

DECEMBER 2014

STUDY ON LEGAL GUARDIANSHIP AND ADOPTION PRACTICES IN UGANDA



THE REPUBLIC OF UGANDA

STUDY REPORT
Submitted by: Dr. Hope Among

unicef 



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List of acronyms

ACPF	The African Child Policy Forum
ACRWC	The African Charter on the Rights and Welfare of the Child
CRC	The Convention on the Rights of the Child
HAC	The Hague Adoption Convention
LC	Local Council Chairperson
MGLSD	Ministry of Gender, Labour, and Social Development
OVC	Orphans and vulnerable children
PSWO	Probation Social and Welfare Officer
UAA	Intercountry Adoption Act of 2012
USA	United States of America

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FOREWORD

In Uganda, as in other developing countries, some children are temporarily or permanently deprived of their parental family environment and therefore require alternative care. Although Uganda's OVC policy prioritizes kinship family and community based care for orphans and other vulnerable children, both institutional care and adoption have been on the increase in the recent past.

There have been a number of unethical practices linked to the establishment and operation of children's and baby's homes, and the process of adoption. Of particular concern is the circumvention of adoption processes through use of legal guardianship processes; a deliberate recruitment of children from within the community into child care institutions with prospects of financial gain through adoption and legal guardianship; and relinquishment of parental responsibility under false/pretentious circumstances.

It is against this background that the Ministry of Gender, Labour and Social Development with support from UNICEF, commissioned a study on legal guardianship and adoption practices in Uganda. The study aimed at scrutinizing the status quo on the actualities of legal guardianship and adoption practices in Uganda to establish the validity and status of concerns.

The study report provides a comprehensive but synthesized analysis of the current state of legal guardianship and adoption practices viewed against the existing legal framework, highlighting issues of compliance or the lack thereof, areas of ambiguity and issues related to interpretation and perception by the various actors involved in these processes. The issues highlighted and recommendations made provide important points for reflection as we continue to deliberate on how best to address existing system and practice gaps through relevant care reforms that put children and their best interest at the heart of all alternative care interventions. The Ministry is particularly keen to take up discussions with relevant institutions and ministries in its efforts to progress discussions regarding the issues raised within this report so that practical short and medium term solutions, including ratification of the Hague Convention on Inter-country Adoption can be pursued.

MARY KAROORO OKURUT (MP)

MINISTER OF GENDER, LABOUR AND SOCIAL DEVELOPMENT

EXECUTIVE SUMMARY

Uganda is among the top 20 countries of origin for inter-country adoptions. Although the absolute numbers are not necessarily very high when compared to other African countries like Ethiopia, most of the adoptions of Ugandan children are to be finalized outside Uganda. This raises fundamental concerns regarding the procedures being used, the checks and balances therein to safeguard children and the remedies available to children in instances of unsuccessful/failed adoptions.

The study on legal guardianship and adoption practices was undertaken to get an insight into the actualities of current practice. The study was undertaken in two parts – a desk review and a primary research component. During the desk review, 100 concluded applications for the period 2006 – 2013 were reviewed (19 domestic adoption applications, 16 inter-country adoption applications, 59 legal guardianship applications for purposes of inter-country adoption, and 6 legal guardianship applications) to assess the extent to which applications made and the subsequent court decisions were in accordance with existing legal provisions. Based on the findings of the desk review, key informant interviews were held with 18 law firms, 14 birth parents/family members, 5 probation and social welfare officers, 8 child care institutions, 2 adoptive parents, 6 Judges and 6 local council chairmen at village level during the primary research component.

Whereas the law on adoption is clear, the Children Act does not provide any legal regime or rules of procedure for legal guardianship, in particular legal guardianship for purposes of intercountry adoption. The courts thus rely on Article 139 of the 1995 Constitution of Uganda which confers to the High Court unlimited original jurisdiction in all matters including in adoption and legal guardianship. In practice, this provision is read and interpreted together with: Section 2, 3, 4, 5, 6, 36 (1) (c), 44 (1), 45, 46, 51 Children Act; Section 14, 33, 39 of the Judicature Act; Rules 3, 5, 6, 7 Children (Adoption of Children) Rules; Section 2, 3, 4, 5, 6, 98, and 101 of the Civil Procedure Act; and Order 52, Rules 1, 2, 3 of the Civil Procedure Rules.

