

Summary of the outcome of mapping and assessing Kenya's child protection system

Strengths, weaknesses and recommendations

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List of abbreviations

AAC	Area Advisory Council
ANPPCAN	African Network for Prevention and Protection against Child Abuse and Neglect
CCI	Charitable Children Institution
CLAN	Children's Legal Action Network
CPC	Child Protection Center
CPU	Child Protection Unit
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
DCO	District Children's Officer
DCS	Department for Children's Services
FBO	Faith Based Organisation
FGM	Female Genital Mutilation
GTZ	German Society for Technical Cooperation
IDP	Internally Displaced Persons
ILO	International Labor Organisation
MDG	Millennium Development Goals
MoGCSD	Ministry of Gender, Children and Social Development
NCCS	National Council for Children's Services
OVC	Orphans and Vulnerable Children
PCO	Provincial Children's Officer
VCO	Volunteer Children's Officer

1 Background and Situation analysis

Governments and international organizations are increasingly turning to what is referred to as a *systems approach* in order to establish and otherwise strengthen comprehensive child protection efforts. As guided by the Convention on the Rights of the Child (CRC), the systems approach differs from earlier child protection efforts, which have traditionally focused on single issues, such as child trafficking, street children, child labor, emergencies, institutionalization, and HIV/AIDS, among others. Although such efforts have produced substantial benefits, this approach often results in a fragmented child protection response. Establishing or strengthening a child protection system requires attention to legal and policy reforms, institutional capacity development, planning, budgeting, monitoring and information systems.

Several actors in Kenya, including National Council for Children's Services (NCCS) and African Network for Prevention and Protection against Child Abuse and Neglect (ANPPCAN) Regional Office, have for years advocated for the establishment of a child protection system that prevents and responds to violence, abuse and exploitation of children or family separation, both during times of relative normality and during emergencies. Furthermore, the Ministry of Gender, Children and Social Development (MoGCSD) has included the need for developing a functional child protection system for Kenya in its Strategic Plan 2008-2012.

In 2009, UNICEF HQ, as part of an organization-wide endeavour to initiative systems development globally, contracted Maestral International to develop a practical and user-friendly tool for mapping and assessing child protection systems at a national level. At the same time, UNICEF also contracted Chapin Hall at the University of Chicago, with the American Humane Association to review academic and professional literature on systems, with the aim of obtaining conceptual clarity on what a child protection system is.

The toolkit provides a framework for:

- identifying a country's child protection risks;
- identifying the existing rights framework;
- the scope and capacity of both the formal and the informal sectors to prevent and respond to child protection issues at national down to community level;
- accountability mechanisms; and
- resource mobilisation approaches.

The purpose of the toolkit is to help UNICEF country teams and their partners to enhance the overall child protection dialogue and programming, with a particular focus on developing system capacity.

Kenya has been one of the pilot countries to complete the toolkit. This process started in October 2009 when a meeting was held in Naivasha. Representatives from line ministries, NGOs and civil society provided input and comments on the global toolkit. Some attempts were made to adjust the toolkit into the Kenyan context. It was agreed at the meeting that a taskforce should be established under NCCS, and be chaired by ANPPCAN. The taskforce was to second the members and lead the process in filling out the toolkit.

Four workshops have been held, at which the participants filled in the toolkit. The participants were representatives from line ministries and civil society. The workshops were divided into four areas: the justice sector; social services; continuum of care; and civil society. This division reflects the outline of the toolkit. The aim was to define a minimum package of child protection laws, services and capacities that are considered necessary to establish a functioning child protection system.

To ensure that children's views and experiences of the child protection system were captured, Save the Children Alliance contracted Emkay East Africa Limited to conduct a study with children. Approximately 800 children, between the ages of 7-21, were interviewed in Molo, Butere, Dadaab, Kisumu, Thika, Nyahururu, Mombasa and Nairobi. The particular objectives of the exercise were:

- to establish the level of awareness by children of the existence of child protection systems in Kenya;
- to assess the level of participation of children on issues and policies that affect them;
- to assess the effectiveness of existing services for children; and
- to establish the most accessible structures for child protection at community, locational and district level.

The findings of the study with children are incorporated in this summary document.

A preliminary validation workshop was held in April 2010, with the aim to present the outcome of the children's views, and to validate the information gathered in the toolkit, including strengths and major gaps of the system. This paper provides a summary of the outcome of these processes, including the current strengths, weaknesses and gaps of Kenya's child protection system.

2 Definition of a child protection system

As mentioned above, to view child protection issues from a systems approach is a relatively recent development, both internationally and in Kenya. Several discussions have taken place in Kenya in an attempt to define Kenya's child protection system, however limited agreement has been reached. There is however a general agreement on what a child protection system comprises.

A child protection system may be described as a "set of laws, policies, regulations and services, capacities, monitoring and oversight needed across all social sectors – especially social welfare, education, health, security and justice – to prevent and respond to protection related risks. At the level of prevention, the aims of the system include supporting and strengthening families to reduce social exclusion and to lower risk of separation, violence and exploitation".¹ Responsibilities for child protection components are often spread across government agencies, with services delivered by local authorities, non-governmental and community-based organizations. The myriad of actors engaged in service provision underscores the importance that the child protection system must be well-coordinated and have carefully delineated and understood referral mechanisms.

The different sections of the toolkit reflect the description of a child protection system. It is developed and completed through five categories: policy and legal context; structures; function and capacities of child protection actors; promotion and prevention; response; and data for decision-making.

The child protection systems taskforce agreed that rather than attempting to define and agree on what the child protection system for Kenya would look like, the exercise of completing the toolkit would contribute to agreeing on a minimum package of child protection services, laws, policies and guidelines, human resources, capacities and accountability in order to have a functioning child protection system.

