Probation Officers conduct thorough investigation into the background of a child before they are adopted.

4.3 MATCHING PROSPECTIVE ADOPTIVE PARENTS WITH A CHILD

4.3.1 Performance of probation and welfare officers in the adoption process

The Children Act 2009, section 32, outlines the special duties of the Probation and Social Welfare Officer in relation to care orders. Further, values and principles of work (2.3)²¹ in the operations manual for Youth and Probation and Social Welfare Officers (2010), advocates for the strengthening of family units; placing of children in suitable alternative care in the absence of the natural family, particularly fostering; exploration and use of community options before committing a child to an institution²² and emotional and/or material assistance, among others, by Probation and Social Welfare Officers.

In case of International Adoptions, Section 45(5) of the Act requires the Probation and Social Welfare Officer to submit a report to assist the courts in considering the application for adoption orders. In this regard, the Probation and Social Welfare officer in the region where the child resides monitors and records the progress of the adoptive family during the 36-month fostering period.

It was established that the District Probation and Welfare Officers were neither carrying out adequate fact finding research nor preparing welfare reports²³, nor were they tracing or resettling children to their families or communities of origin. There was no evidence that the Probation and Welfare Officers had implemented or promoted proposals in the alternative care²⁴ system, such as; foster placement, kafalah²⁵, domestic adoption or, if necessary, placement in suitable institutions for the care of children, as suggested by Government (MOGLSD), before recommending a child for

21 A family is the best place for a child's growth and development.

22 Even then institutional care shall only be temporary, resettlement being a priority

23 Including recommendation in the best interest of the child

24 Describes the care options available to children who are temporarily or permanently separated from their parent(s), or deprived of their family environment, or in whose best interest cannot be allowed to remain in that environment (Final Draft of Uganda's National Framework for Alternative Care - MOGLSD)

25 Care system (Muslim practice) where individuals in the community voluntarily care, protect and educate a child while retaining its name, family and lineage connection.

an outright international adoption as shown in the Table 4 below.

Table 4: Performance of DPSWOs over selected performance indicators

STATUTORY DUTIES	KEEPING OF WELL-STRUCTURED RECORDS	DOING OWN FACT FINDING RESEARCH	WRITING REPORTS	ATTENDING COURT SESSIONS	TRACING AND RESETTLING OF CHILDREN
DISTRICT PROBATION OFFICERS VISITED					
MITYANA	YES	YES	YES	YES	YES
MBALE	YES	YES	YES	NO	YES
BUGIRI	NO	NO	NO	NO	NO
ARUA	NO	NO	NO	NO	NO
JINJA	NO	NO	NO	NO	NO
LIRA	YES	NO	NO	NO	NO
KABAROLE	NO	NO	NO	YES	NO
MUKONO	NO	NO	NO	YES	NO

Source: OAG field visits and documentary reviews

In addition, document review of twenty nine (29) files out of ninety six (96) applications for adoption orders for the period 2009,2010 and2011 revealed that, of the adoption orders granted, 45% were based on affidavits sworn by the District Probation and Social Welfare Officers (DPSWO), 45% were based on reports prepared by the DPSWO while 10% had neither a progress report prepared nor an affidavit sworn as shown in the **Appendix VIII**.

Further, audit established that Probation and Social Welfare Officers whose jurisdictions of operation were different from those of the Child's place of origin submitted foster progress reports and affidavits on behalf of children whom they neither supervised during growth nor foster care which contravenes the Children's Act. In such circumstances, these probation officers could not have obtained adequate knowledge on the child's history and background to aid court's decision in an application hearing for an international adoption.

A case in point, eight (8) out of the twenty nine (29) files revealed that foster progress reports and affidavits had been sworn by District Probation and Social Welfare Officers whose jurisdictions were different from those of the origin of the children up for adoption hearing as illustrated in **Table 5** below.