Overall, there is a general preference for legal guardianship over adoption applications because there is no legal requirement for fostering. There are more applications for boys than girls; and 52% of the children being adopted

are below 5 years of age, highlighting the overall preference for young children. Only 11% of the children had any pre-existing health condition, contrary to the widely held view that majority of the children are ill and that legal guardianship makes it possible for them to be taken out for urgent treatment. A majority of the children were staying in children's homes at the time of the application (41%), while 35% were actually staying with their birth parents/family and 24% with the petitioners. The high number of children who were in children's homes at the time of the application were partly attributed to the tendency among parents/guardians to transfer children to a children's home just before the commencement of an adoption/legal guardianship process due to the expectation that this would speed up the process. Of the 72 children with known relatives, only 21 were total orphans. Grandparents relinquish the highest number of children followed by mothers.

Despite the requirement that all prospective parents notwithstanding whether the child was institutionalized or not, first attain care orders to foster the child prior to adopting him/her, only 26% of the applications for adoption (domestic and international) and legal guardianship for purposes of adoption had care orders. Even for those with care orders, it was a common finding of the study that care orders especially for children residing in children's homes were attained long after the child had physically resided with the home or the prospective foster parents, implying that the pursuance of a care order is motivated by a prospective interest in adoption and legal guardianship with regard to a specific child, and not necessarily as a result of due process. In up to 71% of the applications, there was no period of physical bonding as implied by the 36 month period of pre-adoption fostering with only 16% of the applications fulfilling the stipulated period of fostering.

Consent of the parents of a child if known, and any other person having any rights and obligation in respect of the child by court agreement or customary law is necessary for an adoption order to be made. Up to 91% of the applications attached affidavits of consent, although there were still those few cases where proof of consent was not provided, especially for domestic adoptions. The high levels of consent are however somewhat deceptive, as consent is being largely influenced by recommendations from parents who have previously relinquished parental responsibility and a perception of the credibility of a children's home and that of the PSWO.

Consent is also in some instances being sought after the commencement of the adoption/legal guardianship process.

Court decisions are generally guided by the physical/emotional needs of the child weighed against the capacity of the child's birth parents/guardians to meet these needs. This suggests a general acceptability of the correlation between proper child development and financial capacity, contrary to the UN Guidelines on Alternative Care for Children which holds that a child will not be removed from their birth parents/family solely on grounds of 'material and financial poverty'.

The study established an overlap between actual poverty and an effortless approach to exonerating parental responsibility due in part to the misconception that foreign adoptive parents have a great deal of resources to take care of the child as well as support the birth family. In a number of instances, the decision to relinquish parental responsibility is also influenced by financial incentives from adoptive parents and children's homes.

Although it is cardinal law that fraud vitiates everything including in matters of adoption and legal guardianship, courts are reviewing rather than revoking orders even when it is clear that the orders were fraudulently obtained. The reasons for these are multiple, and partly relate to the application of the best interest principle.

Based on the study findings, it is recommended that Uganda takes quick steps to ratify the Hague Convention and put in place the necessary institutional mechanisms to regulate and oversee intercountry adoptions, put a temporary suspension on the use of legal guardianship for purposes of adoption, address existing gaps within the Children's Act to make provisions that are not currently explicit more explicit, more vigilance by the Courts while processing applications including for domestic adoptions, better supervision and operational support to PSWOs, and continuous public education of the community on adoption and legal guardianship processes among others.