3 Strengths and weaknesses of the system

3.1 Policy and legal context

The UN Convention on the Rights of the Child (CRC) requires state parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including

¹ UNICEF Child protection Strategy, 2008. Pp. 4-5..

sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures include effective procedures for the establishment of social programmes to provide necessary support for the child and for care givers, as well as for other forms of prevention and for identification of child maltreatment.

Kenya is a party to the CRC (CRC – signed 26 January 1990, ratified 30 July 1990), as well as the African Charter on the Rights and Welfare of the Child (ratified 25 July 2000), and has domesticated the provisions of the CRC in the creation of its own Children Act (2001). Kenya has also ratified the Hague Convention on Inter-Country Adoptions, Palermo Protocol, the Millennium Declaration 2000 on MDGs, as well as the ILO Conventions 138 (minimum age) and 182 (worst forms of child labour).

Efforts have been made to domesticate and implement these instruments through the creation of policy documents and a spectrum of legislation. However, the existing bills, laws and policies are not necessarily harmonized, and in many cases are contradictory, often resulting in procedural and substantive confusion. In addition, many policies are adopted, but are not implemented, monitored or evaluated. Complicating matters further is that many duty bearers are not aware of all the different laws and policies, regulations and guidelines, leading to misapplications that result in children falling through what should be a protective net.

The Children Act (2001) is currently undergoing an amendment process, and major contested issues include, but are not limited to;

- clarity of structures and roles, in particular with regard to the Ministry of Gender Children and Social Development, the Department of Children's Services (DCS) and NCCS;
- the roles and responsibilities of other ministries involved in child protection, such as the police, health and education, including accountability mechanisms;
- refocusing the language to reflect an emphasis on alternative family-based, care as opposed to institutionalization;
- care and maintenance of children, diversion, and corporal punishment.

Birth registration is compulsory in Kenya. Initial registration is free, and it is accessible in the sense that it can take place at the district, division, local and sub-local (by chiefs) level. However, there is a six-month window during which a family has to register the child, and the child does not have to be given a name at that time. In this sense, the provision on birth registration is not consistent with the CRC requirements. Under the new draft constitution, any child found within Kenya's borders, who is under the age of eight and without another known birthplace, can be conferred Kenyan nationality.

Legislative language pertaining to child labor can be found in Children Act (2001) and the Employment Act (2007). However, these Acts must be read together to understand the age at which a child may work and the circumstances of that work; i.e., the Children Act points to the definition and understanding of child labor as described in the CRC, and guides children to report to any government official, while the Employment Act proscribes reporting to a labor officer or police officer. The Employment Act does not make reference to the signed ILO convention.

Similarly, Kenya does not have a single child marriage legislative package, but like child labour, it is encompassed in a variety of legislation, such as the Children Act and the Marriage Act. The Children Act furthermore grants certain rights to children at risk of child marriage, such as the possibility of reporting to any children officer, police station or any other trustworthy adult.

A Counter Trafficking in Persons Bill has been passed by Parliament and is awaiting Presidential assent. Reference is also made to child trafficking in the Children Act. Thus, there will soon be a specific legislative package in regards to child trafficking. The penalties provided for in the Children Act are not particularly severe; however, the Trafficking in Persons Bill provides for strict sentencing guidelines. The Counter Trafficking in Persons Bill, once enacted, will furthermore provide more explicit rights for children who have been exploited, and will contain provisions covering extradition, repatriation and reintegration of trafficked children.

The Children Act refers to children associated with armed forces and armed groups. Article 10 of the Act addresses the issue of reintegration of children affected by armed conflict. The Armed Forces Act also prescribes the age at which children can join the Kenyan military, at 18 years.

Several pieces of legislation, including the Children Act and the Prisons Act, refer to children without parental care. The technical definition of the Best Interests of the Child is absent in the Children Act, but the best interest principle is captured, for instance in 4(2) and 4(3). However, there is a larger issue at play in the sense that the Children Act does not emphasize charitable children's institution as a protective mechanism of last resort. There is also the issue of the prison system accommodating mothers/ children. The Children Act is currently undergoing revision and there is a growing emphasis in the policy arena on alternative family based care.

In Kenya there is a variety of legislation relating to Female Genital Mutilation/ cutting (FGM). An FGM policy was adopted in June 2010. Furthermore, FGM is specifically mentioned in the Children Act as a prohibited practice. An FGM Bill is awaiting legislative passage. However, from a perpetrator's standpoint, the legislation contains different provisions; i.e. what is contained in the Children's Act provides less severe sentencing than say, the sentencing provisions for criminal assault.

The national legislation and regulations are, to a certain extent, clear with respect to the handling of children's cases, but there are serious issues with understanding the provision, compliance and enforcement of justice for children. According to the Children Act, children are to receive legal representation in matters that affect them. However, this representation is only provided in a limited and ad hoc basis, by NGOs. For example, some children are charged alongside adults, and it is up to advocates and magistrates to determine who among the charged are under 18. In criminal cases there are not always alternatives to incarceration. Magistrates usually sentence, acquit or dismiss. Diversion is not presented as a viable option, either at the police or judicial level. Children held in remand homes under trial for capital offences often exceed the six-month (renewable) time limit stated by the Children Act, often remaining in custody for years.

The Sexual Offences Act provides comprehensive legislation in relation to child sexual abuse. There is currently a dialogue under way to look at the enforcement of the provision of the Sexual Offences Act. The Act grants children at risk of sexual abuse, or subjected to or witnessing sexual abuse, with certain rights, e.g., to file complaints and to have those complaints resolved. Children can approach the district children's officers, police, or any adult they trust. The legislation provides services to children who are at risk of or subjected to sexual abuse, however there are concerns regarding enforcement.