Table 5: Work place of DPSWO and location of child origin

SNO	CASE NO.	ORPHANAGE/ BABIES HOME	LOCATION OF CHILDREN'S HOME'	WORK PLACE OF DPSWO WHO HANDLED ADOPTION CASE	DISTRICT OF ORIGIN OF ADOPTED CHILD
1	0108-2010	SANYU BABIES HOME	RUBAGA DIVISION	KAMPALA DISTRICT	WAKISO DISTRICT – SISSA S/C

2	0113-2010	SANYU BABIES HOME	RUBAGA DIVISION	KAWEMPE DIV.	WAKISODISTRICIT-KANYANYA
3	0165-2010	SANYU BABIES HOME	KAMPALA-MENGO	RAKAI DISTRICT	KAMPALA-RUBAGADIV
4	0038-2010	AGAPE CHILDREN VILLAGE	MUKONO	MUKONO DISTRICT	KABALEDISTRCIT-KAMWEZI S/C
5	0084-2010	MERCY HOME OF CHILDREN	WAKISO	NEBBIDISTRICIT	NEBBI TOWN COUNCIL
6	0083-2010	UGANDA BABIES HOME	ENTEBBE	KAMPALA DISTRCIT	WAKISODISTRICIT-ENTEBBE
7	0195-2010	NSAMBYA BABIES HOME	MAKINDYE	MAKINDYE DIVISION	WAKISO DIST.-KATALE- KAJJANSI
8	0145-2010	OASIS CHILDREN'S HOME	K'LA-KABOWA	NOT SEEN	NAKAWA DIV.-MBUYA PARISH

Source: OAG analysis of selected family court files

Audit attributed the inability by District Probation and Social Welfare Officer's to carry out their statutory obligations to lack of prioritization of their functions by their respective districts of attachment.

Districts on average spent only Shs.46,778,344 million which is only 0.02% of their total funding in the year 2011/12 alone on all activities performed by the district community services department which, incidentally, covers aspects relating to the care of homeless children in need of protection in their jurisdiction among other activities as seen in table 6 below. Audit could not readily verify how much money the said local governments allocated to specific activities relating to the welfare, placement, monitoring, counseling and fact finding research on all children in need of care and protection due to lack of relevant records by the said departments of the respective district local governments.

Table 6: Funding to the DPSWOs for the period 2011/12

DISTRICTS	TOTAL REVENUE	LOCAL REVENUE	COMMUNITY BASED SERVICES	ALLOCATION TO DPSWOS	% AGE OF PSWOS TO CBS
WAKISO	39,866,996,561.00	1,361,931,779.00	718,872,205.00	5,351,000	0.74
MITYANA	17,566,254,000.00	222,788,000.00	380,100,000.00	571,000	0.150223625
LIRA	22,903,525,105.00	441,919,727.00	157,628,162.00	113,113,062	71.75942456
ARUA	42,192,709,212.00	667,009,941.00	207,615,600.00	50,105,000	24.13354295
MUKONO	22,679,786,728.00	556,450,315.00	325,507,797.00	181,752,497	55.8366032
MBALE	23,822,926,158.00	332,806,439.00	140,522,976.00	120,000	0.085395288
JINJA	22,108,318,402.00	431,448,891.00	374,673,872.00	90,000	0.02402089

BUGIRI	17,514,321,663.00	159,276,141.00	264,119,877.00	23,124,200	8.755191113
TOTAL	208,654,837,829		2,569,040,489.00	374,226,759.00	161.49
AVERAGE				46,778,344.88	20.18609525

Source: OAG analysis of funding to DPSWOs by selected districts

Similarly, the Department of Youth and Child Affairs at the Ministry of Gender, Labour, and Social Development has no requirement in its institutional set-up for the District Probation and Welfare Officers to furnish it with progress reports and or statistics on the activities relating to children welfare ,care and protection nor has it managed to supervise the inadequacies of such officers in order to brace itself for the realities on ground to consider while formulating relevant guidelines and protocols to be followed and this hindered a well streamlined and functional system for District Probation and Social Welfare officers in conducting their duties in ensuring that the best interest of Uganda’s desperate and vulnerable children is protected.

Consequently, the Probation Officers who are supposed to aid courts in the hearing of adoption and legal guardianship applications were not able to provide courts with the relevant information²⁶ on which the courts could base their judgment as to what amounted to the best interest of the child.

Management response

- Probation and social welfare is a highly technical function which needs close professional supervision; under the Government decentralization process, probation officers are recruited and remunerated by the districts and therefore report and account directly to the district. Under the government restructuring process there is a proposal to centralize probation and social welfare services.
- Due to the fact that probation and social welfare services do not fall under the assessment area of district authorities, The Ministry is lobbying for probation and social welfare services to be considered as assessment areas for the districts and be allocated more funding.