PART ONE

INTRODUCTION AND BACKGROUND

Uganda, like most African countries¹, has progressively become a sending country especially to the United States of America (USA) which receives approximately half of the children adopted internationally.² In 2011, Uganda was among the top 20 countries of origin for inter-country adoptions to the USA.³ A report by the USA Department of State indicates that between 1 April 2008 and 30 September 2008, 30 children from Uganda received immigrant visas to the USA.⁴ This figure skyrocketed in 2012 when 238 Ugandan children received immigrant visas.⁵ These statistics might not be as high as in some African countries like Ethiopia where 1,031 children in 2008⁶ and 1,568 in 2012 received such visas.⁷ However, the report indicates that the adoptions for all 30 immigrant Ugandan children in 2008⁸ and 227 out of 238 in 2012 were to be finalised in the USA. Only 11 adoptions were finalised in Uganda.⁹

These statistics raise fundamental concerns regarding the procedures being used, and the checks and balances therein to safeguard children before, during, and after such processes. It also raises concerns as to the remedies available to children in instances of unsuccessful/failed adoptions. Moreover, the provisions that create legal guardianship in the Children Act have and continue to be invoked to attain custody rights over children and to facilitate their subsequent migration abroad or overseas for purposes of adoption. This law has been rationalized as an advancement of equitable decisions but raises a number of concerns which resonate throughout this report.

1. Between 2004 and 2010, Ethiopia was recorded as the highest sending country in Africa. For detailed statistics see ACPF (2012) Africa: The New Frontier for Inter-country Adoption. Addis Ababa: The African Child Policy Forum 4.
2. Peter Selman, Key Tables for Inter-country Adoption: Receiving States and States of Origin 2003–2011, NEWCASTLE UNIV, <https://blogs.ncl.ac.uk/peterselman/files/2012/11/intercountry-Adoption-2003-2011.pdf>.
3. Other receiving countries are Italy, Spain, and France. ACPF (2012) Africa: The New Frontier for Inter-country Adoption. Addis Ababa: The African Child Policy Forum 1–10.
4. United States Department of State (2009) FY 2008 Annual Report on Inter-country Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279, The Inter-country Adoption Act of 2000 17–19.
5. United States Department of State (2013) FY 2012 Annual Report on Inter-country Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279 3.
6. United States Department of State (2009) FY 2008 Annual Report on Inter-country Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279, The Inter-country Adoption Act of 2000 17–19.
7. United States Department of State (2013) FY 2012 Annual Report on Inter-country Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279 2.
8. United States Department of State (2009) FY 2008 Annual Report on Inter-country Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279, The Inter-country Adoption Act of 2000 17–19.
9. United States Department of State (2013) FY 2012 Annual Report on Inter-country Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279 3.

One of the most contentious issues is whether legal guardianship and adoptions advance a child's right to be raised within their birth family as stipulated within the UN Convention on the Rights of the Child (CRC)¹⁰ and the legal-policy framework in Uganda. This right includes the right to be taken care of by one's birth family and to cultural identity. On the one hand, it may be argued that adoption especially intercountry adoption ultimately results in a number of deprivations to both the child and their birth parents or relatives such as the right to identity and relational ties. On the other hand, the permanent institutionalization of children is not an option that is necessarily in the best interest of the child. Moreover, there is still reluctance among Ugandan families to adopt children. This could be attributable to the existing kinship culture of embracing disadvantaged relatives without resort to legal processes as up to 33% of households have either a foster child or an orphan, majority of these households being in rural areas.¹¹ These arguments suggest that adoption including intercountry adoption can provide viable care options for children living without appropriate family care but that the procedures for adopting children must be accompanied with appropriate safeguards.