There is a variety of legislation – including the Children Act and the Sexual Offences Act – that make reference to violence against children. Corporal punishment has been outlawed in schools, and is prohibited upon child offenders, in the Children Act 191(2). However, the Prison Act – section 55(1) and Part VI Rule 72(a) – allows the administration of corporal punishment on child offenders under the age of 16 years. Conversely, The Criminal Law Amendment Act, 2003 outlaws corporal punishment. Hence, the Criminal Procedure Code, being older, is overruled. However, the provisions in the Amendment Act are often not observed. There is a prohibition on cruel and unusual punishment, but this has not been well defined in the Children Act. This is however expected to be captured in the amendment of the Children Act.

Custodial care of children in conflict with the law and those in need of care and protection is regulated by the Children Act in a number of sections (e.g. Part V and Part VII). Institutional custody of children in the justice system is furthermore regulated by the National Standards. However, these Standards need to be reviewed under the current reform by the DCS of its Statutory Institutions.

Several policies relating to child protection are currently being developed or are about to be adopted. These include the Sexual Offences policy, Internally Displaced Persons (IDP) policy, Children's policy and Legal Aid policy. In relation to the legal Aid Policy, it is important to ensure the inclusion of child friendly legal aid. There is however no policy on child protection, which ideally should spell out how to address the gaps identified by the current process of mapping and assessing Kenya's child protection system. Another major gap in relation to policies is that they are rarely fully implemented, monitored or evaluated. Related to this

is the fact that many duty bearers are not aware of all of the different laws, policies, regulations and guidelines related to child protection.

The family is seen as the first unit of ensuring survival, development and protection of children, and right to parental care has been provided for in the Children Act as one of the rights of a child (Section 6A). The Children Act is elaborate in explaining parental responsibilities (Part III), although it places first instance responsibilities on the mother if a child is born out of the wedlock (Section 24(3a)). However, most children remain in need of protection even within families, probably because the Regulations on Parental responsibilities have not yet been developed as per the requirement of Section 29 of the Act.

Care and protection of children who cannot be with their biological parents has been provided for in the Children Act in line with provisions of the CRC. This includes the requirement of the state to assist in reunification of separated children with their parents (section 6(3)), provision for foster care (Part X1 and schedule 4), guardianship (Part V111), adoption (Part X1 Section 154-183) and placement of children in charitable children's institutions (Part V, Section 58-72). The government developed the Adoption Regulations in 2005 to provide guidelines on how to conduct both national and international adoptions. In 2007, the government ratified the Hague Convention on Intercountry adoption. The Adoption Regulations are being reviewed to accommodate the provisions in the Hague Convention, and to also address gaps identified by stakeholders in the implementation of adoption processes, in addition to gaps identified during a technical assessment made in 2008, on the law and practice of alternative care in Kenya.

Unlike adoption, there have not been any expanded legal and policy guidelines developed to guide and promote the practice of foster care and guardianship. The government plans to develop guidelines for operations of both foster care and guardianship, and also to raise awareness on these practices of adoption, including promotion of local adoption.

It is important to note that the Children Act does not necessarily emphasize the need for family care, but rather places a lot of emphasis on the role of charitable children's institutions; even foster care has to be done through a Charitable Children Institution (CCI). Although the Act provides for placement of children in CCIs as a measure of last resort, in practice, CCIs have become the first placement for children who are rescued from various risky situations, including removing them from their families due to poverty, and as response to orphanhood due to HIV and AIDS. As such, numerous CCIs have been set up in Kenya with many children under their custody. The government has realized this, and in 2005 it developed Regulations for CCIs to regulate the registration and operations of these institutions. Despite this, several of these institutions are not registered by the DCS. It has also been noted that some CCIs continue to operate in a substandard manner. One of the reasons for this is that the regulations are not adequate in providing clear operational guidelines and procedures. The government has developed Standards for Best Practices in CCI and a Training Manual for CCI, in an effort to address this gap. At the same time, the government plans to review the CCI regulations so as to provide legal backing to these Standards, and to address gaps identified during the 2008 assessment on Alternative Care Legal Provisions and Practice.

Similarly, there are numerous Civil Society Organisations (CSOs) working with or for children that operate without any minimum standards, and outside of a regulatory framework. This means that they cannot be monitored and evaluated, and in effect cannot be regulated to a certain standard. Therefore guidelines and standards for CSOs should arguably be developed.

The interviews with the children showed that the majority of children are aware that they have legal protection under the Children Act and the Constitution. However, it is unclear to what extent they are aware of when their rights under the Children Act have been violated. The place that was mentioned most frequently, as a place to receive information from about laws, was the schools.² The study also revealed that child participation in policy formulation is extremely low.

In relation to child labour, the study revealed that even though the children could not cite particular laws, they were aware that a child below the age of 18 is not permitted to be recruited to work as a domestic

² Emkay East Africa Ltd, *Report on Children's Participation in the mapping of child protection system in Kenya* ((2010), p. 6.

servant or in any other form under the laws of Kenya. In spite of this information, children told the research team that there were a significant number of children who work as domestic servants, farm workers, in quarries, as herders, and in bars, and elsewhere.³

In relation to birth registration, the study showed that 71% of all the respondents reported that they are aware that they have the right to a birth certificate. However, 83% of the children knew of many children, including themselves, who did not have birth certificates at the time of the study. There were children who had difficulties obtaining a birth certificate because they were orphans or they came from poor families that could not afford all the hidden costs relating to acquiring a birth certificate, such as transport to government offices where applications are made, long waiting, slow mechanism of attending to applicants, and fee charged for late registration.⁴

Children were also concerned that some parents and guardians were still ignorant of the importance of birth certificates. Children recommended that parents need to be targeted with awareness programmes on the importance of birth registration. They also recommended that those children that do not have a birth certificate can acquire one in school to lessen the burden of parents/ guardians travelling to district offices to apply for late birth registrations.⁵

3.2 Structures, functions and capacities

3.2.1 Ministry/agency

The Government of Kenya domesticated the UNCRC through the Children Act in 2001, and within the Act essentially created two bodies, previously being under the Ministry of Home Affairs and currently under the Ministry of Gender Children and Social Development. These two bodies are the National Council for Children's Services (NCCS) having the policy mandate for children's issues, and the Department of Children's Services (DCS), being its implementing and technical arm.

