



***Infanticide and Abuse:* Killing and Confinement of Children with Disabilities in Kenya**

DISABILITY RIGHTS INTERNATIONAL



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Infanticide and Abuse:
Killing and confinement of children with disabilities in
Kenya

Disability Rights International

Kenyan Association for the Intellectually Handicapped

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Cover photo: Photo of a dead tree surrounded by vultures in Nairobi National Park. Taken by Eric Rosenthal, DRI.

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EXECUTIVE SUMMARY

Infanticide and Abuse: *Killing and confinement of children with disabilities in Kenya* is the product of a two-year investigation by Disability Rights International (DRI) into institutions and orphanages across the country. DRI visited twenty one children's institutions – both public and private – in Kenya's capital of Nairobi and rural and coastal communities. There were approximately 3,400 children in the facilities investigated by DRI.

Some orphanages in Kenya are registered and licensed by the government, but many facilities are unregistered and hold children without any oversight. There are an estimated 1,500 orphanages in Kenya but no reliable estimates of the number of children in those orphanages.

Basic living conditions in many of the orphanages we visited were poor, but conditions in the facilities designated for children with disabilities were far worse – dangerously so. There is almost no support for parents who wish to keep their children with disabilities at home. As this report documents, parents are placed under enormous pressure to kill their children with disabilities.

Pressure to kill children with disabilities

DRI interviewed a woman whose close friend was pressured by her family to kill her two-and-a-half year old child with cerebral palsy. After killing her child, the woman became severely depressed. Her family has rejected her because of her deteriorating mental health, not because she killed her child.

Throughout Kenya, families reported to DRI that there is a common belief that children born with a disability are “cursed, bewitched, and possessed.” Many believe it is a punishment for the sins of the mother, including being “unfaithful” to her husband. Another common belief is that if the firstborn has a disability, the baby should be killed if the parents want to have more children.

DRI conducted interviews with mothers of children with disabilities – women who had elected to keep their children, withstanding pressure from family and the community to kill their children or give up their baby.

Children with disabilities are called idiots, imbeciles, abnormal, subhuman and a burden. – Mothers of children with disabilities

With both a written survey and personal interviews, DRI questioned approximately ninety mothers who opted to keep their child with a disability.

All the women DRI spoke with said it is common for parents to be pressured to kill their babies with disabilities and “many babies are killed at birth.”

Thirty seven percent of the women surveyed from Nairobi said they were pressured to kill their children with disabilities while fifty four percent of women from the more rural areas felt pressure to kill their children. Sixty three percent of all women surveyed stated that they were told “your child is cursed.”

One mother was told to put a needle in one of her child's veins and the needle would eventually kill them. Others were told to take their child to a witch doctor – who would either cure the child of their disability or kill them.

Medical negligence and social isolation

Many of the mothers in the survey told DRI that they left the hospitals without being told their child had a disability. Mothers complained that doctors and nurses do not want to treat them or their children with disabilities because they believe disability is dangerous or even “contagious.” Mothers are often sent home without any information or care plan as doctors feel children with disabilities are “not worth it” or are “not going to make it.”

Your child is a cabbage and will be a cabbage all her life. Doctor to mother of child with a disability. Later she found out her child was deaf.

Most mothers in the DRI interviews, who had been pressured to kill their children, had been told that they “brought shame to their families and community” that they would be unable to afford medical expenses, or that their child “would not live a good life” as reasons they should kill them.

When women in Kenya give birth to a child with a disability they are thought to be cursed, too. According to UN authority on Violence against Children Marta Santos Pais:

Witchcraft may also be viewed as a kind of genetic inheritance, with children of accused parents or relatives also suspected of harboring evil. This leads to increased stigmatization and social isolation not only for the child, but sometimes for the whole family who must struggle under a spoiled reputation.

More than half of the mothers we interviewed felt “alone” and “sad.” Many had been shunned by their families and rejected by their husbands and in-laws. Social isolation is a way of life for mothers of children with disabilities in Kenya. Children cannot attend school and other parents will not let their children play with a child with a disability as their children “might get sick.” Many children with disabilities are hidden in their homes. Mothers told DRI that their families did not want to be associated with their children and did not allow them to return home after being rejected by husbands and in-laws. One woman shared:

My own family disowned me, they chased me away.

And still another noted:

After she was abandoned by her husband for giving birth to a deaf daughter, she was shunned by her community and could not go out with her child on her own. She stayed home for a very long time until she found a support group for mothers of children with disabilities.

Eighty two percent of women DRI surveyed said they could not find anyone to take care of their child so that they might be able to work. Without government, charity, community or family support, it is next to impossible for mothers of children with disabilities to survive – thus reinforcing infanticide as an option.

Institutions and orphanages in Kenya

In the 21 institutions DRI visited, there were approximately 3,400 children – some as young as one week old. In the coastal city of Mombasa we found another 3,000 institutionalized children. Given that there are an estimated 1,500 orphanages in the country, the total number of children in Kenya's orphanages is likely to be vast.

Most children in orphanages are not orphans – it is poverty and disability that push children into orphanages. For the most part, children are not abandoned due to abuse, but rather because their families do not have the resources to adequately care for them.

The situation in institutions for children with disabilities is dire – DRI found children with disabilities in overcrowded and filthy conditions, children spending lengthy time in restraints and isolation rooms, overall lack of staff and untrained staff, neglect, and the withholding of medical care – treatment is readily available, yet children with disabilities are intentionally left to die. **Children with disabilities – if they survive childhood – will likely spend their adult lives in institutions – death will be the only way out.**

Although children with disabilities are at serious risk of abuse in institutions, all children locked away and forgotten are likely to be emotionally, physically and/or sexually abused. **DRI has documented severe neglect, physical and sexual abuse, and torture in Kenya.**

DRI found children in institutions locked overnight for thirteen hours or more, their lives at risk if there were to be a fire. In many places space was so scarce that four or more children shared one twin bed.

The light bulb was coated with dead bugs and dirt and was a potential fire hazard. The program director reported that the children are locked in the room at approximately 6pm each night and the door is not open until sometimes 7am the next morning. The door to the room was of solid steel with a latch bolt. If there were a fire, the children would perish before assistance could be provided. – DRI investigator

The list of egregious human rights violations perpetrated against children seems without end. At Compassionate Hands for the Disabled, children with cerebral palsy were left to feed themselves even though they were tied to chairs and were unable to hold spoons. For eighty-seven children, there were four staff members (some of whom were barely teenagers) and two volunteers.

At the Dagoretti Rehabilitation Centre five hundred children were crammed into several filthy rooms and passageways. An older child was guarding the door with a machete and a whip – to prevent children from leaving. Rehabilitating drug addicts and former male prisoners were roaming the facility with teenage boys and girls.

At Baby Blessing Children's Home, DRI found thirty six babies crammed into two small rooms with few staff. At Christ Chapel Children's Home, the director told DRI that "children make mistakes." They are punished by being locked in a dark room with no windows. They remain there for a whole day and are not allowed to play and are given no food. **According to the Director, "the children are terrified of the room and none of them wants to be there."**

International donors, volunteers and mission trips fueling the orphanage business and trafficking of children

DRI interviewed a Kenyan government official from the Ministry of Labor and Social Protection who said that **“trafficking is very high”** in institutions; **“children are being recruited and they’re shipped out of the country with promises of better lives but they go and they end up in brothels where they are sexually exploited.”** This official mentioned that the Children Services Department is working with the Criminal Investigation Department to **focus on orphanages “where children are being exploited.”** The exploitation is in many cases being carried out by ‘foreigners.’ According to the official, **“foreigners are paying to come, they are paying school fees for children and are sexually exploiting them.”**

In many developing countries, it has been observed that orphanages have become a booming business. And children are the commodity (see e.g. Laurie Ahern, Orphanages are No Place for Children, The Washington Post, August 11, 2013). Orphanages have also been recognized as feeders for child trafficking (Laurie Ahern, Huffington Post, January 2, 2016).

Most children in orphanages are not orphans. They have living parents and extended families. Poverty and the belief by families that their children will be better off in institutions – that they will be well-fed, given an education, or have access to rehabilitation for a child with a disability - drive them to give up their children.

By supporting orphanages rather than parents – many of whom are desperate to keep their children – donations are effectively splitting families apart and leaving children exposed to neglect, abuse, and trafficking. In Kenya, DRI found orphanages supported by thousands of dollars through mission trips and volunteers. Yet at the same facilities children are still living in squalor, or worse. Orphanage owners convince poor families they will take good care of their children while volunteers and mission groups – who most often undergo no background checks – have unfettered access to children and pay or donate thousands to volunteer at an orphanage.

Orphanages realized that if they had more children they could get more donations. At first, they only had local donations but now they started getting international donations. As they received more money, they realized they could use it for themselves...orphanages are not good places. They receive donations from people and misuse the resource, buying the most expensive cars for themselves while the children remain isolated from their families. – The local chief of Murango County on the outskirts of Nairobi

Happy Life Children’s Home asks for 50 USD per month to sponsor a child. According to the Director, 35 children are being sponsored thus far. Yet there are only two, non-professional staff for sixty children.

A Canadian website, Lift the Children, raises funds for up to one hundred orphanages in Kenya and many more around the world. Some of the most abusive orphanages uncovered by DRI – Dagoretti Rehabilitation Centre and Agape Home – are listed on their website as receiving funding.

According to the 2018 US State Department Trafficking in Persons (TIP) report:

Profits made through volunteer paid program fees or donations to orphanages from tourists incentivize nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities. These facilitate child trafficking rings by using false promises to recruit children and exploit them to profit from donations.

The volunteers themselves also represent a risk to the emotional wellbeing of the children. Volunteers that come and go constantly create and break emotional bonds with the children, which leads to attachment disorders in the children.

The Trafficking in Persons report also found that “volunteering in these facilities for short periods of time without appropriate training can cause further emotional stress and even a sense of abandonment for already vulnerable children with attachment issues affected by temporary and irregular experiences of safe relationships.”

Recommendations

All human beings are born free and equal in dignity and rights. – Universal Declaration of Human Rights (1948)

Kenya must take immediate action to stop the killing, torture and abuse of children with disabilities. It is fundamental to the obligations of all nations under international law that human life must be protected – for children with and without disabilities. Kenya has ratified the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD) – which require governments to take action necessary to **prohibit and prevent the killing of children** and protect the right of all children to live and grow up with a family.

The CRPD requires States to:

...adopt immediate, effective, and appropriate measures to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities. – CRPD, Article 8

It is the government’s obligation under international law to enforce existing criminal laws against infanticide. Kenya must educate the public, communities, health care professionals, and traditional carers about disability and should provide families the support they need to ensure children with disabilities grow up in safety.

Many of the practices of infanticide in Kenya are based on deeply rooted stigma and cultural traditions. Stakeholders and communities should be engaged in developing solutions to stop infanticide and institutionalization that will be appropriate and effective in Kenya. People with disabilities and family members are key constituency groups that must be engaged in creating solutions.

The CRPD requires governments to “consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations...concerning issues relating to

persons with disabilities.” Organizations like Child in Family Focus Kenya have been at the forefront of a deinstitutionalization movement seeking to shift the supports to family based alternatives. The Kenyan Association for the Intellectually Handicapped (KAIH) has shined a light on the challenges for children with intellectual disabilities in Kenya and the need to create supports for them and their families. It is crucial that the government engages in discussions with these relevant actors for meaningful reform.

Kenya must create support programs for at-risk families so that no child is placed in an orphanage or institution of any kind. All children with and without a disability need the love and care of a family. Extensive research now shows that placing any child in an institution (or residential program of *any* size) can cause psychological damage and leads to increased developmental disabilities. In addition, placing children in institutions exposes them to increased risk of violence, trafficking, and torture. Given the dangers of placing children in institutions, UNICEF’s 2013 State of the World Children Report called for an “end to the institutionalization” of children.

The United Nations Office of the High Commissioner for Human Rights (OHCHR) has observed that:

Institutional care in early childhood has such harmful effects that it should be considered a form of violence against young children...

Based on these findings, and “in accordance with international human rights and good practice norms,” OHCHR calls on all states to:

... place a moratorium on new admissions of children with disabilities into institutions [and] seek alternative family placement rather than any form of residential care for children who must be removed from their own family... – UN OHCHR, U.N. Doc. A/HRC/34/32, para. 58 (Jan. 31, 2017), para.58

Kenya is responsible for ensuring that international donations and volunteers do not perpetuate the segregation or abuse of children. Kenya should prohibit international volunteering and funding for orphanages and redirect such assistance for the protection of families and the full community inclusion of children with disabilities. As described in this report, there are many worthy non-governmental initiatives in Kenya to support children living in the community and to protect the rights of children with disabilities.

Reform programs to close institutions and support family reintegration should prioritize – and never exclude – children with disabilities. Kenya must establish effective human rights oversight and enforcement systems to protect children with and without disabilities. There must be an immediate accounting for all children now confined to institutions.

GOALS AND METHODOLOGY

Between 2016 and 2018 DRI conducted four fact-finding trips to Kenya and visited institutions in Nairobi, the capital; Muranga County and Kitui, two counties near Nairobi; and Mombasa, a major city on the coast. The original aim of our investigation was to document the situation of children with and without disabilities in institutions and to examine the pressures on families to give up their children. Based on our initial findings, we expanded our investigation to examine the problem of infanticide of children with disabilities. DRI visited 21 institutions – 17 private and 3 public. The institutions visited are listed in the Appendix II. For a visit in November 2017, DRI was accompanied by Melanie Reeves Miller, a Disability Services Specialist. Reeves has served as a court-appointed monitor recognized as an expert in the assessment of care in institutions and social service systems in the United States.

From 2017 to 2018, DRI conducted a quantitative and qualitative study on the challenges that mothers of children with disabilities face in Kenya. The quantitative study consisted of a structured survey conducted by DRI with the support of Kenyan Association for the Intellectually Handicapped (KAIH), one of the leading disability organizations in Kenya at the forefront of protecting the rights of children with disabilities and fighting the stigma and discrimination they face. DRI surveyed 61 mothers of children with disabilities for the quantitative portion of the study. All of the women belonged to support groups and were interviewed during support group meetings. For the women, this meant that they knew that it was a safe place to talk and share their experiences, allowing them to open up. The survey asked six questions regarding motherhood and disability, maternity care and supports and it is available in Appendix II at the end of this report. Of the women included in the DRI's study, 24 lived in two counties outside of the capital – 11 in Narok, and 13 in Nakuru.