There is the related issue of the proliferation of children's homes across the country and whether this is related in any way to the rise in legal guardianship for purposes of intercountry adoption. As at May 2012, a study by the Ministry of Gender, Labour and Social Development (MGLSD) in Uganda had identified approximately 420 operational children's homes within the country, majority of which were reportedly established through irregular procedures. However, many more exist under relative anonymity due to the lack of complete information. Moreover, most of these homes have poor or inadequate provisions for HIV/AIDS affected children and those with special needs.¹² This report also indicated that there are 12,000 children in institutional care, and conservatively estimated at least an additional 45,000 children being in such institutions.¹³ Interestingly, an analysis of the data on the distribution of children's and babies homes across the country in May 2012 reveals that the majority of children's homes are located in urbanized districts like Wakiso (54), Kampala (49), Jinja (37), and Mukono (23) than in predominantly rural districts.¹⁴

10. Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

11. Uganda Demographic and Health Survey, 2011

12. Ministry of Gender, Labour and Social Development (2012) Baseline Study: The State of Institutional Care in Uganda.

13. Ministry of Gender, Labour and Social Development (2012) Baseline Study: The State of Institutional Care in Uganda.

14. Ministry of Gender, Labour and Social Development (2012) Baseline Study: The State of Institutional Care in Uganda.

There are concerns that the high number of homes, majority of which are not regulated nor monitored by Government may be linked to child trafficking, including a deliberate ‘recruitment and movement’ of children from rural to urban areas for purposes of institutionalization with prospects of financial gain through legal guardianship and adoption practices. It is not disputable that the financial incentives underlying the ‘facilitation’ of legal guardianship and adoption processes coupled with the demand for children from the developing countries has fuelled child trafficking schemes.¹⁵

The aforementioned concerns raise an urgent need to undertake major care reforms, including a temporary suspension of intercountry adoption but these cannot be pursued in the absence of an understanding of the current practice. This study is aimed at scrutinizing the status quo on the actualities of legal guardianship and adoption practices in Uganda.

1.1 Legal and policy framework

1.1.1. THE CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child (CRC) places great emphasis on the best interest of the child. Article 20 and 21 provide for procedural and substantive protections pertaining to domestic and intercountry adoption processes. For instance, states are obliged under Article 21(a) to ensure that the adoption process complies with the applicable law and procedures. Whereas Article 21 (b) recognizes intercountry adoption as an ‘alternative means of child care’, it clearly prioritizes placing a child in foster care or an adoptive family within the child’s country of origin. This according to Article 20 (3) reinforces the development of the child within his/her ethnic, religious, cultural, and linguistic background. Moreover, Article 21 (d) places an obligation on state parties to take appropriate measures to ensure that persons involved in intercountry adoption do not enjoy improper financial gain. These protections are expounded in the UN Guidelines for the Alternative Care of Children.

1.1.2. THE AFRICA CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

Article 24 of the Africa Charter on the Rights and Welfare of the Child

15. Smolin D.M., (2013) The Corrupting Influence of the United States on a Vulnerable Intercountry Adoption System: A Guide for Stakeholders, Hague and non-Hague Nations, NGOs, and Concerned Parties.

(ACRWC) adopts a stricter phrase with respect to intercountry adoption, indicating that this should be used as a 'last resort'. It is worth noting that the wording of Article 24 (d) of the ACRWC, which stipulates against illicit financial gain is limited to those who try to adopt a child. This is restrictive compared to Article 21 of the CRC which embodies all persons involved in the adoption process. In order to guarantee the protection of the child in the receiving country, Article 24 (e) of the ACRWC obligates state parties to conclude bilateral or multilateral agreements or arrangements to ensure that the placement of the child in another country is carried out by a competent authority. With regard to the follow-up of the adopted child, Article 24 (f) of the ACRWC provides that states are required to develop machinery to monitor the wellbeing and development of the adopted child. Like the CRC, the provisions of the ACRWC are particularly silent on the procedural and substantive issues concerning the use of legal guardianship for purposes of adoption, which is increasingly being employed in Uganda, such as the mechanisms to ensure the successful adoption of the child once they leave their country of origin, and the available remedies for children in cases of failed adoptions.