According to article 32 of the Children Act, the role of NCCS is to "exercise general supervision and control over the planning, financing and coordination of child rights and welfare activities and to advise the Government on all aspects thereof...". In accordance with the Children Act, NCCS is supposed to carry out this particular mandate through the establishment of district, divisional and location specific Area Advisory Councils (AACs). Thus the Act assigns NCCS a policy, regulatory and standard setting role with respect to children's rights and services. The 21 members of the NCCS include representatives from line ministries, civil society, faith based and the private sector. There are currently 12 permanent staff working at NCCS.

The Area Advisory Councils (AACs) is the extended arm of NCCS in the field, and should be established by NCCS at the district, division and location levels. The objectives of AACs are the same as NCCS, and are provided for in Section 32 (1) of the Children Act, namely "To exercise general supervision and control over the planning, financing and coordination of the child rights and welfare activities in their areas of operation and to advise the government on issues of child rights and welfare of children in their areas of operation".

The membership of AACs should be guided by the provisions governing the composition of the NCCS in section 31 (1) of the Children Act. The Act incorporates relevant government departments and ministries, CSOs, Faith Based Organisations (FBOs) and the private sector in the composition of the NCCS. This composition of members should also be reflected in the AACs.

³ *Ibid*, pp. 9-10.

⁴ *Ibid*, p. 10.

⁵ *Ibid*.

The specific functions of the AACs differ slightly between the district, division and locational levels. However the common functions are:

- supervise and regulate planning, financing and coordination of children welfare programmes in the district, division and location. In addressing the best interest of children in the district, division and location, they should identify needs and priority areas and recommend appropriate action to relevant authorities;
- facilitate the formation of partnership, linkages and networking among the stakeholder in the district, division and location;
- mobilize resources and facilitate funding for identified programmes and activities in the district, division and location. The AAC should link child rights and welfare activities in the area with other support and resources within the district, division and location;
- promote and create public awareness on child rights and child protection and the laws thereof – in particular the Children Act;
- oversee, supervise, regulate and recommend for approval and disapproval of CCIs and programs in line with the Children Act;
- facilitate capacity building of all stakeholders and service providers through trainings; and
- monitor, evaluate and report on the implementation of Child Rights and welfare activities in the district, division and location using tools developed by NCCS.

The Act also gives the MoGCSD the power to establish a Director of the DCS. The Director and the personnel at the DCS are supposed to carry out the technical aspects of the Children's Act, enforcing the provisions therein, and carry out the field-based initiatives conceived at the policy making level. DCS is made up of the personnel who are statutorily mandated by the Children's Act to act on behalf of the state, and in concert with other actors such as the police, hospitals and charitable children's institutions to ensure a child receives protective services. Article 31 of the Children Act also states that the "Director of Children's Services shall be the Secretary to the Council", that is, Secretary to the NCCS, and defines in article 38 that the Director, "Should ensure that all decisions taken by the Council are fully processed and implemented".

The DCS operates nationwide by running five Divisions at the central level, which include its main child protection system thematic areas, namely:

- Field Services Division: Child Protection, Sexual abuse and child trafficking are some of the activities handled.
- The Orphans and Vulnerable Children Secretariat. This division coordinates national programmes for OVC and actors with Orphans and Vulnerable Children (OVC) programmes, including coordination of the Cash Transfer to OVC programme, which provides cash grants to poor households taking care of OVC in Kenya.
- Alternative Family Care:
 - Adoption Services, including registration of adoption societies
 - Foster Care
 - Guardianship
 - Registered List of Adoption Societies in the country
- Statutory Institutions and CCI's Services:
 - Statutory Institutions
 - Charitable Children's Institutions
- Finance & Administration Division: Coordinates the sections of the department, including training staff.

There are children's officers at the headquarters and field offices to implement the Act. At the provincial level there is a Provincial Children's Officer to coordinate the officers at the district level within the Province. The Department has 696 officers in post, against an approved establishment of 1,277. At the sub-national level, the department is represented in 79 districts (eight being the Nairobi administrative divisions) out of the 149 districts in Kenya, representing a 47% coverage.

The provincial level of government is the link between the national ministries of education, health, labour and children's services, and the District Children's Officers (DCOs) and other departments' management staff. The functions of this level of government include to coordinate and align various children's initiatives and to integrate service delivery to children and families. To ensure that the delivery of training and capacity building opportunities are available to District Children's Officers and to provide financial resources and mobilize private business sector on behalf of children.

The DCS is faced with numerous challenges, including limited human, financial and technical capacities and growing numbers of children in need of care and protection. For instance, although the number of children's officers have increased substantially over the last years, the current number of 400 children's officers in the country is not sufficient to tackle the problems facing children and their families at all levels in Kenya today.