In addition, DRI conducted in-depth interviews with 30 parents –mostly mothers – of children with disabilities on their experiences with disability and stigma in Kenya. Seven of these parents attended a workshop organized by DRI and KAIH. The workshop was centered on the right of children with disabilities to support in the community. DRI interviewed 11 mothers of children with disabilities that belong to a support group in Nairobi. DRI also interviewed 12 parents that are part of the Jomvu Constituency Disability Network for Persons with Disabilities (JOMVU Network) in Mombasa.

DRI is appreciative of the many people with disabilities, family members, government authorities, and service providers who were generous with their time in responding to this investigation. We met dedicated and well-meaning people working in orphanages, institutions, and other programs. Because this report is intended to identify human rights violations, we have not recorded all the excellent services and programs we saw in Kenya – particularly those programs that help children live in the community and retain ties with family. Some institutions also run excellent community programs and schools or provide necessary medical treatment or other services.

International law recognizes that all children - with and without disabilities - have a right to live and grow up with a family (including extended family, kinship care, substitute or foster family). Children should not be separated from living with a family just to receive care or services. This report refers to all residential programs for children as “institutions” or “orphanages” because they are places where children are separated from family. This report identifies the names of the most abusive facilities we visited. But we also include clean and well-staffed institutions in the report because we are concerned whenever children do not grow up with the love, care, and stable bonds that can only be formed within a family.

I. INFANTICIDE AND STIGMA

Throughout our investigation, parents of children with disabilities told DRI that their children are stigmatized and accused of being cursed or bewitched. DRI's study shows that parents, especially mothers, are often pressured to kill their babies or "give them up." **Among the mothers surveyed, 45% said that they had been pressured to give up and or kill their child. Mothers who kept their children were pressured to leave their children in an institution.** DRI's investigation into the situation in orphanages found that children in institutions are at risk of suffering inhumane and degrading treatment and torture. Some conditions within facilities we observed were immediately life threatening (see Part II of this report).

Lack of adequate medical care and supports for parents of children with disabilities adds to the stigma and the pressure to "give up" a child with a disability. Mothers spoke of an utter lack of information from health professionals on the disability of their child as well as a lack of adequate post-partum care. Parents of children with disabilities, especially mothers, told us that they do not receive adequate supports from the government to take care of their children. Mothers who refused to give up their children expressed sadness and feelings of loneliness as they are often ostracized from their families and communities due to the disability of their child.

A. Pressure to kill a child with a disability

DRI interviewed a woman whose close friend was pressured by her family to kill her 2 1/2 year old child with cerebral palsy. After killing the baby, the woman became severely depressed. The family has rejected her because of her deteriorating mental health, not because she killed her baby.

Parents who participated in a workshop organized by DRI and KAIH said that there is a belief that children with disabilities in Kenya are "cursed, bewitched and possessed."¹ According to their parents, children with disabilities are perceived as "*idiots, imbeciles, abnormal, subhuman, a burden.*"² They are further believed to be a punishment to the parents, especially mothers, for their sins. Mama Anna (*not her real name) was accused by her community of trying to get an abortion, perceived as a sin in Kenya, which resulted in her child's disability. Mama Anna's husband told her that she had used witchcraft which caused her child's disability; her parents in law blamed her for the disability of the child and sent her back to her family. A woman who was surveyed wrote that her family claimed that she had been unfaithful to her husband "and that is why I have a child with disability."

Given the negative beliefs that surround children with disabilities in Kenya, *all* of the parents interviewed by DRI stated that it was a common experience for parents with disabilities in Kenya to be pressured to "give up" or "to kill" their baby. As a result, "many children are killed at birth."³ Other groups have documented the killing of children with disabilities by being abandoned in the woods to die, deliberately starved to death, or buried alive in Kenya and East Africa.⁴

¹ DRI Workshop for parents of children with disabilities and advocates, November 2017.

² *Idem.*

³ Interview with mother of child with disability, November 2017.

⁴ Terre des Hommes Nederland, *Hidden Shame: Violence against children with disabilities in East Africa*. Available at

Among mothers who participated in the structured survey, 45% said that they had been personally pressured to kill their child. One mother was told to put a needle in one of the veins of her child, and that the needle would eventually kill it. According to the mothers, stigma and pressure to give up their child is worse in rural areas.⁵ DRI's study finds that the percentage of women who were pressured to give up their children is higher in rural areas than in the city. In Nairobi, 37% of the surveyed women responded that they had been pressured to kill their child while in rural areas, 57% of mothers reported pressure to kill their child.

Almost two thirds of the women (63%) stated that the reason why they were told to kill their child was because "the child was cursed." These findings are consistent with a problem identified by the Special Representative of the UN Secretary General (SRSG) on Violence against Children, Marta Santos Pais, who has observed that "orphans, children with disabilities, children with albinism, prematurely born or 'bad-birth' children, specially gifted children or those who are simply deemed "different" are most often targeted and branded as being witches."⁶ According to Santos Pais, being accused of witchcraft or of being cursed is "often associated with other forms of violence, including serious abuse tantamount to torture, sometimes leading to life-long injuries and even death."⁷ In DRI's survey, 25% of the women who pressured to kill their child were told to take the child to a "witch doctor" who could either "kill or cure the child."

Other cultural beliefs on disability also threaten the lives of children born with a disability in Kenya. In Mombasa, DRI interviewed the chairman of local organization Community United for the Advocacy of the Child. According to him, in the community there is a common belief that if the firstborn child has a disability, he should be killed if the parents want to have more children. In 2017, there was a case of a mother who gave birth to a blind child and who had to run away because the father of the child was trying to kill him. Community United for the Advocacy of the Child helped the mother find a place to live temporarily. The father found the mother and her son but before he could harm them, he was arrested.

Among women pressured to kill their baby, 54% told DRI that the reason given to them was that they "had brought shame to their family and community" for having a child with a disability. A third of the women were told to kill their child because they were not going to be able to afford the medical expenses. Fifteen percent of the women were told that they were not going to be able to work and take care of their child while eleven percent were told that their child "would not live a full life," so there was "no point in keeping the child alive."

<https://www2.ohchr.org/english/issues/women/docs/VAWHRC20/OtherEntities/TerreDesHommes.pdf> (last visited September, 2018). See also: Isabel Inguanzo, *The situation of indigenous children with disabilities*, European Parliament 'Think tank', p. 34. Available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603837/EXPO_STU\(2017\)603837_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603837/EXPO_STU(2017)603837_EN.pdf) (last visited September, 2018).

⁵ Interview with mother of a child with a disability, November 2017.

⁶ U.N., *SRSG-VAC on Violence against Children: Witchcraft Beliefs & Practices - 37th Session of the Human Rights Council*. Available at <https://violenceagainstchildren.un.org/news/srsg-vac-violence-against-children-witchcraft-beliefs-practices-37th-session-human-rights> (last visited September, 2018).

⁷ *Idem*.

Two thirds of the women who answered that they had been pressured to kill their child stated that they had been pressured by a family member, either their husband (14%), their own family (37%) or their husband's family (26%). The remaining third of the women were told to give up their baby by someone in their community, their church, or by their friends.

It is hard to know how many women actually agree to kill or "give up" their babies in Kenya. All of the women we interviewed had kept their babies but a few of them shared that they knew other women who had not. All of the mothers we interviewed were part of support groups that may have helped them keep their children. This includes the JOMVU Network (Mombasa), and the Kenyan Association for the Intellectually Handicapped (KAIH). One of the mothers told us that she was close to "giving up" before she found a support group and was given a "life opportunity" when she was employed. Had she not found this support group, she stated that she may have given up her baby, like many other women who are unable to access supports.

B. Social isolation of the child with a disability and the mother

In Kenya, a woman's identity is heavily linked to motherhood. From the moment a woman gives birth, she will be known as "Mama" followed by the first name of her first son or daughter. According to some of the mothers DRI interviewed, when a woman gives birth to a child with a disability, she is thought to be cursed too, like her child. The UN SRSG on Violence against Children has found that:

"Witchcraft may also be viewed as a kind of genetic inheritance, with children of accused parents or relatives also suspected of harboring evil. This leads to increased stigmatization and social isolation not only for the child, but sometimes for the whole family who must struggle under a spoiled reputation."⁸

Social isolation is a reality for mothers who keep their children with disabilities in Kenya. Over half of the surveyed women responded that they feel alone (54%) and sad (51%). A great majority (72%), stated that their families and/or their communities rejected them and their children with disabilities. One in five women said that the father of their child abandoned them after he found out the child had a disability.

One of the mothers told DRI that, "there is a lot of stigma against children with disabilities; the community will ostracize you and your child."⁹ Mothers told how their own families did not want to be associated with the child with a disability and did not allow them to return home after being rejected and sent away by their husband and in-laws. One woman shared that "my own family disowned me, they chased me away." Mama Paul (*not her real name) noted how, after she was abandoned by her husband for giving birth to a deaf daughter, she was shunned by her community and could not go out with her child or on her own. She stayed at home for a very long time, until she found a support group and employment where she and her daughter were treated with dignity. Mama Anna told DRI: "I locked myself and my baby in the house for a long time because of all the negative talk about my son." Another surveyed mother stated: "I can't take my child to church since they have not accepted my child."

⁸ *Idem.*

⁹ Interview with mother of child with a disability, November 2017.

Stigma affects all areas in the life of a mother and child, including work and school. One surveyed woman wrote: "I have a hair salon business and some clients refuse to come when they see I have a child with a disability." Children with disabilities also face rejection from schools. One of the mothers told DRI: "I was told that my son should go to school, but after three months they told me that my son had brought disgrace to the school. I took my son back home and I cried."

Two surveyed mothers shared that their children were rejected from schools because they of their disability. This is in part because disability is thought to be contagious. Mama Paul recalled how some parents refused to let their children play with Steve, saying they will also get sick. Given the strong stigma that parents with disabilities face in the community and the rejection children with disabilities face in schools, many children with disabilities are left hidden at homes. According to the parents interviewed by DRI, "children with disabilities are still being hidden in homes because of community attitudes and stigma."¹⁰ The Action Foundation works with children who are hidden at home and with their parents; it trains the parents and rehabilitates and reintegrates the children to schools. In June 2017 DRI visited the Action Foundation and met a three-year-old girl who had been rehabilitated by them. According to the Action Foundation, when they met her she was severely malnourished and had reportedly never left her home, her muscles had atrophied, and she had barely grown.

C. Medical negligence and lack of information for parents of children with disabilities

Mothers interviewed by DRI stated that nursing staff and doctors, particularly at public hospitals, do not tell the mother of the child that the child has a disability when they are born. The mother and child are often sent home without any information or care plan. According to Mama Paul, "the doctors and nurses at the government facility where I gave birth never informed me that my son had a disability. They just sent me home with no explanation at all." Another mother shared how she gave birth after two weeks of labor, and her son "was tired and could not cry." He was put in a nursery for one month. After that, she was told to take her child home but was not told that her child had a disability. Once at home, "I realized that my child was weak, could not breastfeed and eventually did not sit or walk." Another mother told DRI: "my baby was born with a disability, but I was not told when the baby was born. They did not feel that my child was worth enough to tell me what her condition was and how I could take care of her."

It can be months and even years before a mother finds out that her child has a disability, which may deprive the child of critical healthcare that could mean the difference between death and survival. Of the surveyed mothers, 93% stated that they found out that their child had a disability only after they took the baby home. A quarter of the women found out within the first six months, a fifth within a year, a third within 3 years, ten percent within six years and 3 mothers found out their child had a disability up to 15 years later. Most of the women realized on their own that their child may have a disability. Two thirds of the surveyed mothers responded that they suspected their child may have a disability because they were not reaching certain milestones, such as sitting up, crawling, talking or walking. A total of 18% found out when they took their child back to the hospital because they became ill. Only four mothers out of sixty-one said they had been informed that their child had a disability when they were born.

Once the mothers realize that their child may have a disability, they still face a lack of information, guidance, and treatment from doctors, particularly in government hospitals. As a result, half of the

¹⁰ DRI Workshop for parents of children with disabilities and advocates, November 2017.

surveyed women responded that they did not know how to best take care of their child. According to a mother, “doctors do not give you all the information about the child and his diagnosis. They assume you will not understand and do not try to explain anything. I went to several government clinics and nobody told me about the condition of my daughter. I had to go to a private doctor to get the information.” A mother interviewed by DRI stated that “doctors assume that the parents do not understand, therefore they don’t even care to explain. They just give you medication and tell you to give it to the child and nothing else.”

One of the mothers said that parents seeking services for their children with disabilities in public hospitals face a lot of stigma. Her daughter has cerebral palsy, but she did not know the diagnosis for several years. She went to various public hospitals, but no doctor informed her of her child’s disability. She was just given medication with no explanation of what it is for. Another mother stated that “there is no assistance from government hospitals and we did not know where to go get help for our children as this information is not available. The system is also so corrupt and therefore not easy to get help.” A mother that participated in DRI and KAIH’s workshop stated that “the doctors are very dismissive to parents of children with disabilities especially government facilities.”

The mothers also reported many instances of serious medical negligence. One mother said that “I noticed that my child was not well because he was convulsing a lot. I went to the doctor and he just gave me medication. He did not explain to me what it was for. When the medication was over, my child started convulsing again. The doctor did not care to tell me that I needed to come and get more medication when I ran out of it.” Another mother similarly stated that “I gave birth at Kenyatta National Hospital (KNH) and my child was convulsing. They gave him medication while in hospital, but they never informed me the diagnosis or that I needed to give him the medication every day. When I was discharged from hospital, they never told me that my son should continue taking the medication. We went home, and he continued convulsing.”

Mothers that were interviewed stated that most government facilities have nurses “who do not understand disability rights, they are rude to parents of children with disabilities and even in offering services they do not explain to the parent what needs to be done.”¹¹ According to a nurse that works at Kenyatta National Hospital and who attended the workshop organized by DRI and KAIH, nurses and doctors do not want to treat children with disabilities because of the stigma surrounding them; “many nurses believe that the disability could be contagious and do not want to treat the child.” According to this nurse, doctors also believe children with disabilities are not “worth it” or “are not going to make it.” Mama Anna said that after she realized something was not right with her daughter and sought medical attention, the doctor told her that her child was “a cabbage and would be a cabbage all her life.” She later found out that her daughter was deaf.