1.1.3. THE HAGUE ADOPTION CONVENTION

The Hague Adoption Convention (HAC) is currently considered the most comprehensive international legal instrument on adoptions in particular intercountry adoption.¹⁶ Although Uganda is not a party,¹⁷ HAC advances a commendable framework that could be instructive to its standards on legal guardianship and adoption.¹⁸ The HAC is modeled around Article 21 of the CRC which requires countries to ensure that adoption is carried out in the best interest of the child. Member states are particularly encouraged to promote the objectives of Article 21 by concluding bilateral and multilateral agreements which ensure that intercountry adoptions are carried out by competent authorities.¹⁹ It is therefore based on this obligation that HAC seeks to ensure that intercountry adoptions are free from abductions, child trafficking, and abuse of human rights.²⁰

16. The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption. Adopted on 29 May 1993.

17. Most African countries are not party to HAC. For an updated list of Convention countries see http://adoption.state.gov/hague_convention/countries.php (Accessed on 05-02-2014).

18. The HAC has been criticised for creating 'arbitrary obstacles to intercountry adoption' and overlooking core substantive and procedural issues. See David M. Smolin (2010) *Abduction, Sale and Traffic in Children in the Context of Intercountry Adoption*. Hague Conference on Private International Law 3. Erica Briscoe (2009) Comment, *The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption: Are its Benefits Overshadowed by its Shortcomings?* *Journal of American Academy of Matrimonial Lawyers* Vol 22, 443-160.

19. Article 21(e) of the CRC.

HAC mandates state parties to ensure that adoptions are carried out by competent authorities who must have regard to the child's eligibility for adoption; the best interest of the child; the consent of the child's parents and any relevant institutions or persons where applicable; and the wishes of the child.²¹ Failure to comply with such requirements can have the effect of rendering the (intercountry) adoption invalid.

The procedural requirements for the successful completion of an intercountry adoption are comprehensively stipulated in Chapter IV of the HAC. Some of the important factors which must be considered include the identity of the child, background, social environment, family and the medical history of the child. This information is pivotal in making the decision as to whether the child is eligible for adoption. As such, a state party may refuse to recognise an intercountry adoption if it manifestly contravenes public policy in light of the best interest of the child.²² It also suffices to note that the HAC prohibits improper financial enrichment of any individual involved in the process of intercountry adoption. The only funds that may be charged include fees prescribed by law and reasonable professional fees. The charging of exorbitant fees by institutions for their services pursuant to an intercountry adoption is also expressly prohibited by the HAC.²³

Whereas the mere ratification of the HAC may not automatically guarantee special safeguards and protections for children involved in adoption processes, the statistics in some reports suggest that children involved in intercountry adoptions by state parties enjoy better protections as compared to those in non-state parties. For instance, only 25 children emigrated from the United States for purposes of adoption between 1 April 2008 and 30 September 2008²⁴ and only 99 in 2012.²⁵ This is notwithstanding the fact that more than 500,000 children in the United States are under the foster care system and nearly 115,000 are pending adoption.²⁶ Also, South Africa has witnessed a significant decrease in inter-country adoptions from 242 in 2004 to 189 in 2010 and Madagascar from 335 to 56 during the same period. This is contrary to

20. Briscoe E. (2009) Comment: The Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption: Are its Benefits Overshadowed by its Shortcomings? 22 *Journal of the American Academy of Matrimonial Lawyers*, p.438.

21. Article 4 of the HAC.

22. Article 24 of the HAC.

23. Article 32 of the HAC.

24. United States Department of State (2009) FY 2008 Annual Report on Intercountry Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279, The Intercountry Adoption Act of 2000 17-19.

25. United States Department of State (2013) FY 2012 Annual Report on Intercountry Adoptions May 2009 submitted pursuant to Section 104 of Public Law 106-279 4.

non-state parties like Ethiopia where intercountry adoptions skyrocketed from 1,527 in 2004 to 4,397 in 2010, and in the Democratic Republic of Congo from 12 to 189.²⁷

1.1.4. THE CHILDREN ACT

The provisions of the Children Act on adoption practices in Uganda,²⁸ as discussed in subsequent parts of the report, primarily embody the standards and principles advanced within the CRC and the ACRWC.²⁹

Adoption is stipulated within section 44-50 of the Children Act chapter 59. Section 44 provides for domestic applications to be made to a chief magistrate court and intercountry adoptions to a High court. Section 45 stipulates restrictions and conditions for adoption orders. For instance, the applicant or at least one of the joint applicants should be twenty five years and is at least twenty one years older than the child. It is vital to highlight that the Act does not provide for an upper age limit for prospective parents. For an application by one spouse, the other has to consent unless he or she is incapable. Moreover, no adoption orders shall be made for a sole male applicant in respect of a female child.