Because of the inadequate number of officers, attempts have been made to gap-fill through the recruitment of volunteer children's officers. Although playing a central role in child protection at local levels, gaps are present in relation to their recruitment modalities, qualifications, provision of training, coordination, and monitoring and evaluation of their work by the relevant AACs and DCOs under whose management they are supposed to operate. This is due to the lack of remuneration or reimbursement of expenses, which also affects their motivation. Incidents of volunteer children's officers extorting money from members of the community have been reported by some stakeholders.

It appears that there is no clear separation of duties between NCCS and the Department of Children's Service. This has resulted in the following limitations:

- The NCCS is not autonomous which is prerequisite for effective performance of its responsibilities. If NCCS was an autonomous body it would have its own independent mandate on coordination of all policies on children in Kenya, including powers to have its own staff, resources and procedures. At the moment this is impossible, due to legal limitations.
- Provisions of section 38(d) of the Children Act, which give the Director of DCS powers to serve as the secretariat to the NCCS. Accordingly, the technical role of the Director is interspersed with a policy function, thereby creating room for confusion and generally a weak council.
- Limited resources to finance the low level structures – the AACs – hence their reliance on project initiatives to the detriment of Kenya's children.
- Weak capacity at the NCCS secretariat due to its dominance by the DCS, particularly with regards to staffing and resources. The Director determines the personnel of NCCS, and all of the officers have worked in DCS at one time or another.

Other Ministries, such as Education, Health, Judiciary and Justice, play an important role in child protection. There is no statutory guidance as to what their roles are and what responsibilities they have in relation to child protection. There is furthermore no official accountability linkage between the ministries involved in child protection. There is currently nothing in regards to children in other ministries' performance contracts.

3.2.2 Civil Society

Civil Society Organisations (CSOs) in Kenya play a critical role by filling gaps left by the state in provision of child protection services, in particular through residential, educational and health services. They are however faced with a number of setbacks and challenges. Coordination is for instance limited or non-

existent. This has resulted in a presence of a large number of civil organisations in one district and limited numbers in others. Overlap of services has been another major outcome of lack of coordination. There is no comprehensive database on CSO presence and the kind of services provided, except for some regional directories published by individual organizations, and a list of registered CCIs which is held at DCS HQ. In addition, registration of civil organizations working for children is scattered, and spread among various government ministries and departments and also the NGO Bureau. They are registered variously by the NGO Bureau, office of Registrar, Social Services, MoGCSD among others. The Children Act does not provide for registration of agencies implementing children programs, apart from Chartable Children institutions and Adoption Societies. It is therefore not easy to monitor services offered by these agencies.

The excessive number of CCIs concentrated in the same geographical areas is a symptom of a culture leaning towards institutionalization rather than community and family based care. There is also limited monitoring and quality assurance of CCIs and CSOs. There are however some efforts to develop guidelines for ensuring quality services for children, such as Standards for Quality services for OVC, standards for best practice in CCI, standards for child protection centres, standards for children unit in police stations, all in their draft.

3.2.3 Children in the Justice system

This mapping and assessment exercise has shown that it is unclear which ministry has the overall responsibility for justice for children. However, children in conflict with the law fall within the jurisdiction of the police and judiciary systems. The consequences of the lack of statutory guidance as to which ministry is the lead agency in matters pertaining to children in the justice system include lack of coordination between actors involved in justice for children, lack of advocacy, inadequate provision of services to children in justice, and social mobilization on issues relating to justice for children, from the national to the grassroots level.

The process of handling children in conflict with the law is stipulated in the Children Act and the Penal Code. Efforts have been made to make the processes child friendly through setting up Child Protection Units (CPU) at police stations, child friendly courts and encouraging diversion programmes. These are however limited in scope and number. A comprehensive training manual for police officers on child protection has been developed and is about to be incorporated into the police training curriculum. The training is intended to equip police officers with skills to handle children's cases. Similarly, child protection standards for CPUs have been developed to guide the operations of CPUs.

Part VI of the Children Act establishes Children's Courts to conduct both civil and criminal proceedings on matters involving the care and protection of children, and Section 127 makes it an offense for "any person who has parental responsibility, custody, charge or care of any child" to (a) "wilfully assault, ill-treat, abandon, or expose, in any manner likely to cause him unnecessary suffering or injury to health (including injury or loss of sight, hearing, limb or organ of the body, an any mental derangement); or (b) by any act or omission, knowingly or wilfully cause that child to become, or contribute to his becoming, in need of care and protection."

There are currently four Children's Courts in Kenya. The Judiciary, comprising all magistrates and judges, are trained to deal with cases involving children. However, the training is conducted on an ad hoc basis. There is a high turnover of magistrates and as a consequence many have not been appropriately trained. The Nairobi Children's Court remains the only physically separate, child-friendly court in the country. All Children's Courts are courts of first instance,

In practice, most legal representation for children in need of care and protection is voluntary. There is no legal representation for children in the justice system at the government's expense, despite the fact that the Children Act provides for it. The right to legal representation at the government's expense is only granted for children in the justice system who have allegedly committed murder. Legal aid clinics tend to do general work on legal awareness in Kenya, and the child rights nongovernmental organization sector and

pro bono individual lawyers are very active in the legal representation of children in judicial proceedings and in creating awareness. This effort, is however mainly concentrated in the urban areas, particularly in Nairobi. There is currently no strategy for a state supported scale up response for legal aid to the most vulnerable children.

The DCS runs 25 statutory institutions countrywide, being subdivided according to three main categories: Four Child protection Centers (with two additional planned), 10 Remand Homes and 11 Rehabilitation Schools. There is also one assessment centre for children in transit to rehabilitation schools.

There is too heavy emphasis on institutionalizing children in conflict with the law instead of returning them home under supervision.