According to Joseph (*not his real name), a father of a child with a disability, the utter lack of information available to parents makes it harder for them to fight stigma and, in the end, to decide to keep their child.¹² Joseph talked about how complications during the birth of his son resulted in a disability. Nobody explained to him what had happened to his child, but he knew it was not his wife’s fault. If anything, he believed it was the fault of the nurses that were delivering his baby. When his and his wife’s families

¹¹ *Idem.*

¹² DRI Workshop for parents of children with disabilities and advocates, November 2017.

attacked his wife (the mother of the child) for having a disability and accused them of being cursed, Joseph said he could stand up to them because he knew for a fact that his child was not cursed. Without that certainty, “it would have been hard to fight the stigma and everyone telling you your child must be cursed.” Joseph is calling on hospitals to provide more information to families, as information is the best tool parents have to fight the stigma that they and their children will face on a day to day basis.

D. Lack of supports to families

Parents who keep their children reported to DRI that there are not adequate supports, including financial support, accessible schools, or job opportunities. Almost two thirds of the surveyed women responded that one of the main struggles they faced is the lack of support. Parents interviewed by DRI stated that they face hardships and an uphill battle to get their children education and the chance of a better life. Mothers of children with disabilities that belong to JOMVU Network reported to DRI that they have to carry their children on their backs to bring them to the only public school that accepts children with disabilities in the county. The roads are inaccessible, some children do not have wheelchairs, and there is no school bus to pick up the children.

Two surveyed women wrote that “I have to take my child to school carrying him on my back” and “the roads are inaccessible, and it is hard to move a wheelchair, so I have to carry my child on my back everywhere including to and from school.” According to one surveyed mother, “the school is inaccessible, and it makes my child's life difficult.” A teacher from one of the few public schools in Mombasa that accepts children with disabilities stated that due to the lack of accessibility, children with more severe disabilities just stay home.¹³

Among mothers surveyed, 97% responded that one of the main struggles they face is that it is very expensive to raise a child with a disability. Parents interviewed by DRI agreed that taking care of a child with disability is expensive in Kenya. According to parents from the JOMVU Network, “taking care of a child with disability is expensive with regards to food, medication and diapers. Some have severe disabilities and they use adult diapers.” Some of the families receive Ksh. 2,000 (USD 20) per month as support from the government. However, according to a mother whose child has spina bifida, she spends Ksh. 8, 160 (USD 81) per month on diapers alone. All of them have other children and struggle to make ends meet.

Over half of the surveyed women stated that they cannot find work as a mother of a child with a disability. Eighty two percent responded that they could not find anyone to take care of their child if they went to work. Some of these mothers face extreme hardship, as shown by the story of Mama George, one of the surveyed mothers. She was abandoned by her husband and shunned by her family and her community after she gave birth to a child with cerebral palsy. She has not been able to find a stable job that will allow her to bring her child with her or find someone to take care of her child while she goes to work. To survive she works plots of land for a day. She carries her child with her but the child cannot stand or sit on his own, so she digs a hole in the ground where she can “sit” him while she works. When she is done for the day she picks him up and carries him back home. She worries for the time when her son will be too big for her to carry, and she will not be able to take him with her to work.

¹³ DRI Interview with JOMVU Network, Mombasa, November 2017.

II. INSTITUTIONALIZATION OF CHILDREN IN KENYA

Throughout the world, a large percentage of children in orphanages have at least one living parent or extended families.¹⁴ This is certainly true in Kenya. DRI found that children in institutions in Kenya are placed outside the family because the families are unable to care for them due to poverty, disability, and lack of supports, or a combination of these factors. Given the stigma and pressure to kill children with disabilities, support and information for families is especially important to avoid unnecessary institutionalization. Despite the obvious dangers that exist for children in the community, DRI's investigation demonstrates that placement in institutions may be even more dangerous.

A. Poverty and disability: major factors behind institutionalization

“If I had had the resources, I would have kept my grandson with me.”

– Grandmother of a child who was in an institution.

“Some are in contact with their family, but they are poor, therefore they stay here.”

– Director, Christ Chapel Children's Home

More than half of the institutions that DRI visited informed us that “most” of the children have parents.¹⁵ According to a social worker in Nyumbani Village “all of the children have at least extended families.” Several children in the institutions “go home during the holidays,” as reported by the Local Chief of Muranga County and by a number of institutions.¹⁶ Based on interviews carried out by DRI, we found that children are in institutions not because they do not have any family, but because their family (nuclear or extended) does not have the resources to adequately care for them; there is a presence of disability in the family – the parent, the child, or both; or, the child simply got lost and authorities have been unable to locate the family.¹⁷

The lack of support for parents living in poverty is an important factor behind the institutionalization of children.¹⁸ The majority of institutions explained that most of the children placed in their facilities are unable to live with their parents because they are financially unable to care for them. Despite this, the great majority of institutions do not try to reach out and support children to remain with their families. Only two institutions visited by DRI, Dream Children's Home and Nyumbani Village, carried out efforts to

¹⁴ Mailman School for Public Health, *One Percent of Cambodian Children Live in Orphanages Yet Have a Living Parent*. Available at <https://www.mailman.columbia.edu/public-health-now/news/one-percent-cambodian-children-live-orphanages-yet-have-living-parent> (last visited September, 2018).

¹⁵ The Director of Agape Hope reported to DRI that he was not the legal guardian of the children as most of them still had families. Other institutions that reported this to DRI were Maji Mazuri, New Hope Children's Center, Canaan Orphanage, Nyumbani Village, Nairobi Remand and Rehabilitation, Thika Rescue Center, Dream Children's Home, Nairobi Children's Home, Child of Mercy Institution and Kenya Children's Home.

¹⁶ Visit to Maji Mazuri, New Hope Children's Center and Child of Mercy Orphanage, November 2017.

¹⁷ At Nairobi Children's Home, a public institution for children, around 85% of the children they receive got lost. According to the Director, “the younger the children, the harder it is to locate the family.” They receive children as young as 6 months old, “these are usually sent to an institution.”

¹⁸ A U.N. Study revealed that children from poor families are more likely to end up in institutions. See also Faith in Action Initiative, “Children, Institutions and Families: A Summary of Research to Help Guide Faith-Based Action (2014). See also UNICEF, *Children in Institutions: The Beginning of the End?* (2003), v.

locate the children's families. Dream Children's Home has 87 children and they had located the families of 83 -95% of their population.¹⁹ According to the Director, the children remained in the institution because the families did not have the resources to care for them. Similarly, a social worker in Nyumbani Village stated that they are always able to track down the extended families of the children. Once they are identified, Nyumbani Village informs the family that their child is at the institution. However, the child is not sent back to his or her family. According to the social worker, "most extended families are too poor to take care of the children."²⁰

Children of single mothers and teenage mothers are also at risk of ending up in an institution. Five institutions – a quarter of the institutions visited – reported that several children at their institution were given up by single mothers.²¹ In one institution, New Hope Children's Center, the Director told DRI investigators that more than half of the children were from single mothers. In another institution, Happy Life Children's Home, the Director told us that they received several children from teenage girls who would not or could not keep their children. In this institution DRI found one child that was one week old who had just been given up by his teenage mother.

Disability is also a major factor behind institutionalization. Many parents of children with disabilities must cope with poverty and with the stigma of having a child with a disability. According to the Chief Program Officer of the National Council for People with Disabilities (NCPWD) "many of the children with disabilities that are in institutions have a family."²² However, according to the Director of the National Children's Department, "culture still plays a role as having a child with a disability is said to be taboo and there are also financial constraints for most families. Unable to take care of their children, some parents place the children in institutions."²³

Lack of information, supports and services for families of children with disabilities – discussed in the first part of this report – plays a role in their abandonment and institutionalization. The Chief of Muranga County stated that "it is hard for the families of children with disabilities, the mother cannot work or take care of the home. They need support."²⁴ The Director of the Association of Charitable Children's Institutions (ACCIK) stated that "there are no supports for children with disabilities and their families, so they are likely to end up in an institution. Children are locked up like animals." In Maji Mazuri, a private institution for children with disabilities, we were informed that the majority of the children had families, but they were too poor or unable to take care of them. In another institution, Compassionate Hands for the Disabled, DRI found 89 children with disabilities including autism, cerebral palsy and intellectual disabilities. Most of these children had families but, according to one of the staff, they were too poor and unable to care for their children "so they leave them at the institution."²⁵

¹⁹ Visit to Dream Children's Home, June 2017.

²⁰ Interview with Social Worker, Nyumnani Village, November 2017.

²¹ Visit to New Hope Children's Center, Maji Mazuri, Salvation Army, Child of Mercy Institution, November 2017; Happy Life Children's Home, June 2017.

²² DRI Interview, June 2017.

²³ *Idem.*

²⁴ *Idem.*

²⁵ DRI interview with Director, Compassionate Hands for the Disabled, June 2017.

The Head of the Children's Department recognized that public institutions to which abandoned children with disabilities are sent "lack facilities and specialization to provide for their care."²⁶ DRI found that private institutions where children with disabilities are sent are also extremely abusive. At both Maji Mazuri and Compassionate Hands for the Disabled we found severe overcrowding, unhygienic conditions, use of prolonged restraints and isolation rooms, lack of staff, neglect, feeding practices that put the children's life at risk, and inadequate medical care.²⁷ Lack of supports for families of children with disabilities condemned them to a life of institutionalization and abuse in these institutions.

Mothers with disabilities are also likely to have their children taken away from them and put in an institution. According to the Director of New Hope Children's Center, one of the girls has a mother "who is dumb", that is, she has an intellectual disability. "The girl stayed with her mother in a village. A pastor that went to preach to that village could not leave the girl with her mom because she was dumb, so he brought the girl here."²⁸ Separation of children based on the presence of a disability in the parent, the child, or both is further in violation of Article 23 (right to a family) of the Convention on the Rights of Persons with Disabilities, as discussed in Section IV.A.

1. Indefinite segregation of children with disabilities

Placement in an institution is especially dangerous for children with disabilities, because they usually remain in institutions after they have become adults. The Director of a public institution, Thika Rescue Center, stated that children with disabilities were likely to stay there indefinitely or be transferred to another institution.²⁹ In Nyumbani Village, DRI found 8 children with disabilities, most of whom have siblings also in the institution. A social worker stated that when the siblings turn 18, they will leave the institution but the children with disabilities will stay indefinitely because "they have nowhere else to go."³⁰ DRI found a young man, presumed to be around 30 years old, still at this institution.

Maji Mazuri said in relation to children with disabilities that "the government has nowhere to take them and they tell us to stay with them." This institution houses a 36 year old man with a disability. According to staff, he had "outgrown the institution" so they are planning to take him to Mathare Psychiatric Hospital, the only psychiatric institution for adults with disabilities in Kenya. This report is focused on children in institutions but DRI did visit the Mathare Psychiatric Hospital. It is a large facility where we observed unhygienic and degrading conditions. Many people are left to languish on the floors and patios without any meaningful activity or prospect of reintegration into the community.

Article 14 (right to personal liberty), paragraph 1 (b) of the Convention on the Rights of Persons with Disabilities (CRPD) unambiguously states that "the existence of a disability shall in no case justify a deprivation of liberty."³¹ Segregation of children based on their disability constitutes arbitrary detention and violates Article 14 of the CRPD.

²⁶ DRI interview with the Ministry of Labor and Social Protection, June 2017.

²⁷ See Section II.

²⁸ Visit to New Hope Children's Center, November 2017.

²⁹ Visits to Thika Rescue Center, Nairobi Remand Home, June 2017.

³⁰ Visit to Nyumbani Village, November 2017.

³¹ Convention on the Rights of Persons with Disabilities (CRPD), G.A. Res. 61/106, UN GAOR, 61st Sess. Supp. No. 49, U.N. Doc. A/RES/61/106, Annex II, at 65 (13 December 2006) [entered into force May 3, 2008], art. 14.

B. Lack of oversight and monitoring

There is a pervasive lack of independent oversight and human rights monitoring of institutions that places all children at risk of inadequate care, exploitation, trafficking, and other human rights violations. The fact that many institutions are unregistered, and that the total number of children in institutions is unknown, makes it impossible for Kenya to create effective rights protections programs for children.

Whenever children are separated from family and community they are inherently at increased risk of abuse and trafficking. According UN former Special Rapporteur on Torture Juan Méndez, “the detention of children is inextricably linked [...] with the ill-treatment of children, owing to the particularly vulnerable situation in which they have been placed that exposes them to numerous types of risk.”³² Mr. Méndez stated that “the particular vulnerability of children imposes a heightened obligation of due diligence on States to take additional measures to ensure their human rights to life, health, dignity and physical and mental integrity.”³³

For these reasons, Article 16 of the CRPD requires States to monitor and supervise *all* institutions where children with disabilities and adults are detained.³⁴ To be effective, Article 16 makes clear that monitoring and oversight systems must be independent of the operation of service systems themselves. Article 16 also requires specialized programs to be created that are age and gender sensitive and ensure full access to protection for people with different disabilities. To be effective, protections for children with disabilities must be made available in a language and manner that is fully accessible to them.

One of the greatest challenges in Kenya is that children are in unregulated and uncounted institutions. It is difficult to evaluate the total number of children in institutions as no reliable data is available from government authorities, and there is a lack of oversight and monitoring. In its recent evaluation of Kenya, the Committee on the Rights of the Child (CRC Committee) simply observed that “a large number of children are living in care institutions.”³⁵ The Association of Charitable Children’s Institutions (ACCIK) estimates that there are over 1,500 private institutions in Kenya. According to the CRC Committee, most of the institutions in Kenya are not registered, so there could be many more.³⁶ In addition to the private institutions, there are twenty eight government institutions for children who are in conflict with the law or in “need of care and protection” – children who have been lost, abandoned or abused.³⁷

In the institutions visited by DRI alone there were approximately 3,500 children of all ages including infants as young as one week old.³⁸ In Mombasa, a major city on the coast of Kenya, DRI attended a “Christmas

³² U.N., *Detention is inextricably linked with ill-treatment, children must be protected – UN expert*. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15674&LangID=E> (last visited September, 2018).

³³ *Id.*

³⁴ CRPD, *supra* note 31, art. 16.

³⁵ Committee on the Rights of the Child (CRC Committee), *Concluding observations on the combined third to fifth periodic reports of Kenya*, CRC/C/KEN/CO/3-5 (21 March, 2016), para. 41 (a) (emphasis added).

³⁶ *Id.* para. 41 (b).

³⁷ Interview with the Ministry of Labor and Social Protection, June 2017.

³⁸ DRI found one-week olds in Happy Children’s Home and Baby Blessing Home. See Appendix I for name of the institutions visited by DRI and the number of children in them.

Celebration”³⁹ in a local stadium organized by a private company, Talanta Kenya, for children in institutions. When we arrived, we saw over 3,000 children from different institutions in Mombasa. We were informed by the organizers that fifty institutions were invited. According to the organizers “there are more than one hundred registered institutions in Mombasa, but we cannot include them all, there are too many children.”