The applicant should have fostered the child for at least 36 months under the supervision of a PSWO who will submit a report to the court. This applies to both domestic, and intercountry adoption as stipulated in section 46. Foreign applicants are required to stay in Uganda for at least 3 years. Section 47 provides for the requirement of consent of the child's parents, and the child if he or she is at least fourteen years of age. Moreover, the views of the child must be taken into account if the court is of the view that he or she understands the proceedings. Section 48 provides for the functions of the court, section 49 outlines the procedure for adoption, and section 50 provides for appeals. These provisions are expounded in discussions throughout this report.

The Children Act does not provide any legal regime or rules of procedure for legal guardianship for purposes of intercountry adoption.

26. US Department of State, Office of Children's Issues, Intercountry Adoption: From A to Z available at http://adoption.state.gov/content/pdf/Intercountry_Adoption_From_A_Z.pdf (accessed 30-12-2013) 7.

27. ACPF (2012) Africa: The New Frontier for Intercountry Adoption. Addis Ababa: The African Child Policy Forum 11.

28. Section 44-50 Children Act Chapter 59.

29. OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

1.2 Working definitions³⁰

APPROVED HOME: A Government or non-governmental home approved by the designated Minister to provide substitute family care for a child and this includes a babies' approved home and children's approved home which provide care and accommodation for children aged below six years and aged between three to under eighteen years respectively.

AUTHORIZED PERSON: An official or other person authorized expressly or impliedly to perform the act in question.

CARE ORDER OR INTERIM CARE ORDER: This is an order issued by the family and children court placing a child in the care of the warden of an approved home or with an approved foster parent.³¹

CHIEF MAGISTRATE'S COURT: A court presided over by a chief magistrate.

CHILD: A person below the age of eighteen years.

COMPETENT AUTHORITY: An official or body or other person authorized expressly or impliedly by any enactment or otherwise to perform the act in question.

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

DOMESTIC ADOPTION: The process by which a Ugandan citizen(s) seeks an adoption order over a Ugandan child or children.³²

FOSTER PARENT: means a person with whom a child is placed under the Foster Care Placement Rules.³³

30. These definitions are mainly extracted from the Children Act Cap 59; the Children (Adoption of Children) Rules Statutory Instrument 59-1; and the Foster Care Placement Rules in the second schedule to the Children Act.

31. This order can be applied for by the probation and social welfare officer or an authorized person.

32. This order confers parental rights to the applicant or applicants. The application shall be made by petition to the chief magistrate's court, in Form A in the Schedule to the Children (Adoption of Children) Rules Statutory Instrument 59-1.

GUARDIAN: A person having parental responsibility for a child.

INTERCOUNTRY ADOPTION: The process by which a non-Ugandan citizen(s) seeks an adoption order over a Ugandan child or children. This order confers parental rights to the applicant or applicants.³⁴

LEGAL GUARDIANSHIP ORDER: An order granting a person(s) parental responsibility for a child or children.

PARENT: The biological mother or father or adoptive mother or father of a child.

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

RELINQUISHED CHILD: A child whose birth parents or relatives hand over parental responsibility to another person not within the child's birth family.

WELFARE REPORT: This is a report prepared by the probation and social welfare officer in respect of a child to inform decisions regarding a supervision or a care order.³⁵

1.3 Methodology

The study was conducted in two stages, the first being a desk review and the second a primary research.