Conclusion

The MOGLSD, in developing the Operation Manual for Youth and Probation and Social Welfare Officers, did not allocate itself, through its Department for Youth and Children Affairs, responsibility in as far as the conduct of District Probation and Social Welfare Officers are concerned, being the central government entity with a mandate²⁷ to assume all residual roles affecting the care, protection and promotion of the welfare of all vulnerable children in Uganda²⁸this should have been done, consequently the Ministry has had no effective control and supervision on the activities of the District Probation and Social Welfare Officers in regard to management of child and youth affairs in the Districts.

26 Well-structured records, Fact finding research on the child,

27 The Ministry is enjoined to operationalize Chapter four (4) of the Constitution (especially Articles 31 through 42) which focus on affirmative action and promotion of fundamental human rights of the people of Uganda, with particular focus on marginalized groups such as children (MOGLSD Operations Manual 2010)

28 Based on the international obligations as a signatory of the UN Convention of the rights of the child, the OAU Charter on the rights and Welfare of Children, the Constitution of Uganda and the Ugandan Children’s Act (MOGLSD Operation Manual 2010)

Recommendations

- The Ministry should establish a central coordination agency with clear roles and responsibilities for coordinating, monitoring and evaluating the performance of District Probation and Social Welfare Officers.
- The Ministry should sensitize all stakeholders especially the Local Governments about the importance of allocating adequate budgetary provisions for social welfare and probation activities in the Districts.

4.4 REGISTRATION OF ADOPTED CHILDREN

4.4.1 Record keeping by the URSB

Section 54 of the Children's Act requires the Uganda Registration Service Bureau to maintain a register of adopted children in which all their particulars are registered.

Audit noted that the Uganda Registration Service Bureau had maintained a register although the register was not updated with all the court orders granted. A review of the adoption register indicated that a total of three hundred and thirty three (333) adoptions had been captured in the register for the period under review but that only two hundred and eighty nine (289) had full registration with certificates issued in recognition of the registration of the adoption as illustrated in the Table 7 below.

Table 7: Registration of adoption by the URSB

YEAR	2009	2010	2011	2012	2013	TOTAL
NO OF ADOPTIONS	78	107	45	51	52	333
ISSUED CERTIFICATION	65	97	39	49	39	289

Source: Analysis of family court files and registration records from the URSB

Audit considers this as very low compared to the total Adoption orders granted annually. For instance, according to a publication by the Bureau of Consular Affairs²⁹ Adoptions from Uganda to the USA alone stood at five hundred and seventy six (576) in the period under review.

It was also noted that in cases where a registration was made, not all particulars pertaining to the adopted child together with that of his or her adoptive parent were captured. Information relating to the sex of the adoptive parents, country of destination, for the case of international adoption, origin of the child and adoption application number among others, were missing.

Audit attributed the failure by the Uganda Registration Service Bureau (URSB) to maintain an up to date adopted children's register to the reluctance by the successful applicants to submit all the adoption orders issued by Court to the Registrar of birth and death for registration as required by the regulations.

²⁹ U.S. Department of State, Annual Report on International Adoption www.Adoption.State.gov

Consequently, Government has no complete record on the numbers of adopted children in Uganda. As a result, it has become difficult for Government to ascertain that the best interests of these children as provided for by the Constitution of the Republic of Uganda, 1995, are being upheld by the adoptive parents.

Management response

- The Ministry will follow up with the Uganda Registration Services Bureau in ensuring that an up to date register for all adopted children is maintained and kept in place.
- The Ministry has made a provision under the National Framework For Alternative Care that certificates be issued for adoption by the Ministry as final clearance for children to be taken out of the country; besides in the children's Amendment bill it is stated that guardianship should not be used as a means for intercountry adoption.

Conclusion

Adoption orders in Uganda are only submitted to be registered at the discretion of the adoptive parents mainly because it is a requirement by their respective embassies before they are allowed to migrate with the child in question in total disregard of the provisions of the law that makes it mandatory for every adoption.

There are more adoptions granted every year by the courts that are not recorded by the state. In absence of records on adopted children, the MOGLSD has failed to plan follow-ups on the adoptions granted to ensure that the conditions under which the orders granted are being met by the adoptive parents, especially in as far as their care and protection is concerned.

Recommendations

- The Uganda Registration Service Bureau should maintain an up to date register of all adopted children, including all particulars pertaining to the respective adoptive parents.
- The Ministry should ensure that registration certificates for adoption are the last requirement for a legally recognized adoption of children in Uganda and that this should form part of the immigration clearance for such a child before he or she is allowed to leave the country as regards to international adoptions.