There is a significant informal system in place that handles children in justice issues. Different communities have informal systems as prescribed by their cultural traditions. For instance, sanctions where the extended family enforces the parent to take responsibility is used as a mediation mechanism that is employed by local elders; some communities impose penalties on the offender which is met by the perpetrator's family/ clan and distributed among the survivor's family /clan, and sometimes nothing of this reaches the survivor.

The Provincial Administration, through chiefs, play a relevant role, both in proceeding with arrest of children in conflict with the law and persons committing an offence against a child (Chiefs Authority Act 8(2)), and in rescuing child victims. Although the arrested person should be taken with no delay to the nearest police station, a number of cases are usually settled independently by the chief. Although not having formal authority, chiefs also often engage in semi-formal settling of cases related to child maintenance and custody.

Other weaknesses in the current justice for children system are:

1. mixing of children in conflict with the law and those in need of care and protection in same statutory institutions;
2. lack of psychosocial support to children in the justice system;
3. inadequate infrastructures in statutory institutions;
4. inadequate reintegration procedures for children in justice;
5. lack of a rehabilitation model for children in rehabilitation schools;
6. Inadequate coordination among GOK agencies involved with children in justice such as police stations, courts, institution management, field services (DCOs), and provincial administration; and
7. limited understanding of how the different informal "court" systems work and how they can be sensitized and strengthened to enable children's access to justice.

The interviews with children revealed that children are aware that children commit crimes, from petty offences to serious crimes. They commit crimes on their own, in collaboration with other children or with adults. The latter was the case with young people interviewed who were under probation at the Nairobi Probation Youth Hostels. The interviews also revealed that even though children may be aware that what they are doing is wrong, others only became aware once they start going through the criminal justice system. This was the case with some of the children interviewed at the Nairobi Remand Home. According to a majority of the children interviewed, only children from the age of 15 years should be charged in a court of law for committing a crime.⁶

Fifty six per cent of the children were aware that there are special programs for children who are in conflict with the law. These include education, counselling and vocational skills training. The counselling assisted them come to terms with their situation, especially those who committed crimes due to difficult situations at home. Youth undergoing probation reported that the skills training they undergo would help them in future to look for jobs to sustain themselves. They cited the toolkit given to them upon successful completion of probation as particularly useful in assisting them to find employment.⁷

⁶ *Ibid*, p. 9.

⁷ *Ibid*, p. 11.

The children also revealed that some were likely to be mistreated and discriminated against at home even after they have reformed and left their “bad habits” behind, because of the stigma attached to having been through the justice system.⁸

3.3 Community Context

The key community players in child protection at the community level include the family, community, schools, religious institutions, hospitals, village leaders/ chiefs, CBOs, FBOs VCOs Children’s Officers, AACs, and police.

The coordination between local community structures and local/ national (formal) government structures are conducted through the AACs (as explained above), where the local leaders are represented. One of the local justice mechanisms that falls outside the formal sector that has a bearing on child protection is meetings with elders, religious leaders and counsellors, , peer councillors and family elders.

The existing referral system is ad hoc, relying heavily on the goodwill of the general public and civil servants. It is not institutionalized, and there are no clear guidelines on who should receive initial reports of child abuse in the community. Much of the child protection referrals are done informally, without adequate records and documentation, leading to possibilities of frustration and further psychological trauma for the affected children. There are numerous informalities in the referral system with the children being subjected to multiple interviews and interrogations. There is a recent effort for DCS countrywide, working with Childline Kenya and peer civil society actors nationally, to have an operational referral system brought about by the 116 help line and the Child Protection Centers.

Many organizations address child abuse and violence cases without any documentation but mainly as good samaritans. These cases are rarely properly documented except where they reach hospitals or the police. However, it appears that cases sometimes get lost in the occurrence book at the police station.

There is a strong need for sensitization of the community in terms of child protection. This includes information about rights and responsibilities under the law, where to receive help and what services exist, both provided by the government and by CSOs. There is also a need to extend social workers to the community level as part of a formal system.

3.4 Promotion and prevention

There are currently three operating Child Protection Centres, in Eldoret, Mombasa, Garissa, with the plan to open others in Malindi and Nairobi. The aims of the centres are to operate as a child protection resource centre, offering information and advice to the community on all matters relating to the protection and care of children.

Charitable children’s institutions provide care, protection, accommodation and education to the most vulnerable children who would otherwise be homeless and possibly living on the streets. It is therefore essential that they are regulated and provide the best quality of service possible to the most vulnerable group of children in the community. However, many of the children in CCIs have a family, but are institutionalized due to poverty related factors.

As described above, one of the functions of the AACs is to coordinate the different actors in child protection, such as police, health workers and teachers. The aim of the coordination is to have a forum where protection issues can be brought up by any of the members of the council. This coordination mechanism is however not functioning, due to lack of membership, financial support and inadequate capacity from the government to make them operational.

⁸ *Ibid.*

The most large-scale program for the retention of orphans and vulnerable children in their families is the Cash Transfer programme, funded by the government together with UNICEF, Sida the World Bank and DFID.

The government, together with development partners, have embarked on a cash transfer programme to provide a social protection system through regular and predictable cash transfers to families living with OVC in order to encourage fostering and retention of OVC within their families and communities, and to promote their human capital development. The transfer is expected to improve health, nutrition and education outcomes for OVC. The program also aims to enhance guardians' knowledge on OVC care (e.g. through training on issues such as nutrition and health care practices) as well as to improve the civil registration of OVC.

3.5 Response

The government and CBOs are providing a number of child protection services, which have been spelled out in the toolkit. The services are however not coordinated and there is a lack of a referral mechanism between the service providers.