The Children Services Department, under the Ministry of Labor and Social Protection, is responsible for registering private institutions. Local child protection officers are in charge of supervising the private registered institutions. However, the CRC Committee expressed its concern given the fact that “the inspection and monitoring of the care provided at childcare institutions are weak, and there is no complaint mechanism through which children can denounce violence in care institutions.”⁴⁰ In line with the CRC Committee’s statement, most of the institutions that DRI visited stated that they were not regularly monitored.⁴¹ Unregistered institutions operate under the radar and consequently are also never monitored.

Registered institutions are supposed to receive children only through a court order. However, a wide range of authorities and individuals, besides the courts, are sending children to institutions, including the police; local chiefs; the Kenya’s Children’s Department; the District Children’s Hospital; churches; and persons in the community who find children lost or in the streets.⁴² All but two private institutions visited by DRI⁴³ reported that they received children that were not referred by courts but were brought instead by private individuals, local chiefs, or the police. At Flomina Children’s Home, we found a 6-month old baby who had been abandoned in a beauty salon and brought by a “good Samaritan” to the institution. According to the Director, they “just kept the baby.”⁴⁴

1. Lack of monitoring and action from authorities to stop abuses

“It is our responsibility to monitor institutions for children with disabilities, but we do not do it.” – Chief Program Officer, National Council for People with Disabilities

DRI met with the National Council for People with Disabilities who recognized that it is their responsibility to monitor institutions specifically for children with disabilities, but they do not do it.⁴⁵ The Chair of Association of Charitable Children’s Institutions (ACCIK), an organization that represents over one hundred institutions in Kenya, informed us that there is no supervision by the government of registered and unregistered institutions; “if you register or not, it makes no difference in terms of the government and supervision.”⁴⁶

³⁹ It could hardly be described as a celebration, children stood in the blazing sun for over an hour before they got a bowl of rice with a tiny piece of meat.

⁴⁰ CRC Committee, *supra* note 35, para. 41 (b)

⁴¹ Visit to Dagoretti Rehabilitation Centre, June 2016.

⁴² Interviews carried out by DRI with staff and officials on June 2016 and June 2017.

⁴³ Visit to Dream Children’s Home, June 2017 and Child of Mercy, November 2017.

⁴⁴ Interview with Director, Flomina Children’s Home, June 2017.

⁴⁵ Interview with Chief Program Officer, National Council for People with Disabilities.

⁴⁶ Interview with Chair of Association of Charitable Children’s Institutions (ACCIK), November 2017.

There have been several instances where abuses have been reported to local children authorities who have in turn failed to act. Some organizations have suggested that individual government officials sometimes fail to act because they do not have the resources to do so or in some cases, because they may be colluding with the institution and benefiting from financial bribes.

According to the Chair of Community United for Advocacy for the Child, an organization in Mombasa that deals with institutions, some institutions are abusing the children. However, owners of institutions are often “very influential and when you identify a child is being abused and report, it goes to the legal system but the case does not go anywhere. The institution still remains open.”⁴⁷

C. Abuses in institutions

Kenya has a two-tiered system of institutions. As a general rule, the institutions for non-disabled children are cleaner and better-funded than the institutions for children with disabilities. Despite the greater support needs of children with disabilities, these facilities often had fewer staff and resources available to them. With some exceptions, we were able to observe higher levels of abuse in facilities for children with disabilities. While DRI is particularly concerned about the institutions identified in this report where conditions are filthy and unhygienic, or where we observed abusive staff, it is important to recognize that children are at increased risk of abuse *whenever* they are separated from family and community.

In his report on the protection of children from torture, UN former Special Rapporteur on Torture Juan Méndez noted that “even very short periods of detention can undermine a child’s psychological and physical well-being and compromise cognitive development.”⁴⁸ Once a child is separated from his or her family and placed in an institution, he or she is subjected to an array of dangers that can be irreversible, including psychological damage from being raised in congregate care without stable emotional attachments, developmental delays, and permanent intellectual disability caused by neglect and a lack of social stimulation.⁴⁹ Children in institutions also face exploitation⁵⁰ and are at a “heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment.”⁵¹

While psychological damage, exploitation, and trafficking can be hard to observe and document, we observed numerous cases of inhuman and degrading conditions and life-threatening treatment. These

⁴⁷ Mr. Mwawasi, Chairman of Community United for the Advocacy of the Child, Mombasa, November 2017.

⁴⁸ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68, (5 March, 2015), para 17.

⁴⁹ *Id.* para 16 and 33.

⁵⁰ Disability Rights International (DRI), *Abandoned and Disappeared Mexico’s Segregation and Abuse of Children and Adults with Disabilities*, (2010), <https://www.driadvocacy.org/wp-content/uploads/Abandoned-Disappeared-web.pdf>; DRI, *Twice Violated Abuse and Denial of Sexual and Reproductive Rights of Women with Psychosocial Disabilities in Mexico*, (2015), <https://www.driadvocacy.org/wp-content/uploads/Mexico-report-English-web.pdf>; DRI, *After the Fire Survivors of Hogar Seguro Virgen de la Asunción at risk*, (2017), <https://www.driadvocacy.org/wp-content/uploads/After-the-Fire-March-15.pdf>; DRI, *No Justice: Torture, Trafficking and Segregation in Mexico*, (2015), https://www.driadvocacy.org/wp-content/uploads/Sin-Justicia-MexRep_21_Abr_english-1.pdf (last visited September, 2018). More DRI reports and findings are posted at www.DRIadvocacy.org (including reports from investigations in Argentina, Guatemala, Mexico, Paraguay, Peru, and Uruguay).

⁵¹ Juan E. Méndez, *supra* note 48 para. 16.

cases are described below. In the limited number of institutions the government has monitored, it has made similar findings. In May 2010, for example, the Area Advisory Council of the Children's services inspected the "Naivasha Orphans Rescue and Rehabilitation Centre" and found poorly maintained records of the children, unqualified staff, poor diet, inadequate medical care, and poor water and sanitation. The government also found a terminally ill girl who was immediately taken to hospital after having been bedridden.⁵²

1. Life threatening conditions

DRI found immediate life-threatening conditions and practices in three institutions, two of which are for children with disabilities: Compassionate Hands for the Disabled and Maji Mazuri. In both institutions, children are locked overnight in a room for thirteen hours or more.⁵³ At Compassionate Hands for the Disabled, up to four children sleep in one bed for those thirteen hours. Being locked up and unable to move puts the children's lives at risk if there were to be a fire. At Maji Mazuri, a DRI expert found that:

"The light bulb was coated with dead bugs and dirt and was a potential fire hazard. The program director reported that the children are locked in the room at approximately 6 pm each night and the door was not opened until sometimes 7 am the next morning. The door to the room was of solid steel with a latch bolt. If there were a fire, the children would perish before assistance could be provided."⁵⁴

DRI visited Compassionate Hands for the Disabled three times, in June and November 2017 and in September 2018. On all three visits DRI observed feeding practices that put the children at risk of choking. In June 2017, DRI observed a four-year-old child feeding another child with cerebral palsy (pictured below) by pulling his head backwards and shoving food in his mouth, repeating the process before the child with cerebral palsy was done swallowing. He was unsupervised.

⁵² The Area Advisory Council made a report and decided to close the institution on 17th May 2010. Judicial Review Number 113 of 2010 in The High Court of Kenya at Nakuru.

⁵³ From 5pm to 6am in Compassionate Hands for the Disabled and from 6pm to 7am "sometimes 8am" in Maji Mazuri.

⁵⁴ Melanie Reeves Miller, "Report on Nairobi, Kenya visit with Disability Rights International, November 2017" (February 2018). Ms. Miller is an expert to courts in the United States that monitors institutions and community services for people with disabilities.



Compassionate Hands for the Disabled. Photo by DRI

The children with cerebral palsy were observed during lunchtime. Children with cerebral palsy commonly have feeding disorders and swallowing problems (dysphagia) that in many instances place them at risk for aspiration with oral feeding.⁵⁵ One child was being fed by another child who lives at the facility. Other children were being fed by caregivers who were placing heaping mounds of food on spoons into the child's mouth. The children were unable to manage the large amount of food and were thrusting most back to the spoon with their tongue which was then scooped back into the child's mouth.

At Compassionate Hands for the Disabled, DRI also found a child with "severe hydrocephalus" that has been untreated for years.⁵⁶ His condition had not been treated because, according to the institution, they do not have the monetary resources. According to a DRI expert, if "left untreated, progressive hydrocephalus may be fatal."⁵⁷ Untreated hydrocephaly can also be extremely painful for the child.⁵⁸ During our September 2018 visit to Compassionate Hands, this child was no longer present. Staff reported that the child had received treatment and was "cured," but they could not account for where the child was now residing.

At Canaan Orphanage, in Mombasa, we found thirty-eight children crammed in two small rooms. This was not the only institution where we found overcrowding, as detailed in Section II.A.3. However, at Canaan Orphanage the rooms were not adequately ventilated and there were at least two children per bed, with some children sleeping on the floor. According to the manager, during rainy season the rooms would

⁵⁵ DRI, *supra* note 50.

⁵⁶ "Hydrocephalus is a condition in which the primary characteristic is excessive accumulation of fluid in the brain causing the head to steadily grow in size, resulting in pain, risk of convulsions, developmental, physical, and intellectual impairments. Typically, early diagnosis and treatment (usually with insertion of a shunt to divert the flow of fluid), increases the chances for recovery and quality of life." Melanie Reeves Miller, Report on Nairobi Kenya visit 2017 (See appendix III) [hereinafter Melanie Miller Report].

⁵⁷ Melanie Miller Report, *supra* note 56.

⁵⁸ Disability Rights International, "Left Behind: The Exclusion of Children and Adults with Disabilities from Reform and Rights Protection in the Republic of Georgia" (2013), p. 6. Available at <https://www.driadvocacy.org/wp-content/uploads/Left-Behind-final-report1.pdf> (last visited September, 2018).

flood. Communicable diseases like malaria and cholera were common in the institution and spread easily due to the overcrowding and lack of ventilation. The institution reported that they did not have access to medications to treat these diseases. According to the manager, a six-month-old infant died in 2017 and at least three others had died in the last five years from malaria and cholera.

2. Trafficking

In 2018, The US Department of State's Trafficking in Persons report identified orphanages as a place where children are at high risk of trafficking. This risk is particularly high in Kenya because there is little or no oversight or regulation by the government. In Kenya, DRI observed that volunteers or people from the community regularly have access to children without background checks. As described in the voluntourism section of this report (Section III B), we observed numerous volunteers taking care of small children with no staff present from the institution. The free flow of visitors from institutions makes it possible for abuse within an institution and makes it possible for people to remove children from these facilities without any control. If the authorities are unaware of how many children are residing in institutions, it is impossible for criminal justice or anti-trafficking programs to know whether children are being removed from facilities for exploitation or trafficking.

DRI interviewed a Kenyan government official from the Ministry of Labor and Social Protection who said that "trafficking is very high" in institutions; "children are being recruited and they're shipped out of the country with promises of better lives but they go and they end up in brothels where they are sexually exploited."⁵⁹ This official mentioned that the Children Services Department is working with the Criminal Investigation Department to focus on orphanages "where children are being exploited." The exploitation is in many cases being carried out by "foreigners." According to the official, "people are paying to come, people are paying school fees for children and they are sexually exploiting them."⁶⁰

3. Lack of staff and neglect

In every single institution DRI visited, we found that there were few staff taking care of the children. Moreover, staff was not trained and in several places we found teenagers taking care of other children. In half of the institutions, the ratio was one staff person for ten to fifteen children. In the other half of the institutions, we found a more extreme ratio of one staff person for thirty to forty children. These institutions were Happy Children's Home, Canaan Orphanage (Mombasa), Salvation Army Institution (Mombasa), Flomina's Children Home, Christ Chapel Children's Home, Compassionate Hands for the Disabled, Baby Blessing Nursing Home, Dagoretti Rehabilitation Centre, Agape Hope Home, and Thika Rescue Center (public).

⁵⁹ Interview with DRI, June 2017.

⁶⁰ *Idem*.

Severe lack of staff was especially dangerous in cases of institutions for babies. At Happy Life Children’s Home, there were sixty babies in total, divided in four rooms. The babies were lying down, crying or sleeping in rows of cribs. There were only two staff to “care” for all of the babies, and both were busy changing diapers or preparing feeding bottles. No staff was available to soothe the babies that were crying or to provide individualized attention. At Baby Blessing Nursing Home, there were thirty six babies lying in cribs. There was only one woman that was “caring” for all the babies. One baby that was merely one week old started crying; it took ten minutes for the woman to come and check on him, even after the person that was showing us around called her.



Kenya Children’s Home, Photo by DRI

At Kenya Children’s Home, DRI found fifteen babies lying down on a blanket-covered floor with no stimulation. There was only one woman with the children and she was busy changing diapers. At Flomina Children’s Home, DRI found one “housemother” in charge of nine babies. When DRI arrived at the institution, we heard a baby crying for about five minutes. We thought the baby was alone until we walked in and saw the housemother lying down on a bed. It was only after we walked in that she got up to attend to the baby.

At Flomina Children’s Home, there was one woman in charge of over forty children. Some of the children were running around, would fall, and start crying, but nobody would come to check on them. At Salvation Army institution in Mombasa we found forty young children, including babies, in one room watching television with only one woman with them. At Christ Chapel Children’s Home we found around 30 younger children in one room with one woman, just sitting in the room.

Nyumbani Village brings in some older women referred to as “grandmothers” to take care of the children. They take care of up to fifteen children that all live in a house together. “Grandmothers” taking care of the children are not paid by the institution. Besides taking care of the 15 children, they have to work the land to grow food for the house, cook, and clean. Some of the “grandmothers” are very old. Children mostly play outside on their own without supervision. According to a social worker from Nyumbani Village, “this is not a home, we cannot account for where all the children are at any given time.”