4.5 POST ADOPTION REPORTING

4.5.1 Monitoring the care and protection of children

Article 24 (f) of the African Charter on rights and welfare of the child requires state parties to establish a mechanism to monitor the well-being of the adopted child. The mechanisms developed would help not only what is currently happening to the child, but also the child's health and development, and the wider family and environmental context in which it is placed.

Audit noted, through document review that the Ministry had not established a tracking mechanism to monitor the welfare of the adopted children in Uganda during the period 2009, 2010 and 2011. For instance, audit noted that in the period under review, there were seven hundred and nineteen (719) applications for both adoption and guardianship orders granted by the high court family

division of Kampala as shown **table 8** below.

Table 8: Adoption and guardianship cases granted

ORDER GRANTED	2009	2010	2011	2012	TOTAL
ADOPTION	17	51	10	18	96
GUARDIANSHIP	133	140	179	171	623
					719

Source: OAG Analysis of family court cases.

However, a review of three hundred (300) of these files showed no evidence that relevant government bodies had made a follow up on the granted Orders to make sure that the conditions therein are adhered to by adoptive parents or legal guardians.

As illustrated from table 9 below, Audit noted that although 20% of the expected six hundred (600) reports had been submitted by adoptive parents to the Registrar, High Court- family Division Kampala on the welfare and condition of the children under their custody, there was no system in place by either the courts or MOGLSD to follow-up on the assertions made by the adoptive parents about the welfare of the children.

Table 9: Post adoption reports submitted by adoptive parents

PARTICULARS	2009	2010	2011	2012	TOTAL	%AGE
TOTAL ORDERS GRANTED	150	191	189	189	719	
FILES REVIEWED	75	75	75	75	300	
EXPECTED REPORTS ON FILE¹	150	150	150	150	600	
REPORTS PREPARED	17	28	32	41	118	20
NOT PREPARED	133	122	118	109	482	80

Source: OAG Analysis of family court adoption/ legal guardianship files

The Ministry attributed its inability to establish a tracking mechanism for monitoring the welfare of adopted children to lack of resources, such as, funding and staff.

Audit attributed the ministry's failure to develop a tracking mechanism to lack of prioritization, considering that only 0.28% of its total budget meant for social protection for vulnerable groups³⁰ had been allocated to the output of monitoring the care and protection of children as illustrated in Table 10 below. A review of the ministry's annual work plans indicated that the Ministry had not planned for the follow up of adoption and or guardianship orders granted.

³⁰ I.e. Empowerment, support, care and protection of vulnerable groups and Monitoring and Evaluation of programmes for vulnerable groups;

Table 10: Budgeted expenditure for Monitoring of Vulnerable children

YEAR	SOCIAL PROTECTION FOR VULNERABLE CHILDREN 000'	TOTAL ALLOCATION FOR PROGRAMME 5; ITEM OF MONITORING AND EVALUATION 000'	%AGE ALLOCATION OF MONITORING TO THE VOTE FUNCTION(SOCIAL PROTECTION FOR VULNERABLE CHILDREN
2010/2011	8,147,892	-	
2011/12	10,841,340	107,457	
2012/13	38,380,720	57,383	
TOTAL	57,369,952	164,840	164,840/57,369,952*100 = 0.28%

Source: OAG Analysis of expenditure for Social Protection

In the absence of systems to aid in the tracking of adopted children from Uganda, it was difficult for audit to give assurance that the children's fundamental rights ^{have been respected}.

Management response

Once a child has been adopted the child becomes a citizen of the new destination country and the new country has to provide for the necessary protection and care to the child. However if a child is given away under legal guardianship order there is a need for maintaining linkages, care and protection because the child is still a Ugandan.

Conclusion

The children for whom Orders have been granted, whether for adoption or legal guardianship, have not been followed up to give assurance as to their protection and welfare. This may result in children being abducted, or trafficked.

Recommendation

The Ministry should come up with a mechanism in which the welfare of children is monitored and should consider prioritizing matters relating to the care and protection of adopted children or those on legal guardianship.