In 2005 the government set up a National Adoption Committee on alternative care for children who can not live with their biological parents. The Committee has registered five adoption societies to facilitate both local and international adoptions, and during 2010 constituted a national Technical Committee on Alternative Care to steer the process of strengthening alternative care systems and structures in the country. In addition, the government started registering foster parents in all provinces in a "foster parent register" to promote fostering. The government also plans to review the adoption regulations, and develop guidelines on foster care and guardianship.

The government has also developed standards for best practice in CCIs in an effort to prevent more children from ending up in CCIs, and also to promote reintegration of children back into their families and communities from CCI. Furthermore the government has developed a training manual, and is planning to review the CCI regulations and also to develop guidelines on reintegration of children back into their families and communities.

Retention of children in families remains a key focus for the government, and therefore plans to expand the geographical and household coverage of the cash transfer program for households with OVC.

The child participation study showed that most children are generally aware of whom to go if they have been abused. Children in all the sites were of the opinion that there are structures at the community level where children can seek help in cases of extreme mistreatment and physical violence. Some of those mentioned were chiefs, police, and extended family members such as aunties or grandmother. Neighbours were often cited as the first call for help when a child is badly hurt from beating or excessive punishment by employers.

Parents and guardians were mentioned on the one hand as abusers, but on the other hand as possible persons who can also protect their own children from external violence, for example beating by older boys, beating at school, and being wrongly accused of committing a crime. In Dadaab refugee camps children mentioned block leaders, UNHCR, Save the Children and religious leaders as the most accessible persons and structures which were always ready to help them.

Even with this information, the children shared with the research team some of the challenges they face. In Mombasa and Molo, children told the research team that they feared reporting to the police, because they knew they were likely to be abused further rather than be assisted. In Nyahururu, adolescent girls and boys said that if they reported cases of sexual abuse to any adult-led institution, they would be accused of tempting the offender. Younger children however were likely to get sympathy from adults if they were

sexually abused, and genuine efforts would be made to apprehend the offender. Except for Mombasa, all children interviewed at other sites did not know of any agency offering legal aid to children, even when the interviewers asked leading questions of organizations such as CLAN, ANPPCAN, Kituo cha Sheria and CRADLE, which are renowned for providing legal aid to children.⁹

3.6 Data for decision-making

The mandate of consolidation of child rights data in Kenya lies with the NCCS as the coordinating body of all institutions that provide services to children. The council should therefore at any given time be in a position to have relevant information pertaining to children. Furthermore, children constitute slightly more than a half of the Kenyan population. Given this large proportion of the population which is largely dependent, it is imperative for the government to plan well for the provision of social services, such as education and health. Education, for example, shapes the personal growth and life chances of children, as well as the economic and social progress of the country.

In order to ensure improved planning and programming on children's issues, the government, through the NCCS and other partners, realised the need to establish a centralized data base system that would enhance service delivery to children through information sharing and efficient focused planning for children issues. Accurate data will provide tools for planning, development and monitoring of interventions. Thus, a centralized database will enhance accuracy through elimination of inconsistencies. For this to happen, however, there is need for improvement in the data collection systems in the relevant ministries, such as in the police and the judiciary. Furthermore, data on issues affecting refugee children and other children within the jurisdiction of Kenya who are not nationals should also be captured.

The DCS implements and oversees programs that protect children from child abuse, neglect and exploitation, including sexual exploitation. In the course of discharging its mandate the department generates statistical information that is useful in planning and programming on children's issues. The department is the single most important source of child protection statistics. The first efforts to establish proper information management in the children sector were undertaken by the Government of Kenya, assisted by partners, in the 1990s.

Currently, DCS uses two programs to capture data on children in Kenya. These are the children database, developed with support from GTZ eight years ago and a recently introduced Inter Agency Child Protection database.

The two programs have been operationalized, but they have not been adequately utilized to capture all the data as initially envisaged. The amount of data received from the field reveals that very few of the district children's officers (DCOs) use the database. Information gathered through consultations with government officers indicates that the officers lack the necessary skills and knowledge to operate the children database.

The Inter Agency Child Protection database is a more recent project that was installed with the support of UNICEF and Save the Children Alliance. It was one of the emergency response initiatives by DCS to capture data on separated and other vulnerable children as a result of the post 2007 election violence. Data collection tools have been developed and are in use in 31 districts which were the worst hit by the violence. Duly filled forms are sent every two weeks to the DCS headquarters where information is entered in the central database.

The DCS has a national network of offices spread throughout the country, up to the district level. All cases of child abuse, exploitation and neglect are reported to the DCO, who handles these cases. It is at this level where proper statistics are, and can effectively be, generated. In line with the provisions of the children database, the current practice is that the DCO enters the information concerning a child on a detailed "case record sheet" of the children's database. This case record sheet gives detailed information about the child's

⁹ *Ibid*, pp. 10-12.

personal information, entry information, parents/ guardian, siblings, residence, rural home particulars, case history, health information, school education, and vocational training.

The database, if used properly, has an in-built program that can generate important statistical summaries, from the district level to the national level.

Serious attempts have been made to install the soft copy of the detailed case record sheet in all districts. Equally there have been attempts to train the DCOs to directly enter the information concerning individual children in the children database.

While it is appreciated that concerted efforts have been made to produce data on children, the efforts have observably not been very successful, due to:

- lack of appropriate staff with the relevant skills to undertake the work of data entry;
- lack of monitoring and evaluation training to the data producers on the type of data to collect;
- lack of computers for some DCOs;
- frequent break down of the existing computers used by the DCOs and the high cost of repairs. Computers have been provided without proper planning on operation and maintenance costs and processes;
- lack of training to the DCOs, who are the most important source of institutional data on the use of computers;
- insufficient number of children officers.