At Compassionate Hands for the Disabled, there were very few qualified staff members. During our June 2017 visit we saw two volunteers, two women and two men, who were wearing lab coats and referred to themselves as a doctor and a physiotherapist. The institution houses eighty seven children. The volunteers were supervising two women who were moving all the children into the rooms where they would lock them up for the rest of the evening until the next morning.

i. Impact of neglect

According to former Special Rapporteur on Torture Juan Méndez, emotional neglect as a result of lack of attachments to a consistent caregiver is one of the most pervasive and damaging types of abuse in social care settings:

“One of the most egregious forms of abuse in health and social care settings is unique to children. Numerous studies have documented that a child’s healthy development depends on the child’s ability to form emotional attachments to a consistent caregiver. [...] Unfortunately, this fundamental need for connection is consistently not met in many institutions, leading to self-abuse, including children banging their head against walls or poking their eyes.”⁶¹

At Maji Mazuri DRI observed a young man with a disability rocking back and forth. At Compassionate Hands for the Disabled we saw one child banging his head on the wall both times we visited the institution, in June and in November 2017. At Happy Children’s Home several children were rocking back and forth. We also found a child that was three years old but looked as small as a one year old and was lying in a crib with the other babies. One baby girl was picked up by a staff to change her and she could not hold her head and arms up, so they were just dangling.⁶²

The former Rapporteur on Torture has also found that children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder.⁶³ However, children are not receiving adequate psychological support in institutions. In one institution, the director told us that the only emotional support the children get is from herself, though she is not a trained psychologist.⁶⁴ In Nyumbani Village there were two psychologists for one thousand children. A Chief Program Officer from the National Council for Persons with Disabilities (NCPWD) acknowledged that the “mental health system is extremely poor” in Kenya and there is little understanding on mental health care and how to provide it adequately.⁶⁵

4. Inhumane and degrading conditions

In several institutions children are essentially warehoused. DRI found poor water and sanitation and overcrowding in most of the institutions we visited.⁶⁶ More than half of the institutions were severely overcrowded, with twenty to thirty children sleeping in one room.⁶⁷ In various institutions, there were more children than beds so the children had to share mattresses.⁶⁸ Compassionate Hands for the Disabled

⁶¹ Juan E. Méndez, *supra* note 48 para. 16 and 33

⁶² DRI visit, June 2017.

⁶³ Juan E. Méndez, *supra* note 48.

⁶⁴ Visit to Flomina Children’s Home, June 2017.

⁶⁵ DRI interview, June 2017.

⁶⁶ The State also made this finding in an institution it supervised in Naivasha. Judicial Review Number 113 of 2010 in The High Court of Kenya at Nakuru.

⁶⁷ Flomina Children’s Home, Christ Chapel Children’s Home, Compassionate Hands for the Disabled, Happy Life Children’s Home, Nyumbani Village, Maji Mazuri, New Hope Children’s Center, Canaan Orphanage, Salvation Army, Baby Blessing Children’s Home, Agape Hope Home and Dagoretti Rehabilitation Centre.

⁶⁸ Christ Chapel Children’s Home had a capacity for 50 children, but it housed 69. The small boys sleep in the same room with older boys. The girls share beds.

has a capacity of fifty but it houses eighty five.⁶⁹ In one room, there were ten beds for thirty children. By 5 pm all the children were being put to bed. According to one volunteer, they are left in their beds from 5 pm until 6 am the next day. There were up to four children on one mattress put to sleep together (pictured below), where they would remain for at least thirteen hours, until the next morning. During the night these children would soil or wet the beds they share.



Compassionate Hands for the Disabled, Photo by DRI

At Compassionate Hands for the Disabled, DRI also saw how some children with cerebral palsy had a plate put in front of them and were left to feed themselves, even though they were tied to chairs and some of them could not hold a spoon. Children tried to eat but some of them were physically unable. Their mouths and faces were covered in food. Flies were flying all around them and landing in their mouths and on their faces. They were dressed in dirty and ragged uniforms, many with only soiled socks for footwear. All the clothes were gender neutral and the boys and girls had short haircuts alike, making it difficult to tell who was a boy and who was a girl.⁷⁰

Several facilities were also in very bad condition. Some of them were makeshift rooms without an adequate structure. The rooms were small and children were crowded in them. At Baby Blessing Children's Home, DRI found thirty six babies crammed in two small rooms. In a separate building, there were forty children living in three small bedrooms; the rooms had no windows and, as a result, the illumination and ventilation were very poor.⁷¹ At Agape Hope Home, several buildings were made of wood and there were leaks in the ceilings and walls when it rained. Several buildings had dirt floors.

⁶⁹ According to the Director of Compassionate Hands for the Disabled, the orphanage started as a day center to support children with disabilities and their families. However, several parents did not return for their children and the government urged her to create an institution. According to the Director, over the years, the government has continued to send dozens of children to Compassionate Hands, even after the Director has refused to take in more given the lack of space for them. This has led to a severe overcrowding in the institution.

⁷⁰ Melanie Miller Report supra note 56.

⁷¹ DRI visit, June 2016.

One particularly disturbing institution was Dagoretti Rehabilitation Centre. This institution was practically a slum with several rooms and passages where five hundred children were crammed in extremely unhygienic conditions. One of the older children was guarding the door with a machete and a whip to prevent the children from leaving. The most dangerous aspect of this facility was that rehabilitating drug addicts and former prisoners are crammed together with girls and teenagers. Several adult men are also roaming the institution.

At Canaan Orphanage in Mombasa there is also severe overcrowding. Thirty eight children sleep in two rooms. There are five bunkbeds in each room so two children sleep in one bed and some children sleep on the floor. According to the Director, during the rainy season the rooms flood. There is no adequate ventilation in these rooms, despite the fact that the institution is on the coast and it gets very hot and humid. Other rooms in the institution had a fan, but not the rooms where the children were sleeping. The facility had two bathrooms in very bad conditions that had a stench of urine and feces.

5. Use of isolation rooms and restraints

At Christ Chapel Children's Home, the director told us that when young children "make mistakes," they are punished by being locked in a dark room with no windows. They remain there for a whole day, are not allowed to play inside and are given no food. According to the Director, "the children are terrified of the room and none of them ever wants to be there."⁷² In a meeting later with the government, the Director of Children's Services stated in relation to this practice: "that is torture." At Maji Mazuri, an institution for children with disabilities, we saw one child, Leila (pictured below), locked in a shack where old furniture was stored. When we noticed her in the window, the door was opened and we were told she prefers to be in the room by herself. The door was closed and locked afterwards.⁷³



Maji Mazuri, Photo by DRI

At two institutions for children with disabilities, Maji Mazuri and Compassionate Hands for the Disabled, we found children tied to wheelchairs. Staff maintained that they had to be tied down, otherwise they

⁷² DRI visit, June 2017.

⁷³ Melanie Miller Report, *supra* note 56.

might fall, which suggested that these children remain tied down for prolonged periods of time. At Maji Mazuri, we found a young man tied to a wheelchair with pieces of cloth across his waist. He was standing up with the chair attached trying to push open the gate to the outside.

At Compassionate Hands for the Disabled we also found children in hand splints for prolonged periods of time, a form of restraint. When questioned, the “physiotherapist” reported that the children wear the hand splints throughout the day to “straighten” their hands. There were no documents to indicate an assessment had been conducted to determine why the children needed the hand splints or the benefit to the child of wearing the splints.

Additionally, at Compassionate Hands for the Disabled six children were tied to a standing board in what seemed to be a very painful position, to allegedly keep their legs straight. The children remained in this position for the entire duration of our visit, which was over three hours. By the end of our visit the children were crying out in pain and begging us to release them. The “physiotherapist” told us that the children were going to remain in that position for another couple of hours. After a child begged to be released, the “physiotherapist” replied “if you keep crying, I will keep you here longer.”

The children were observed crying and expressing discomfort, but were not provided an alternate position during the visit. Many of the children in these standing devices were observed to be on “tiptoes” or without their feet touching the bottom of the device, indicating inappropriate positioning and inadequate support, potentially causing additional pain and discomfort.

6. Inadequate medical care

In three institutions, including two for children with disabilities, DRI witnessed instances of gross medical neglect and inadequate care. In the institutions for children with disabilities we found use of inadequate wheelchairs that could cause pain. Wheelchairs were ill-fitting and did not appear to have been designed specifically for the child in order to support contractures and reduce further deformity. Many children observed were noted to have knees rubbing together, elbows rubbing against armrests and lap trays, and legs extended and crossed without proper orthotic cushions, supports, or wedges that would “relieve the pressure and reduce the risk of skin breakdown and pain associated with decreased range of motion and limitation in mobility.”⁷⁴

At Maji Mazuri we could hear one child’s bruxism – grinding of the teeth – upon exiting the building to the courtyard where the child was sitting in a wheelchair. He was sitting in a wheelchair, crying and grinding his teeth (pictured below). He rolled his chair closer to us and twisted to the point that his legs were caught between the seat back and the seat. His crying and bruxism intensified. He continued to try and get out of his chair and was sitting high on the back which posed an imminent risk of injury with the chair tipping and him falling to the ground. A staff person grudgingly attempted to assist him without taking the lap tray off the chair in order to safely adjust him to a front-facing position, again risking injury.

⁷⁴ *Id.*

In both institutions for children with disabilities there were no medication records at all despite the fact that anti-epileptic medications and anti-psychotics were being administered to the children. According to DRI expert Melanie Reeves Miller, there were no assessments or psychiatric diagnoses for prescribing the medication, no assessments of the the positive or negative effects the medication was having on the children, and no lab tests to monitor the levels of the medications for therapeutic ranges or toxicity. At Maji Mazuri, all the medications were mixed in a bucket including loose tablets, with no boxes to identify the medication. At Compassionate Hands for the Disabled, the “doctor” informed us that one child (who is eight years old) was given 10mg per day of Risperdal (an anti-psychotic medication) due to “hyperactive behaviors.” Yet again, “there was no evidence of a psychiatric assessment to support a mental health diagnosis that would require a dosage of nearly four times the recommended adult range.”⁷⁵



Maji Mazuri, Photo by DRI

At Canaan Orphanage we found a young girl, around eight years old, sleeping in the girls’ room. The room was stuffy and hot but she had her sweater on. We walked up to her and asked her if she was okay and if she could sit up. She had a high fever, looked weak and could barely sit up, and her eyes were watery and red. Staff reported being unaware that the girl was unwell and had not taken her to a hospital or given her any medication to at least control her fever. When we asked the manager to take the girl to the hospital, he said that they did not have a car and the girl would probably have to walk for half an hour under the sun to get medical care.

One teenager that was rescued from an institution by Stahili told us that he had an accident while staying at the institution. He was twelve years old and he was sent to fetch water using a donkey cart down to the river. The weight of the cart was too much when trying to push it up again, and he fell and got a large open wound in his head. However, he was not taken to a clinic to receive immediate care. Instead, the institution waited for some volunteers that were coming three days later to take him to get proper medical attention. He still has a large scar on his head because of the accident. According to his aunt, “he could have died.”

7. Physical abuse and sexual abuse

At Compassionate Hands for the Disabled, one volunteer told us during our June visit that her sole role in the institution is to “watch out for abuse.” She informed us that she often saw instances of physical abuse from the staff towards the children and reported them to the director. During our June visit, we saw the “doctor” pushing the children around and slapping one of them. When we came back in November we saw the same “doctor” hit a child two times with a long rubber pencil.⁷⁶ At Christ Chapel Children’s Home the director showed us a stick that she said was used to hit children when they misbehaved.

⁷⁵ *Id.*

⁷⁶ *Id.*

Child of Mercy Orphanage is an institution in Mombasa. Its director used to work at another institution where she witnessed abuse against the children. She decided to open Child of Mercy to transfer the children from the abusive orphanage to Child of Mercy and stop their abuse. Recently, Child of Mercy Orphanage received eighteen boys that had been sexually abused at another institution called the Twaaf Foundation. According to the director, staff had complained to the police about a male staff member that was sexually abusing the boys at night.

8. Malnutrition

“The children eat what we can afford, depending on money available.”

– Director, Christ Chapel Children’s Home

Many of the children we saw had very thin hair and arms and had bloated stomachs – a sign of malnourishment due to a lack of protein.⁷⁷ At almost half of the institutions visited by DRI, staff told to us that often they did not have enough food to feed the children.⁷⁸ At Agape Home, Compassionate Hands for the Disabled, and Flomina Children’s Home we arrived during lunch time so we were able to observe the food being given to the children. At all three the food lacked protein; it consisted of ugali (a type of polenta) and greens. During a monitoring visit that the State carried out to an institution, it found an “unbalanced diet, including poor storage of food.” This institution was later closed.⁷⁹

III. INTERNATIONAL DONATIONS AND VOLUNTEERS ARE FUNDING ORPHANAGES

“Orphanages are using children to make money” – Head of ACCIK

DRI found that donations are being used to expand institutions. Individual donors from Australia donated money to Flomina Children’s Home to build an extra room for boys. Habitat for Humanity was building a whole dormitory for boys at Dream Children’s Home.⁸⁰ At Happy Life Children’s Home,⁸¹ donations were being used for a new building. New Hope Children’s Home had also expanded a school on the grounds of the orphanage and built a dining area for the children with donations.

Chris,⁸² an eleven-year-old child that spent years in an institution, told DRI he had to write letters to international sponsors that he never met. He also had to ask for donations. During our visits, DRI found cases of donations coming from individual donors in Australia, Canada, the US, and Germany. Orphanages also receive funds through international websites. A Canadian website, Lift the Children,⁸³ raised funds for up to one hundred orphanages in Kenya and many more around the world. Individuals can choose to

⁷⁷ Gail Sessoms, *Swollen Stomachs in Malnutrition*, at LIVESTRONG (Oct. 3, 2017). Available at <https://www.livestrong.com/article/505253-swollen-stomachs-in-malnutrition/> (last visited September 2018).

⁷⁸ Visit to Compassionate Hands for the Disabled, Flomina Children’s Home, Agape Hope Home, Dagoretti Rehabilitation Centre, Canaan Orphanage, Baby Blessing Children’s Home, Nyumbani Village, Maji Mazuri and Christ Chapel Children’s Home.

⁷⁹ Judicial Review Number 113 of 2010 in The High Court of Kenya at Nakuru.

⁸⁰ Visit to Dream Children’s home, June 2017.

⁸¹ Visit to Happy Life Children’s Home, June 2017.

⁸² Chris *not his real name*, was rescued from an orphanage by the Stahili Foundation.

⁸³ Lift the Children website. Available at www.liftthechildren.org (last visited September 2018).

sponsor a child for a month or donate a specific amount to the orphanages. Dagoretti Rehabilitation Centre and Agape Home, two abusive institutions visited by DRI, are listed on this website and receive funding from it.⁸⁴

Happy Life Children's Home seeks USD \$50 per month to sponsor a child. According to the Director, thirty five out of sixty children were being sponsored by international donors.⁸⁵ It is worth noting that despite this funding, the institution had only hired two nonprofessional staff for sixty children.