OVERALL AUDIT CONCLUSION

Although the Ministry of Gender Labour and Social Development and the related agencies are trying to ensure that Child adoption in Uganda is carried out within the existing legal framework there are still loopholes and gaps in the laws governing child adoption that must be addressed by Government to ensure that the best interest of the child is kept paramount. The ministry should pursue the proposed amendments to the law and regulations to ensure full protection of the Rights of children

John F. S. Muwanga
AUDITOR GENERAL

31ST MARCH 2014

GLOSSARY OF TERMS:

Adoption: A legal process where a person(s) take into their care child/children who are not born to them. The child-parent relationship is formalised through the legal process. It is a permanent relationship where the biological parents if known renounce their natural rights over the child.

Legal guardianship: This is an order granted by the High Court allowing usually non citizens to have custody of Ugandan children and allow them to emigrate with them to allow them to immigrate with them to their countries for purposes of Adoption in their countries.

Care Order: A care order made under Part V of the children's ACT and includes an interim care order.

Vulnerable children: These are orphans, needy children.

Chief Magistrates Court: Means a magistrate's court presided over by a chief magistrate.

Child: Any person below the age of 18years.

Custodian: A person in whose care a child is physically placed.

Foster parent: A person not being the biological mother, father or relative of the child who assumes parental responsibility of the child by way of a care order.

Guardian: A person having parental responsibility for a child.

Parent: A biological mother or father or adoptive mother of a child.

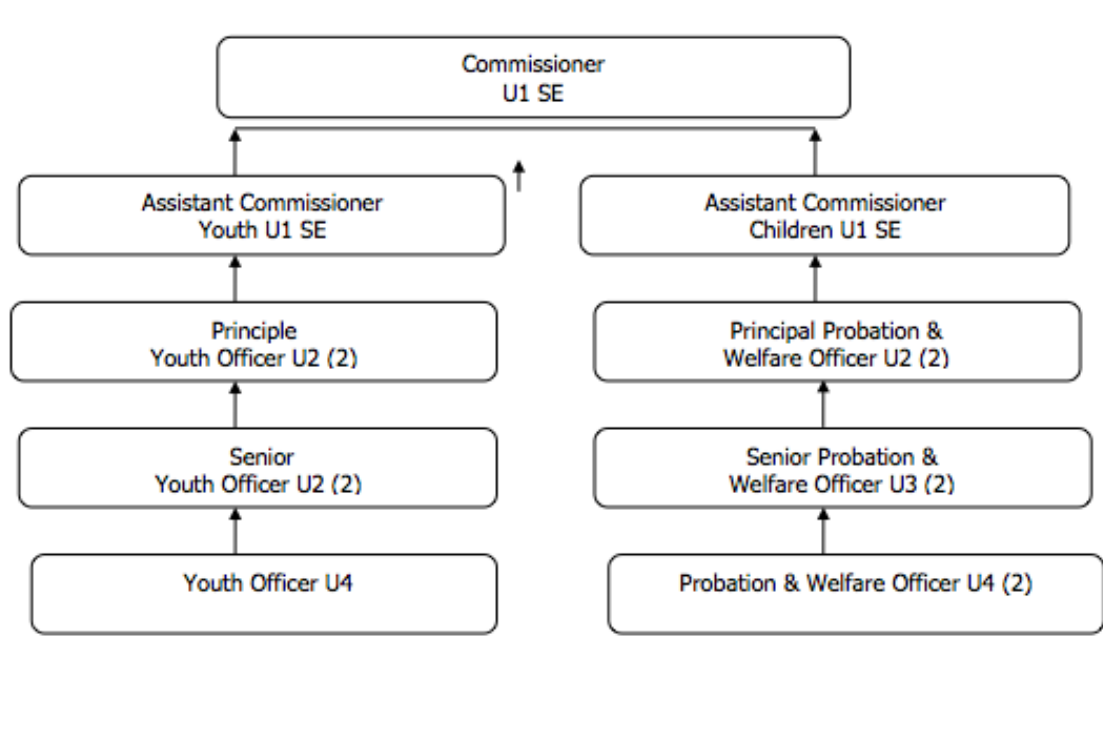
Parental Responsibility: All rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child.

Welfare Report: A report described in section 20 of the children's act.