Despite the fact that only a few districts are able to use it, the DCS uses a standard summary format sheet to report cases handled, on a monthly basis. In theory the summaries from the districts are supposed to be channelled to the headquarters in Nairobi through the provinces. The provinces use the district reports to develop their own reports, and then send them to headquarters.

4 Priority gaps and recommendations for the way forward

As pointed out in the introduction of this paper, the aim with the mapping and assessment exercise is for stakeholders involved in child protection to identify and agree upon a minimum package of gaps and recommendations to be addressed in order to have a functioning child protection system. The below gaps and recommendations have been identified as priority issues to be addressed over the next three years, in order to have a functioning child protection system.

Membership and participation in the NCCS and the AACs is currently not defined and statutory for the most critical members (local authorities, child social workers, police, health workers, education professionals, youth services, adult mental health services, probation officers).

Recommendation: To include inter-agency collaboration in the Children Act amendment process. The NCCS and AAC membership should be defined in the amended Children Act, and membership should be at the decision-making level, with clear mechanisms for holding agencies accountable. The NCCS and AACs should also carry out a coordination, as well as a monitoring and quality control, function (scrutiny), function to ensure effectiveness of support and services provided for safeguarding children. The NCCS and AACs should also be responsible for reviewing relevant data, providing annual reports on progress and constraints, and for rolling out the policy framework. The NCCS and the AACs should not deliver services directly but coordinate and harmonize them at all levels. That is the responsibility of the individual agencies and DCS. The role of Provincial and District Commissioners as independent chairs of the AACs should also be included in the Children Act, including spelling out their coordination and oversight responsibilities.

Regular coordination meetings should be held at the ministerial level. The meetings should be chaired by the Minister of Gender, Children and Social Development, and should include Education, Health, Justice, Ministry of State for Provincial Administration and Internal Security (Police), Judiciary, Labour, Immigration, Registration, and other relevant departments. The meetings should review inter-agency collaboration for the safeguarding of children.

There is a lack of adequate training for child protection stakeholders

Recommendation: Appropriate training packages on child protection should be provided within the statutory training manuals of all ministries and GOK departments dealing with children (education, health, DCS, provincial administration and police). Increased collaboration between the government and universities regarding specific training for social workers and children officers is recommended. It is critical that the social workers have the right skill set required to address the needs of the child and his or her family, at the family level.

Multi-agency capacity building is critical for the success of child protection. While agencies would be responsible for specialized agency trainings, the AACs should carry out the general safeguarding training for all relevant service providers. In addition to the members of the AACs, each agency should have safeguarding focal points who have a more in-depth understanding of safeguarding, and who contribute to in-house and multi-agency training.

There is an over emphasis on institutionalisation of children

Recommendation:

There is the need to continue strengthening alternative care systems and mechanisms, including raising awareness on the importance of family care for children, as opposed to institutional care. The first level of intervention for children in need of protection should be at the family level. If, through support, parents are able to stop their abusive behaviour and properly care for their children, this is arguably the best option for the children, and the most cost-effective and sustainable approach for the state. Also, it does not carry with it the inherent risks of institutionalization, such as inability to form attachments, lack of identity and lack of belonging to a culture and community.

In order to respond effectively at the family level, well planned behaviour change efforts are required to educate families and communities so that they are more vigilant and police each other for enhanced child protection. This should be specific to the particular community/ region or context, so that it addresses the inherent child protection issues that are sanctioned in that particular family, community or context.

Child rescue procedures should be streamlined according to the following principles: Removal of a child from his or her home should only take place if the child is in immediate danger (this does not include poverty related factors). The best care placement for children, even in emergency cases, is with kinship care or (if that is not possible) with non-kinship foster care. Institutional care should only be used for the hard to place cases (i.e. older children with behavioural issues) and as a last resort and for a short time period. A child should never be housed in a police station. In order to realize this in Kenya a lot of effort will have to be put into building up the foster care system, and also to work on streamlining the mandate and operations of CCIs.

There is a lack of children's officers

Recommendation: The MoGCSD will need to advocate for an increase in numbers of children's officers, and for deployment ideally down to the location level, but at least down to the division level. Setting up a child protection system without adequate social workers means that interventions will remain largely at the treatment level rather than at the prevention or risk mitigation level.

There is a lack of a monitoring and evaluation system for child protection

Recommendation: The DCS and NCCS should undertake an assessment of what information is required in order to make evidence based decisions on future programming. A management information system should be developed in the DCS, which should included individual file management, data compilation on specific indicators and monitoring of institutions and organisations that care for children.

There is a lack of child protection services

Recommendation: Currently child protection services are mainly available in urban areas. The services need to be extended into the the rural areas. These services include, child protection centers, child friendly courts, legal aid for children, child protection units at police stations, scale up of the cash transfer programme for orphans and vulnerable children, amongst all.

Lack of knowledge of children in the justice system, including the role of the informal justice system

Recommendation: A situation analysis of children in the justice system should be undertaken, including the roles and responsibilities of the different actors involved in matters pertaining to children in conflict of the law, the informal justice system and regulations and guidelines on child friendly justice for children.

5 The way forward

The mapping and assessment exercise of the child protection system has been a consultative process. It is important that the way forward to establish Kenya's child protection system continues to be so. In order to work on the way forward, the following points have been recommended to be addressed.

- Ensure agreement between stakeholders on the priority gaps.
- Develop a child protection strategy/workplan for how to implement the priority gaps over the next four years, including a cost analysis of the implementation of the gaps.
- Ensure that the outcomes of the child protection strategy document are captured in the amendment of the Children Act.