A. Economic exploitation of children

The US State Department in its Trafficking in Persons report found that:

“Profits made through volunteer-paid program fees or donations to orphanages from tourists incentivize nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities. These orphanages facilitate child trafficking rings by using false promises to recruit children and exploit them to profit from donations. This practice has been well-documented in several countries, including Nepal, Cambodia, and Haiti.”⁸⁶

According to a Children's Services Official, “many children have been put in orphanages, many are not even from Kenya; they are from Tanzania. They are brought here to make money for somebody.”⁸⁷ The Local Chief of Muranga County, in the outskirts of Nairobi, told DRI that:

“Orphanages realized that if they had more children they could get more donations. At first, they only had local donations but they also started getting international donations. As they received more money, they realized they could use it for themselves. It became corrupt. They started misusing the donations”⁸⁸ – Local chief, Muranga County

The Local Chief of Muranga County stated that “orphanages are not good places. They receive donations from people and misuse the resources, buying the most expensive cars for themselves while the children remain isolated from their families.”⁸⁹ The Director of an orphanage told DRI that “orphanages are raising a lot of money. The Directors are rich. They create websites and get a lot of money from the US; the money is not going to the children.”⁹⁰

The Children's Services authority told DRI in 2017 that they were denying registration to new orphanages. However, according to officials at that time: “we are getting a lot of resistance, they are fighting us in court because they want to be registered so that they can make money. Children are being exploited for

⁸⁴ Dagoretti Rehabilitation Center, Agape Home

⁸⁵ DRI interview, June 2017.

⁸⁶ U.S. State Department, *Trafficking in Persons Report (2018)*, p. 22. Available at <https://www.state.gov/j/tip/rls/tiprpt/2018/index.htm> (last visited September 2018).

⁸⁷ Senior Assistant Director Children's Services, June 2017.

⁸⁸ DRI interview, June 2017.

⁸⁹ *Id.*

⁹⁰ Interview with Director, Christ Chapel Children's Home, June 2017.

an economic gain.”⁹¹ Even if the government managed to stop registration of orphanages, in practice orphanages don’t need to be registered to raise funds. According to the Director of an orphanage in Nairobi, “some do not even have children in the orphanages, they just lie to raise funds. I know a Bishop in Kenya who raised money saying he had a children’s home but when some visitors came to see the home, they did not find any children.”⁹²

B. Voluntourism

Several of the institutions we visited received volunteers from Canada,⁹³ Denmark,⁹⁴ Spain,⁹⁵ Italy,⁹⁶ and the US.⁹⁷ At Flomina Children’s Home, a sixteen-year-old that we interviewed told us that volunteers came often to the institution – at least twice a month. “When they come, they bring food and volunteer for a week or even a month.”⁹⁸ A child who had left an orphanage told DRI “many white people came to the home and brought clothes and played with the children.” DRI only found volunteers in institutions for children without disabilities.

Orphanages charge volunteers to stay in the facilities. Happy Life Children’s Home charged each volunteer \$35 USD per day. According to the Director, they receive groups of up to thirty people who stay from one week up to six months. The organization receives volunteers all year round and makes up to an estimated \$100,000 USD per year on volunteer fees. To accommodate all the volunteers, DRI investigators found the babies crammed in two rooms, while the volunteers had a whole floor to themselves.

Locked away and without the protection of family and community, children are at a much greater risk of exploitation – sexual and physical abuse and trafficking for labor and sex have all been documented by DRI in orphanages around the world.⁹⁹

In all the orphanages we visited, there were no background checks for volunteers. Volunteers have unfettered access to the children. Allowing unrestricted access to children by unchecked volunteers has led to instances of foreigners sexually abusing children in orphanages in Kenya. The US State Department, in its Trafficking in Persons report, found that “it is rare that background checks are performed on these

⁹¹ Interview with Ministry of for Labor and Social Protection, June 2017.

⁹² Interview with Director, Christ Chapel Children’s Home, June 2017.

⁹³ Canadian organization Love Team Travelers sent volunteers to Flomina Children’s Home.

⁹⁴ Danish organizations THIVS and Save a Heart send volunteers to orphanages in Kenya and in other countries.

⁹⁵ Visit to Canaan Orphanage, November 2017.

⁹⁶ *Id.*

⁹⁷ DRI encountered 20 volunteers from the US that were sent by Go Ministry, an organization based in the US.

⁹⁸ Girl at Flomina Children’s Home.

⁹⁹ See DRI reports: *No Way Home, The Exploitation and Abuse of Children in Ukraine’s Orphanages* (2015), *Left Behind, The Exclusion of Children and Adults from Reform and Rights Protection in the Republic of Georgia* (2013), *Abandoned and Disappeared Mexico’s Segregation and Abuse of Children and Adults with Disabilities* (2010), *No Justice: Torture, Trafficking and Segregation in Mexico* (2015) at <https://www.driadvocacy.org/media-gallery/our-reports-publications/>. See also Human Rights Commission of the Federal District, Recommendation on “Casitas del Sur”, Doc- 04/009. Available at http://cdhdf.org.mx/wp-content/uploads/2014/03/reco_0904.pdf (last visited May 29, 2018). See also, *Hunger, sexual abuse, beatings: a judge uncovers the case of a Catholic children's shelter in Salamanca*, Sin Embargo, (July 11, 2017). Available at <http://www.sinembargo.mx/11-07-2017/3259825> (last visited September 2018) (author’s translation).

volunteers, which can also increase the risk of children being exposed to individuals with criminal intent.”¹⁰⁰

In 2007, an Oklahoma missionary who volunteered at a children's home in Kenya “was sentenced to 40 years in prison Monday for sexually assaulting three girls and a boy while working at the facility, according to court documents.”¹⁰¹

“The Director of Flomina Children’s Home told DRI that ‘anyone can volunteer.’ At Happy Life Children’s Home, the Director told DRI that volunteers could bathe the children. In that same institution, we saw teenagers and grown men from the US carrying babies around.” – DRI investigator

Through the fees they pay and donations that volunteers continue to send long after their week with the children is over, volunteers are unknowingly perpetuating the cycle of institutionalization by making institutions profitable. Until donations are redirected to help vulnerable families rather than supporting orphanages, the violence, damage, and abuse to children separated from families will continue.

“Institutional care in early childhood has such harmful effects that it should be considered a form of violence against young children.”¹⁰²

– United Nations High Commissioner for Human Rights

The volunteers themselves represent a risk to the emotional wellbeing of the children. Volunteers that come and go constantly create and break emotional bonds with the children, which leads to attachment disorders.¹⁰³ As recognized by the former Special Rapporteur on Torture, not being able to form stable and lasting relationships deeply impacts the emotional development of a child.¹⁰⁴

An extensive body of research has shown that children need to form loving and stable emotional attachments to family in order to grow up healthy and avoid the emotional damage of attachment disorders. Orphanages where volunteers come and go provide children with the opposite of such an environment. They grow up without family, and they form attachments to volunteers who may be gone from their lives within days.

The Trafficking in Persons report found that “volunteering in these facilities for short periods of time without appropriate training can cause further emotional stress and even a sense of abandonment for already vulnerable children with attachment issues affected by temporary and irregular experiences of safe relationships.”¹⁰⁵

¹⁰⁰ U.S. State Department, *supra* note 86, p. 22.

¹⁰¹ Lorenzo Ferrigno, *Missionary sentenced to 40 years for sexually assaulting children in Kenya*, at CNN (Feb. 23, 2017). Available at <https://www.cnn.com/2016/03/07/us/missionary-sexual-assault-kenya-children/index.html> (last visited September 2018).

¹⁰² U.N. General Assembly, *Report of the United Nations High Commissioner for Human Rights A/HRC/34/32* (January 2017) at para. 58.

¹⁰³ Weber, Mark R., *There’s no such thing as a good orphanage*, Available at <https://www.povertyinc.org/news/orphanages> (last visited September, 2018).

¹⁰⁴ Juan E. Méndez, *supra* note 48.

¹⁰⁵ U.S. Department of State, *supra* note 86.

IV. KENYA'S OBLIGATION TO GUARANTEE THE RIGHT TO COMMUNITY INTEGRATION AND TO A FAMILY

There is a growing international consensus that placement of any child in an institution is inherently damaging to their emotional growth and development. Based on what the international community has learned about the danger of institutions and the importance of families, UNICEF in 2013 called for governments to “end the institutionalization of children.”¹⁰⁶ Moreover, in 2015, the CRPD Committee expressed its concern about “the institutionalization of persons with disabilities and the absence of community support services that provide for inclusion of persons with disability in society.”¹⁰⁷

The UN Guidelines for Alternative Care of Children call on governments to plan for the progressive elimination of institutions for all children.¹⁰⁸ This obligation has now been codified as a requirement of international law. Article 19 of the CRPD protects the right of *all* people with disabilities to live in the community. In General Comment No. 5, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) unequivocally states that “[f]or children, the core of the right to be included in the community entails a right to grow up in a family.”¹⁰⁹ The CRPD Committee goes on to explain that:

“Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. ‘Family-like’ institutions are still institutions and are no substitute for care by a family.”¹¹⁰

In order to prevent new placements in institutions, governments must create protections for families, so that the pressures of poverty, disability, and stigma do not force them into a situation where they feel they have no choice but to give up a child.

As a matter of policy, Kenya has moved in the right direction. In October 2017, Kenya put a moratorium on the creation of new institutions. DRI heard from the Chief of the ACCIK, however, that despite the moratorium, the government is still authorizing them to open new homes.¹¹¹

As this report shows, Kenya has not yet implemented a program that would prevent new placements in institutions or created the support necessary for children to be reintegrated into society.

¹⁰⁶ UNICEF, *THE STATE OF THE WORLD'S CHILDREN* (2013).

¹⁰⁷ Committee on the Rights of Persons with Disabilities (CRPD Committee), *Concluding Observations on the Initial Report of Kenya*, CRPD/C/KEN/CO/1 (Sept. 30, 2015), para. 37.

¹⁰⁸ Guidelines for the Alternative Care of Children, G.A. Res. 64/142, para. 22 (Feb. 24, 2010) [hereinafter “Guidelines for Alternative Care” or “the Guidelines”].

¹⁰⁹ U.N. Secretary-General, *General Comment No. 5 (2017) on living independently and being included in the community*, U.N. Doc. CRPD/C/GC/5 (Oct. 27, 2017), para. 37. [hereinafter General Comment No. 5] (emphasis added).

¹¹⁰ *Id.*, para. 16(c).

¹¹¹ Chief ACCIK, November 2017.

A. Provide supports to families

“We are not interested in institutionalizing children, we would prefer if they stayed with their families, they are more protected there and also have access to education.” –

Director of Nairobi Remand and Rehabilitation Center

Article 23 of the CRPD recognizes the right of children to family. Article 23(4) of the CRPD requires governments to “ensure that a child shall not be separated from his or her parents against their will” and “[i]n no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.” CRPD Article 23(5) establishes the most important protection of the right to grow up in a family, stating that governments shall “where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.” Thus, if a child is taken away from his or her parents because of a disability, Article 23(5) makes it clear that the child still has a right to grow up in a family environment with extended kinship care or in a substitute family.

It is worth noting that Article 23(5) **“never mentions the possibility of placing a child in an institution or in any form of residential care.”**¹¹² Article 23 of the CRPD is one of the only provisions of the CRPD that *explicitly applies to “children”* whether they have a disability or not.¹¹³ This is because it protects against the separation of children from their families based on the disability of the child *or* the parent. The placement of children in institutions based on their disability is one form of discrimination that the CRPD prohibits. Children are also often removed from their parents because the parents themselves are perceived as unable to take care of them – because of real or perceived disabilities. This is also prohibited by the CRPD.

The only situation in which disability is not involved in the break-up of a family, narrowly speaking, “is when neither the child nor parents have a disability, and the child is removed because of parents who are abusive or neglectful.”¹¹⁴ In practice, children who grow up in abusive homes almost certainly suffer from the emotional trauma of physical or psychological violence, or the emotional difficulties associated with growing up in such a toxic atmosphere, and are at a heightened risk of developing a mental health condition¹¹⁵ and, if unaddressed, a disability.¹¹⁶ Placing a child in an institution will very likely not guarantee him access to mental health treatment; instead, he is likely to be traumatized given the violence inherent to institutions.¹¹⁷ Thus, these children should be given the full benefits of the CRPD and should also have a right to grow up in a family.

¹¹² Eric Rosenthal, *A Mandate to End Placement of Children in Institutions and Orphanages: The duty of governments and donors to prevent segregation and torture*, Protecting Children against Torture in Detention (2017), p. 325 (describing the use of the CRPD and the Convention Against Torture to influence government policy and development assistance).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Juan E. Méndez *supra* note 48.

¹¹⁶ U.N. General Assembly *supra* note 102, para. 52.

¹¹⁷ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has reported that institutional care in early childhood has such harmful effects that it should be considered a form of violence against young children. See U.N. General Assembly, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/70/213 (July 30, 2015), para. 73.

Kenya has an obligation to guarantee the right of children with and without disabilities to a family and to be free from torture and inhuman and degrading treatment. In order to achieve this, it is key that Kenya starts a deinstitutionalization process, prevents family separation, and places a moratorium on new admissions of children to institutions. All of these efforts need to involve children with disabilities and their families from the start and not leave them for last. Kenya must also harmonize its legislation to international standards and ensure that any new legislation conforms to the rights of children with and without disabilities under international law. In this section, we present in more detail the steps that Kenya must urgently take to guarantee the rights of all children.

B. Fight stigma against disability in Kenya

Under Article 4 (b) of the Convention on the Rights of People with Disabilities (Convention or CRPD), Kenya has the obligation “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.” Thus, Kenya has the responsibility to fight discrimination and stigma against children and persons with disabilities. The CRPD also lays out the responsibility of State Parties like Kenya to provide “information, services and supports” to children with disabilities and their families. The Convention explicitly states that this support is to be given in an “early and comprehensive” manner with a view to guarantee the right of children with disabilities to “family life” and in order to prevent “concealment, abandonment, neglect and segregation;” an implicit acknowledgment that the lack of support may lead to these practices. According to Article 23.4 of the CRPD:

“States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.”

Based on DRI’s investigation, Kenya has failed to fight stigma against children with disabilities in society and also in government settings like public hospitals. Kenya has also failed to support children with disabilities and their families and to provide early and comprehensive information and services. Failure to fulfill these obligations under international law has led to parents being pressured to abandon and murder their children.