APPENDICES:

APPENDIX I- PROPOSED ORGANISATIONAL STRUCTURE

Organization Structure of the Department of Youth and Children Affairs



APPENDIX II-DOCUMENTS REVIEWED

SNO	DOCUMENT REVIEWED	INFORMATION OBTAINED
1.	AFRICAN CHARTER FOR RIGHTS AND CHILDREN.	LAWS GOVERNING RIGHTS OF A CHILD IN AFRICAN COUNTRIES
2.	CHILDREN'S ACT CHAPTER 59 (2012)	PROCESS OF ADOPTION AS DETAILED IN THE ACT
3.	MOGLSD STRATEGIC PLAN ESPECIALLY IN YOUTH AND CHILD AFFAIRS	STRATEGIES TO SEE HOW MOGLSD ACTIVITIES ARE BEING CARRIED OUT.
4.	MINISTERIAL POLICY STATEMENTS FOR MOGLSD	FUNDING OF THE DEPARTMENT
5.	UN CONVENTIONS ON RIGHTS OF A CHILD	CRITERIA AND PRESSES
6.	A WORLD FIT FOR CHILDREN DECLARATION	RIGHTS AND WELFARE OF A CHILD
7.	HAGUE CONVENTION FOR INTERCOUNTRY ADOPTIONS	HOW OTHER PEOPLE ARE DOING IT IN OTHER COUNTRIES
8.	PROBATION OFFICER'S REPORTS.	INFORMATION ABOUT THE CHILD,PARENTS
9.	OPERATIONS MANUAL	ACTIVITIES OF A PROBATION AND WELFARE OFFICER
10.	NATIONAL OVC POLICY	RIGHTS OF A CHILD.

APPENDIX III- LIST OF PEOPLE INTERVIEWED

S/NO	NAME	DESIGNATION	LOCATION
1	NABATANZI MARGRET	SENIOR CIVIL REGISTRATION OFFICER	URSB
2	LILLIAN MWANDHA	DEPUTY REGISTRAR	FAMILY DIVISION
3	NAKAZIBWE MARY	ACTING PROBATION & WELFARE OFFICER	WAKISO
4	MUGASA CHRISTINE	REGISTERED NURSE AND HOME ADMINISTRATOR/TORO BABIES HOME	KABAROLE
5	MUTUGUBYE NANKYA BARBARA	HOME ADMINISTRATOR/SANYU BABIES HOME	KAMPALA
6	NKINZIAIDAH	SENIOR SOCIAL WORKER/SANYU BABIES HOME	KAMPALA
7	MR OUMA	PROBATION AND WELFARE OFFICER	MOGLSD
8	EMILY JUMI	RESIDENTIAL DIRECTOR-AMAN BABIES HOME	JINJA
9	MUTONYIMERESI	PROBATIONAL AND WELFARE OFFICER	MBALE
10	NAZIMBE ROSEMARY	PROBATIONAL OFFICER	MITYANA
11	INZIKURU TEDDY	SENIOR PROBATIONAL OFFICER	ARUA
12	BUTANDASHAFIQ	SENIOR PROBATION OFFICER	BUGIRI
13	MARK RILEY	CONSULTANT ON CHILD CARE	KAMPALA
14	ACEN JOLLY	SENIOR COMMUNITY DEVELOPMENT OFFICER	LIRA
15	BISHOP SILAS ATUGONZA	ADMINISTRATOR/IBONDE CHILDREN'S HOME	KABAROLE
16	MUSIMBI MUSE	REGISTRAR MBALE HIGH COURT	MBALE

Selected families who gave up their children for adoption

APPENDIX IV: DIFFERENT GUARDIANSHIP AND ADOPTION ORDERS ISSUED.

FILE NO.	APPOINTED LEGAL GUARDIANSHIP	PERMITTED TO TRAVEL IN & OUTSIDE UGANDA	SUBMIT REPORT EVERY 6 MONTHS	SUBMIT EVERY AFTER A YEAR	
0060-2012	✓	×	✓	×	
0041-2011	✓	✓	✓	×	
0115-2011	✓	✓	✓	×	
0063-2012	✓	✓	✓	×	
0042-2011	✓	✓	✓	×	
0047-2011	✓	✓	✓	×	
0052-2011	✓	✓	✓	×	
0286-2011	✓	✓	✓	×	
0114-2011	✓	✓	✓	×	
0306-2011	✓	×	✓	×	
0096-2011	✓	×	✓	×	
0086-2012	✓	×	✓	×	
0133-2011	✓	✓	✓	×	
0085-2011	✓	✓	✓	×	
0186-2011	✓	✓	✓	×	
0274-2011	✓	✓	✓	×	
0024-2011	✓	✓	✓	×	
0277-2011	✓	✓	✓	×	
0280-2011	✓	✓	✓	✓	
0106-2011	✓	✓	✓	✓	
0148-2011	✓	✓	✓	✓	

Source: OAG Analysis of family court files.