Thus, guaranteeing Articles 5 and 23.4 is inextricably linked to guaranteeing the right to life (Article 10) and the right to live in the community of children with disabilities (Article 19), as children who face stigma are at risk of being killed or abandoned in an institution. In relation to the latter, seven percent of the women surveyed by DRI were pressured to take their children to an institution. Being abandoned in an institution puts the child at risk of suffering inhuman and degrading treatment, torture and death.

C. Start a deinstitutionalization process

“Deinstitutionalization could happen in all the villages. Country wide most people believe that families are better.” – Local Chief, Muranga County

The CRPD Committee has called on Kenya to (a) adopt a strategy for the de-institutionalization of persons with disabilities, within a time frame and measurable indicators [which] must involve the participation of organizations of persons with disabilities; (b) launch a comprehensive strategy, with time frame and human rights based indicators, to make community-based services available for persons with disabilities; (c) take steps to introduce specific budgetary allocations for the promotion of independent living, including cash transfer schemes for personal assistance services.¹¹⁸

Moreover, the Committee on the Rights of the Child (CRC Committee) has called on Kenya to “support and facilitate family-based care for children wherever possible and establish a system of foster care for children who cannot stay with their families, with a view to reducing the institutionalization of children.”¹¹⁹ According to the Local Chief of Muranga County, “the government has the greatest role to play in this process by providing adequate supports to families and to start a deinstitutionalization process.”¹²⁰ In this section we outline the steps that the State must take to prevent institutionalization, deinstitutionalize children and reintegrate them to their families.

1. Prevent separation of families

“Staying at home he would have had a better life.” – Aunt of a child rescued from an institution.

“Children should not be kept in institutions. They and their families should be provided assistance for the child to remain at home. The people seeking to help children should talk to the guardians and understand the needs of the child.” – Grandmother of a child rescued from an institution.

In its 2015 Concluding Observations on Kenya, the CRPD Committee expressed its concern “about the absence of measures to return children with disabilities currently in orphanages to a family setting.” As a result, it recommended Kenya “[t]ake steps to increase information and support to families of children with disabilities to ensure they can be raised within the family home, expand the scope of the transfer fund for children with ‘severe’ disabilities to benefit all children with disabilities and establish a monitoring mechanism on the effective disbursement of the resources through the country.”¹²¹

The Convention on the Rights of the Child also requires states to use the maximum resources available to implement the Convention.¹²² This includes human resources – investing in professionals – as well as financial resources.¹²³ In Kenya, children are separated from their families because their families do not have the resources to take care of them. According to UNICEF, “the role of the state is to support vulnerable families in providing care to a child, in order to prevent the breakdown of families.”¹²⁴ While

¹¹⁸ CRPD Committee, *supra* note 107, para. 38.

¹¹⁹ CRC Committee, *supra* note 35.

¹²⁰ DRI interview, June 2017.

¹²¹ CRPD Committee, *supra* note 107, paras. 41-42. 38.

¹²² UNICEF, *supra* note 106, p. 19.

¹²³ Thomas Hammarberg, former Council of Europe Commissioner for Human Rights.

¹²⁴ UNICEF, *Ending the placement of children under three in institutions: Support nurturing families for all young children* (2013), p. 5. Available at https://www.unicef.org/eca/UNICEF_Sofia_Conference_Report_En_Web.pdf (last visited September 2018).

the primary responsibility for the care of a child rests with his or her parent(s), the state must ensure that parents have the necessary supports and resources to fulfill this role.

It is essential to invest in families to prevent separation and institutionalization of children. Well-functioning prevention services should enable early identification of the families at risk and “provide them with the necessary support to ensure that a child remains in a family environment.”¹²⁵ The key thing to bear in mind in the design of prevention systems is outreach.¹²⁶ According to UNICEF, “the majority of abandonments could be prevented – the most important thing is to reach the families at risk before they make this often irreversible decision.”¹²⁷

These services should have a strong disability component and seek to prevent separation and abandonment on the grounds of disability of the child, the parent, or both. Until the government invest resources in prevention of family separation, children are going to continue being abandoned because their families do not have the resources and support to care for them. Guaranteeing the right to a family needs to be accompanied by creation of identification, prevention and support mechanisms for all families.

2. Put a moratorium on new admissions to institutions

“We need a moratorium, we need a strong statement to stop children going into institutions.” – Official, Department of Children’s Services in Kenya

DRI recommends that Kenya establish a moratorium on new placements in institutions. International standards point towards an emerging recognition that a moratorium is an effective way for a country to meet its obligation to end the institutionalization of children.

The practice of the CRPD Committee supports this approach. In September 2016, the Committee asked Guatemala to “abolish institutionalization” of children.¹²⁸ This Comment appears to endorse a moratorium on new placements in institutions. The Committee’s statement uses the term “children” and not “children with disabilities,” reinforcing the ideal that all children have a right to these protections.

In its January 2017 report on human rights and mental health, the UN Office of the High Commissioner on Human Rights (OHCHR) cites the CRPD and calls on governments to “ensure that deinstitutionalization in the case of children is focused on reintegrating them into a family rather than into a smaller institution.”¹²⁹ The OHCHR calls for “a moratorium on new admissions of children with disabilities in institutions.”¹³⁰

¹²⁵ *Id.*, p. 7.

¹²⁶ *Idem.*

¹²⁷ *Idem.*

¹²⁸ CRPD Committee review of Guatemala’s record. “Abolish the institutionalization of children of any age.” UN Committee on the Rights of Persons with Disabilities, *Concluding Observations of the Committee on the Rights of Persons with Disabilities on the Initial Report of Guatemala*, U.N. Doc. CRPD/C/GTM/CO/1 (Aug. 31, 2016), para. 54 (d). Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GTM/CO/1&Lang=En

¹²⁹ U.N. General Assembly, *supra* note 102, para. 58.

¹³⁰ *Id.*

Kenya's October 2017 moratorium on the creation of new institutions would be valuable – if enforced. But even this policy is not as effective and does not go as far as a moratorium on new admissions.

3. Track families

“We have noted that when the children grow up, they want to know where they came from. If you do not know, they will blame you.” – Social worker, Dream Children's Home

Most of the children in institutions in Kenya have families (nuclear or extended). The responsibility to find the children's families is first and foremost a government responsibility.¹³¹ In Kenya, the government has delegated this responsibility to the institutions. DRI interviewed a 16 year old girl at Flomina Children's Home.¹³² She told us that she has been at the home since she was a baby. She does not know when she came or how she got to the home or whether her parents are alive.

Out of the 18 private institutions that we visited, only two, Nyumbani Village and Dream Children's Home, had a program to actively track families.¹³³ According to a social worker from Nyumbani Village, they were always able to track the families (nuclear or extended). Dream Children's Home had 87 children and they had located the family of 83 children (95%). This institution was receiving funding from Ai.Bi., an Italian organization, to pay for the transportation costs to reach out to the families.¹³⁴ According to the institution, the funding they received was symbolic, indicating that not a lot of resources are necessary to be able to find the family but that resources do need to be allocated for this.

In very few cases, once the family or extended family was located, it was possible to reintegrate the child back to their family. In one success case, the social worker told us that:

“We integrated a child who was 9 years old. She was from Kibera slums in Nairobi where she lived with her father and stepmother since her mother died. The father and stepmother used to beat and mistreat her. She ran away from home and was brought by the police to our children's home. Thanks to Ai.Bi., we were able to locate her extended family in Western Kenya. She now stays with the maternal grandmother and she is doing well.”¹³⁵

Another institution that we visited does not have a program to locate families but, “whenever they can, they help to reunite the children with their families.”¹³⁶ The director could only recall one instance in which a child was reintegrated to the family. The child got lost and was taken by police to the institution, without attempting to find the family first. The child told the director the area where he used to live; they searched for the family, found them, and the child was returned to them. The director observed that the

¹³¹ Guidelines for Alternative Care, *supra* note 108.

¹³² Visit to Flomina Children's Home, June 2017.

¹³³ Visit to Dream Children's Home, June 2017.

¹³⁴ Ai.Bi. was funding 10 other institutions in all of Kenya specifically to track families. Regrettably, since this year, we were informed that the organization has stopped the project. Interview, Director, Dream Children's Home, June 2017.

¹³⁵ Interview, Social worker, Dream Children's Home, June 2017.

¹³⁶ Director, Agape Hope, June 2016.

family and the whole community were extremely happy to get their child back and threw a large party to celebrate his returning. It is imperative that authorities start a program to locate the families of all the children in institutions and reintegrate immediately those whose families, nuclear or extended, and communities are able to take them back.

4. Shift donations from institutions to families

“It would have been better if I was given the money to take care of my child at home instead of taking him to the institution.” – Aunt of a child that was taken to an institution

“There is also no support for the families. We can reintegrate children to their families but the government needs to provide financial support to them or at least pay for the school fees. Without resources, the families really struggle.”

– Chair of the Association for Charitable Children Institutions in Kenya (ACCIK)

In many instances, even when the families are located, children remain in the institutions because the families do not have the resources to care for them. Dream Children’s Home, the only institution that had a program to locate families, only managed to reintegrate 5 children. The rest of the families did not have the resources or the supports to care for their children. According to the director, “if the families got support to take care of the children, they would keep them.”¹³⁷ Deinstitutionalization programs must include support to the families to care for their children including:

- General support in the form of cash transfers, food, and clothing
- Support for the children to attend school including school fees, school supplies, and uniforms
- Guidance, training, and counseling for the families
- Trauma-informed care for the child to address emotional trauma caused by being in an institution

Kenya is a low-income country; however, it is receiving large amounts of international aid and donations. DRI has documented international donations going to institutions. Starting with these funds, the government of Kenya must regulate international funds so that they are reallocated to fund family supports. Stahili has closed institutions by locating families, talking to donors, and convincing them to transfer the support they were giving to the institutions to the families. This has allowed for the rescuing and reintegration of children in institutions back to their families. This model can work in Kenya and be replicated on a larger scale to fund reintegration and support programs to families.

5. Monitor institutions and programs in the community

Under Article 16 of the CRPD, the government of Kenya has the obligation to “ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.”¹³⁸ Any program designed to serve persons with disabilities should be “gender and age sensitive.”¹³⁹ Until all institutions are closed and children are reintegrated to their families, it is imperative that the government effectively monitors institutions and takes immediate action in case of abuses. The

¹³⁷ Director, Dream Children’s Home, June 2017.

¹³⁸ CRPD, *supra* note 31, art. 16.

¹³⁹ *Id.*

government must also monitor new programs that are created to reintegrate children to their families or to foster care families.

The former Rapporteur on Torture observes that one of the most important sources of ill-treatment of children in institutions is in fact the lack of proper government oversight.¹⁴⁰ Governments must establish effective complaint mechanisms to investigate allegations of abuse and create strong and independent oversight mechanisms¹⁴¹ at “all places of deprivation of liberty, including places run by private actors, through regular and unannounced visits, and to include civil society organization in the monitoring of places of deprivation of liberty.”¹⁴²

D. Prioritize children with disabilities and their families in all government and donor-funded programs

1. Children with disabilities at the forefront of deinstitutionalization

“Children with disabilities do not need to be in institutions.” – Local Chief, Muranga County

In other countries, DRI has found that in deinstitutionalization processes, children with disabilities are largely excluded.¹⁴³ It is often agreed upon that children belong in families; unfortunately, children with disabilities, especially those who need more supports, are not in the picture when talking about deinstitutionalization and family programs. In the Republic of Georgia, for instance, an ambitious deinstitutionalization process took place and children without disabilities and with limited support needs were reintegrated into the community. However, reformers did not plan from the outset to create the supports necessary for children with disabilities to be integrated in to the community and, as a result, they remained institutionalized after the process had ended.¹⁴⁴

Article 2.1 of the Convention on the Rights of the Child (CRC) and Article 5 of the CRPD prohibit discrimination on the basis of disability. The CRPD brings the attention of governments and international development agencies to the obligation to include children with disabilities in all programs. The protection against discrimination should be understood to mean that children with disabilities must be included at all stages of deinstitutionalization processes, and not left to the end.¹⁴⁵ When the government is planning a deinstitutionalization process, it must children with disabilities a priority and allocate the necessary funding to bring about full inclusion to fulfill its obligations under the CRPD.¹⁴⁶

¹⁴⁰ Juan E. Méndez, *supra* note 48, para. 71.

¹⁴¹ *Id*, para. 84.

¹⁴² *Idem*.

¹⁴³ Disability Rights International, *Left Behind. The Exclusion of Children and Adults from Reform and Rights Protection in the Republic of Georgia* (2013). Available at <https://www.driadvocacy.org/wp-content/uploads/Left-Behind-final-report1.pdf> (last visited September 2018).

¹⁴⁴ DRI found that approximately 150 children with disabilities remained in three institutions while approximately 2,000 children had been integrated into the community. DRI also found that more than 1,000 children in church-run institutions were overlooked by reformers. DRI *supra* note 143, p. 21.

¹⁴⁵ Eric Rosenthal, *supra* note 112, p. 334.

¹⁴⁶ CRPD, *supra* note 31, articles 5 and 33.

2. Supports to families

The CRPD mandates States ensure access to a wide range of support services to persons with disabilities, and provides a comprehensive framework for its implementation.¹⁴⁷ The Convention on the Rights of the Child also recognizes the obligation of States to provide assistance required by children with disabilities for achieving their fullest possible social integration and individual development (art. 23).

According to the Local Chief of Muranga County, families of children with disabilities require more intensive support, including cash transfers.¹⁴⁸ There is evidence that social protection schemes in the form of, among other things, conditional cash transfers to families have been effective in augmenting child care and reducing the need for alternative care.¹⁴⁹

A program to provide cash transfers to families with children with disabilities started by the National Council for People with Disabilities (NCPWD) unintentionally led to the deinstitutionalization of several children. The program consists of giving \$20 USD per month to families that have children with disabilities who need “intensive support.” Around 47,000 families are benefiting from this program. According to a NCPWD Chief Program Officer, “the unintended outcome of this program has been deinstitutionalization.”¹⁵⁰ After the cash transfer program started, “some parents went to retrieve their children from institutions.”¹⁵¹ According to the official, “this showed that with little support, families can take care of their children with disabilities.”

However, there are challenges to the program. Families have experienced severe delays in getting the payments, risking abandonment of their children in institutions. There is also a long waiting list for families to get into the program, which means that there are many children who could be reintegrated to their families but the necessary supports are not there. Moreover, there are no programs to provide training and guidance to parents, which are essential to ensure adequate care for their children.