APPENDIX V: PROSPECTIVE ADOPTIVE PARENTS DID NOT MEET ELIGIBILITY CRITERION.

SNO	FILE NO.	AGE	MARRIAGE	CONSENT	FOSTER PERIOD	POST ADOPTION REPORTS
1	0108-2010	✓	✓	N/A	X	X
2	0113-2010	✓	✓	N/A	X	X
3	0152-2010	✓	✓	YES	X	X
4	0165-2010	✓	✓	N/A	X	X
5	0013-2010	✓	✓	N/A	X	X
6	0038-2010	✓	✓	YES	X	X
7	0084-2010	✓	✓	YES	X	X
8	0094-2010	✓	✓	N/A	X	X
9	095-2010	✓	✓	N/A	X	X
10	0092-2010	✓	✓	N/A	X	X
11	0161-2010	✓	✓	N/A	X	X
12	0083-2010	✓	✓	YES	X	X
13	0200-2010	✓	✓	YES	X	X
14	0195-2010	✓	✓	N/A	X	X
15	0145-2010	✓	✓	YES	X	X
16	0144-2010	✓	✓	N/A	X	X

Source: OAG Analysis of family court files-Kampala

APPENDIX VI: AVERAGE NUMBER OF DAYS IT TAKES TO GRANT AN ADOPTION ORDER

FILE NO.	APPN. DATE	RULING DATE	NO. OF DAYS	AVERAGE
ADOPTION				
0041-2009	30/04/2009	04/05/2009	4	
0040-2009	15/04/2009	09/11/2009	208	
0038-2009	16/02/2009	15/05/2009	88	
0076-2009	15/06/2009	02/10/2009	109	
0127-2009	24/09/2009	04/11/2009	41	
0108-2010	11/6/2010	27/7/2010	46	
0113-2010	18/6/2010	29/7/2010	41	
0152-2010	17/8/2010	14/9/2010	27	
0165-2010	23/8/2010	8/10/2010	46	
0013-2010	15/1/2010	5/2/2010	21	
0038-2010	1/3/2010	9/3/2010	8	
0084-2010	12/5/2010	20/5/2010	8	
0094-2010	17/9/2010	24/9/2010	7	
095-2010	17/9/2010	24/9/2010	7	
0092-2010	21/5/2010	22/9/2010	123	
0161-2010	3/9/2010	24/9/2010	22	
0083-2010	21/5/2010	27/5/2010	7	
0200-2010	9/11/2010	25/11/2010	17	
0195-2010	11/10/2010	21/10/2010	11	
0145-2010	18/10/2010	27/10/2010	10	
0144-2010	15/10/2010	26/10/2010	12	
0041-2011	09/04/2011	13/05/2011	34	
0041-2011	09/04/2011	13/05/2011	34	
0115-2011	10/12/2011	20/12/2011	10	
0042-2011	11/04/2011	14/04/2011	4	
0047-2011	10/03/2011	31/03/2011	21	
0052-2011	12/02/2011	03/05/2011	21	
0286-2011	10/11/2011	23/11/2011	13	
0114-2011	10/11/2011	23/11/2011	13	
			1013	1013/29=35DAYS

Source: OAG Analysis of adoption applications for the year 2010

APPENDIX VII: NUMBER OF PROGRESS REPORTS AND AFFIDAVITS BY THE DPSWO

PARTICULARS	REPORTS PREPARED	AFFIDAVITS SWORN	NO REPORT & NO AFFIDAVITS
ADOPTION			
0041-2009	✓		
0040-2009			×
0038-2009	✓		
0076-2009	✓		
0127-2009	✓		
0108-2010		✓	
0113-2010		✓	
0152-2010		✓	
0165-2010		✓	
0013-2010	✓		
0038-2010	✓		
0084-2010		✓	
0094-2010		✓	
095-2010		✓	
0092-2010	✓		
0161-2010		✓	
0083-2010		✓	
0200-2010		✓	
0195-2010	✓		
0145-2010			×
0144-2010		✓	
0041-2011	✓		
0115-2011		✓	
0042-2011	✓		
0047-2011			×
0052-2011	✓		
0286-2011	✓		
0114-2011		✓	
0306-2011	✓		
	13	13	3
	45%	45%	10%

Source: OAG Analysis of family court files

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