Additionally, as positive as the cash transfer program is, \$20 USD a month is not enough for most families with children with disabilities. One parent often needs to stay home to take care of the child, which means the loss of household income. Families also need to pay for medication, health care, and transportation costs to the nearest clinic. It is important for the government to create a more comprehensive program to support families that includes a salary, training and guidance, medication, and free access to health care. These supports must also be available to extended families for kinship care, in case the parents of the child are unable to care for them. The program can also be used to create foster families to receive children with disabilities, in case nuclear or extended families are unable to care for the child.

3. Community programs focused on reintegration

¹⁴⁷ U.N. General Assembly, *Report of the Special Rapporteur on the rights of persons with disabilities*, A/HRC/34/58 (Dec. 20, 2016), para. 29.

¹⁴⁸ DRI Interview, June 2017.

¹⁴⁹ Yablonski, J., & Bell, B. (2009). Responding to vulnerability: the role of social welfare services and cash transfers, *Vulnerable Children and Youth Studies*, 4(S1), 77-80; Yablonski, J., & Bell, B. (2009). *Lasting Benefits: The role of cash transfers in tackling child mortality*. Save the Children UK: London.

¹⁵⁰ DRI interview, June 2017.

¹⁵¹ Chief Program Officer, DRI interview, June 2017.

Kenya must strengthen community programs for children with disabilities that are focused on full reintegration of the child to society. There are already some programs being implemented by local organizations that are successfully providing supports and rehabilitation to children with disabilities. The government could use these good practices as a model and scale them up. For instance, during one visit to Kenya, DRI visited The Action Foundation, a daycare center for children with disabilities living in the slums of Kibera. The organization provides physical rehabilitation, training for daily independent living, school placement, and a feeding program to children with disabilities. For malnourished children, they provide them with proper care and diet to ensure they gain the required weight.

If the children are old enough to go to school, the organization works with public schools to integrate them. The organization is currently working with 13 schools in the area and has had great successes in making them accessible to children with disabilities. According to the Director:

“We have a young boy called Henry who has been with us since he was really young. He is quadriplegic and has cerebral palsy. When he was of school age most schools we approached said it will be difficult to take him. We worked closely with a public school in the area called Magoso and it accepted him. We then decided to work with the local schools closely to train them on accessibility and supports and this has worked for us.”¹⁵²

The organization also works with the local administration in the area to reach out to children with disabilities who have been neglected by their parents, malnourished, locked up in their homes, and hidden from the community. Parents often neglect their children out of ignorance. Staff work with them and train them on how to take care of their children. The daycare also serves as a place where the parents can leave their children when they go to work and pick them up in the evening. When the children start going to school, they also take them there during the day. This has motivated many families as their children are being fully integrated to society.

During our visit, we met a child who had a developmental disability and was severely malnourished. The Action Foundation informed us that the child is 3 years and was found in a house where she had been neglected by her mother. The organization spoke to the parents and her father agreed to bring her to the daycare center. Her father now drops her off every morning and picks her up in the evening. While she is at the daycare center, they ensure she gets proper care, nutrition, and therapy, and her father is now very involved with her and motivated to see her rehabilitated and be placed in a school later this year.

E. Harmonize local legislation with right to a family and to community integration

Kenya must have clear legislation that recognizes the right of all children to a family. When there are circumstances that mean that a child must be separated from their family, legislation must explicitly state that children have the right to remain in kinship care or, when that is not available, in foster care. Legislation must also recognize supports for families unable to care for their children in order to prevent separation. The law must also explicitly state a clear goal of deinstitutionalization and regulate international funding to ensure that it is not being used to finance institutions, in accordance with

¹⁵² DRI interview, June 2017.

international law. Lastly, Kenya must ensure that any new proposed legislation also conforms to international standards, including the CRPD ratified by Kenya.

1. Proposed new children’s bill: a push to keep institutions running

The government of Kenya, in an effort to regulate institutions, is proposing a new Children’s bill. DRI has reviewed a draft of the proposed legislation from March 2018 and has noted with concern that it does not have a concrete plan for deinstitutionalization, family and kinship support, and foster care. Instead, it seems to be heavily oriented towards keeping children in institutions. The main drawbacks of the law are outlined below.

i. Heavy emphasis on institutionalization

The proposed bill defines children “in need of care and protection” as those who are orphans, have a disability, or whose parents are deemed “unfit or unable to exercise proper care,” which may include parents with disabilities.¹⁵³ According to the bill, authorities who come across children in need of care and protection have the responsibility to take them to an institution.¹⁵⁴ Also, “any person who has reasonable cause to believe that the child is in need of care and protection” can admit a child to an institution.¹⁵⁵

ii. Long term detention

The former Rapporteur on Torture called for the detention of children in any type of setting, including social settings, to be for the shortest period of time possible.¹⁵⁶ The proposed children’s bill, however, has contradictory clauses on how long a child can stay in an institution. It first states that the placement of the child in an institution “shall not exceed three years” unless there are “compelling circumstances.”¹⁵⁷ The bill does not define what constitutes “compelling circumstances,” so a child can easily end up staying for longer than three years. Later, the proposed bill states that a Court may order that a child shall remain in the custody of an institution *until the age of eighteen years*.¹⁵⁸ Either way, children can and will remain in institutions for prolonged periods of time, contrary to their best interest and to international standards.

F. Ban international funding of institutions and orphanage voluntourism

Article 32 of the CRPD regulates international cooperation and requires international support to advance the “purpose and objectives” of the Convention. Since the CRPD requires governments to support the right of children to grow up with a family, any international funding to support institutions runs directly counter to the CRPD and exposes children to increased risk of human rights violations. It is Kenya’s obligation to limit international donations that lead to the violation of the rights of children. The European Union, which has adopted policies to include people with disabilities into its foreign assistance, has observed that the CRPD carries with it extra-territorial obligations:

¹⁵³ The Children Bill, 2018 DRAFT, article 142.

¹⁵⁴ *Id.*, article 143 (2)

¹⁵⁵ *Id.*, article 70 (1)(b)

¹⁵⁶ Juan E. Méndez, *supra* note 48.

¹⁵⁷ The Children Bill, *supra* note 153, article 66 (3).

¹⁵⁸ *Id.*, article 148 (7)

“The Convention recognizes that human rights being universal and inalienable, their protection must extend beyond jurisdiction of States Parties and include disabled people in third countries. Legal basis for including a disability perspective in all international cooperation initiatives is thus provided.”¹⁵⁹

International funders and the government of Kenya should take the necessary measures to ensure that international funds are not used to finance institutions. Likewise, the government of Kenya has the obligation to regulate voluntourism and prevent it being used to finance institutions.

Poverty and malnutrition are serious problems facing children in Kenya. Programs designed to help children should do so in the context of their families. It is both traumatic and dangerous to separate children from their families, and such programs should ensure inclusion within families at all times. According to the UN Guidelines on Alternative Care, “financial and material poverty [...] should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.”¹⁶⁰

When families desperately need support to feed, clothe, and keep their children at home, support for orphanages is contributing to the break-up of families. When children are subject to increased rates of violence, abuse, exploitation, and trafficking in institutions, conditions that amount to torture, donors and volunteers are perpetuating those abuses by supporting or volunteering in orphanages.

Kenya must prohibit international donors from financially supporting or volunteering in orphanages. International funding should be redirected to programs that allow families to keep children at home or for the development of foster and substitute family programs. International donors and volunteers should direct funds and volunteer efforts toward programs that help families keep children and assist with full community integration of children with disabilities.

G. Ensure that human rights and anti-trafficking programs monitor all public and private programs for children

Article 16(3) of the CRPD requires that “all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.” In addition to public and private institutions, all public and private group homes, foster homes, and substitute family programs should be monitored. In addition, under Article 16(2) Kenya must provide “information and education on how to avoid, recognize and report instances of exploitation, violence, and abuse. States Parties shall ensure that protection services are age, gender, and disability sensitive.”

¹⁵⁹ These obligations go beyond a requirement to contribute toward economic and social rights but also include cooperation that impacts on “all rights including civil and political rights.” Office of the High Commission on Human Rights, Thematic study on the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities, U.N. Doc. A/HRC/16/38, December 20, 2010, para. 5. See also European Commission, Directorate-General for External Policies, Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU External Relations, (2013) (describing the obligations on the EU imposed by CRPD article 32 to protect disability rights as part of its international assistance projects).

¹⁶⁰ Guidelines for Alternative Care, *supra* note 108, para. 15.

Given the risk of abuse and trafficking in both public and private programs for children, education and training should be provided to authorities monitoring all such programs. Criminal justice and anti-trafficking groups must be trained on the special vulnerabilities of children with disabilities.

Independent authorities must monitor all public and private institutions, group homes, and foster and substitute family programs serving children. These authorities should also monitor the implementation of other recommendations of this report – including the moratorium on new placements.

Kenya must publicly account for the findings of independent monitoring. Education and training should be provided to service providers, criminal justice authorities, and anti-trafficking program to identify exploitation and abuse of children with disabilities.

H. International donors & volunteers must support reform – not perpetuate further abuse

The international community should support efforts by the government of Kenya and NGOs to protect the right of all children to grow up in a family. It is especially important to support stakeholders – children’s rights and disability advocacy groups – to ensure full citizen participation in designing and implementing reforms.

DRI’s findings in Kenya reinforce the increasing global awareness that international support and volunteering in orphanages is dangerous and leaves children open to further violence, exploitation, and abuse.¹⁶¹ If governments themselves are mandated by international law not to confine children in institutions, international donors and volunteers must abide by the same standards. There is no way to ethically volunteer in an orphanage.

DRI takes the position that it is not just ethical, humane policy to support children to live and grow up with families, not orphanages – it is an obligation of international human rights law. Any government that has ratified Article 32 of the CRPD is under the obligation to ensure that international cooperation furthers the goals of the Convention. We call on governments to regulate not only government but also private donations to programs that confine children in institutions and break up families. International development, education, and volunteer programs should ensure that they protect children from harm.

I. Support participation by stakeholders – including children’s rights and disability groups

Any and all reforms in Kenya will be more effective if stakeholders are involved in crafting and implementing programs. This is not just good strategy – participation by stakeholders has come to be recognized as an obligation of governments under international law. The CRC recognizes the evolving capacity of the child to make choices and participate in decisions that affect them. Article 4(3) of the CRPD recognizes that people with disabilities have a right to be involved in policy-making and program

¹⁶¹ See, Kathryn van Doore, Florence Martin & Anna McKeon, *Expert paper: International Volunteering and Child Sexual Abuse*,” posted on the Better Care Network Website available at <https://bettercarenetwork.org/bcn-in-action/better-volunteering-better-care/research-and-articles/expert-paper-international-volunteering-and-child-sexual-abuse>; Faith to Action Initiative: Short-Term Missions: Guidance to Support Orphans and Vulnerable Children (2018), posted at <http://www.faithtoaction.org/missions/>; There are extensive reports on dangers of voluntourism with strategies for action to protect children on the websites of the Better Care Network available at <https://bettercarenetwork.org/> and Stahili Foundation available at <http://www.stahili.org/>.

implementation through their representative organizations. There are excellent organizations made up of stakeholders in Kenya, such as Child and Family Focus and KAIH, representing caregivers and families of children with disabilities, respectively.

Children, families, and stakeholder communicates are best situated to develop solutions that will be culturally appropriate and effective In Kenya. Advocacy groups that include adults with disabilities and parents of children with disabilities must be considered key stakeholders and must be included. This is especially important for public information and anti-stigma campaigns that address stigma against children with disabilities. These constituency groups must also be involved in efforts to reform social service systems for children and deinstitutionalization programs. Life-long supports for people with disabilities will be necessary to avoid institutionalization, as inevitably children with disabilities age out of programs targeted at their age groups.

Token participation by one or two children, caregivers, or individuals with disabilities is not sufficient to represent constituency groups. As established in the CRPD, inclusion of people with disabilities should be “through their representative organizations.” Financial support, training, and capacity building of constituency groups will be necessary to ensure full participation by stakeholders in national reforms.

APPENDIX I. QUESTIONNAIRE APPLIED TO MOTHERS OF CHILDREN WITH DISABILITIES

Questionnaire

Date:

County:

Name:

Age:

1. What disability does your child have?

2. When did you find out that your child had a disability?
 - a. When I was pregnant
 - b. When I gave birth
 - c. After I took my baby home.
 - 2.1 How many months after? _____
 - 2.2 How did you find out? _____

3. Did you get any support after finding out your child had a disability?
 - a. No
 - b. Yes
 - 3.1 What type of support?
 - i. Psychological
 - ii. Training
 - iii. Medical
 - iv. Financial
 - v. Other _____

4. Did someone ever tell you to give up your baby?
 - a. No
 - b. Yes
 - 4.1 Who told you to give up your baby?
 - i. A doctor
 - ii. A nurse
 - iii. My husband
 - iv. My family

- v. My husband's family
- vi. A person in my community. Who? _____

4.2 Why did they ask you to give up your baby?

- vii. They said my child was cursed
- viii. They said my child brought shame to my family
- ix. They said my child brought shame to the community
- x. They said my child would not live a full life
- xi. We could not pay for the medical expenses
- xii. I could not work and take care of my child
- xiii. Other _____

4.3 What did they offer to do with the baby?

4.4 What was their reaction when you refused to give up your baby?

5. What are the main struggles for you as a mother of a child with a disability?

- a. No support
- b. Cannot find work
- c. Nobody can take care of my child if I go to work
- d. I feel alone
- e. I feel sad
- f. My family rejects me and the baby
- g. The community rejects me and the baby
- h. I do not know how to best take care of my child
- i. It is very expensive to raise a child with a disability
- j. Other _____

6. What gave you the strength to keep your child?

APPENDIX II. INSTITUTIONS VISITED

PRIVATE INSTITUTIONS

Nairobi

June 2016

1. Kenya Children's Home
2. Baby Blessing Home
3. Agape Hope Home
4. Dagoretti Rehabilitation Centre

June 2017

5. Flomina Children's Home
6. Dream Children's Home
7. Christ Chapel Children's Home
8. Compassionate Hands For The Disabled (for children with disabilities)
9. Nyumbani Children's Home
10. Feed The Children (for children with disabilities)
11. Happy Life Children's Home
12. Upendo Home

November 2017

13. Maji Mazuri (housed children with disabilities)

Kitui

November 2017

14. Nyumbani Village

Mombasa

November 2017

15. New Hope Children's Home
16. Canaan Orphanage
17. Salvation Army
18. Child of Mercy

PUBLIC INSTITUTIONS

Nairobi

June 2017

19. Nairobi Children's Home
20. Nairobi Remand And Rehabilitation
21. Thika Rescue Center