The desk review phase involved a review of concluded applications for domestic adoption, intercountry adoption, legal guardianship for purposes of intercountry adoption and legal guardianship between 2006-2013 at selected High Courts and Chief Magistrates Courts. The

33. Foster Care Placement Rules, Second Schedule to the Children Act.

34. The application shall be made by petition to the High Court in Form B in the Schedule to the Children (Adoption of Children) Rules Statutory Instrument 59-1.

35. Such a report shall be prepared subsequent to a home visit and interview the parents of the child concerned, and interview of a child if he or she is of sufficient age and understanding. This report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the family and children court.

aim of this exercise was to assess the extent to which applications made and the subsequent court decisions were in accordance with existing legal provisions and to identify persons and institutions involved in the process.

The data collected from the desk review was coded based on the major themes emanating from the data.³⁶ It is important to note that there is no single and comprehensive national data on legal guardianship and adoption in the country. As such, the research selected a representative sample of 2 High Court and 2 Chief Magistrate courts in 2 districts per region. The exception was in Kampala district where 3 High Court circuits were covered.

The table below reflects the courts in which files were actually read. It excludes courts that had not handled such applications or whose cases were not available or accessible at the time of the desk review. These courts include the Chief Magistrate Courts of Jinja, Kabale, Lira, Masaka, Mbale and Mbarara. The table below shows the distribution of cases in the different courts based on the type of application.

TABLE 1: THE DISTRIBUTION OF CASES BY COURT AND REGION

COURTS OF APPLICATION	TYPE OF APPLICATION ³⁷				Total cases
	Domestic adoptions	Intercountry adoptions	Legal guardianship for intercountry adoption	Legal guardianship	
Chief Magistrate Gulu	4	0	0	1	5
Chief Magistrate Nakawa	10	0	0	0	10
High Court Gulu	0	3	2	0	5
High Court Jinja	0	1	14	0	15
High Court Kabale	0	1	1	0	2
High Court Kampala	3	3	17	0	23
High Court Lira	0	1	0	2	3
High Court Masaka	1	0	4	0	5
High Court Mbale	0	4	7	0	11

36. Some codes for the data to be collected have been included in the main body of the methodology. Specific codes will be generated for each of the key issues being investigated by the study and the data collected.

37. An application is classified as legal guardianship for purposes of intercountry adoption when the intention of adoption is clearly mentioned in the file; and as legal guardianship when there is no mention of such an intention.

COURTS OF APPLICATION	TYPE OF APPLICATION ³⁷				Total cases
	Domestic adoptions	Intercountry adoptions	Legal guardianship for intercountry adoption	Legal guardianship	
High Court Mbarara	0	0	11	1	12
High Court Nakawa	1	3	3	2	9
TOTAL	19	16	59	6	100

NB: 13 of the 100 files reviewed were applications for more than one child. As such, the total number of relinquished children is 122.

The second phase of primary research entailed back tracing of persons and institutions identified in the desk review to get an understanding of the perceptions and expectations of the persons/institutions involved, and to ascertain the authenticity of documents presented to court. The study sample was determined by the availability of clear contact information including a physical location. Only districts that had two or more participants identified were covered. These included: Gulu, Oyam, and Lira in the northern region; Mbale, Iganga, Tororo and Jinja in the eastern region; Mbarara, Kisoro, and Kibale in the western region; and Kampala, Wakiso, Masaka and Buikwe in the central region. Study participants included 18 law firms, 14 birth parents/family members, 5 PSWO, 8 child care institutions, 2 adoptive parents, 6 judges, and 6 Local Council Chairmen 1.

Data collection was based on individual discussions guided by specific questionnaires which are annexed to this report. Some participants were traced through social media and participated through emails. The different responses on key issues were recorded and systematically analysed. The data has been assessed against the information attained from the desk review in order to gauge the level of conformity with the existing legal procedures and requirements.

The analysis of data from both the desk review and the primary research generated insights as to: the contributing factors to the sharp increase in legal guardianships for purposes of inter-country adoptions; the adequacy of the existing legal and policy framework; the primacy of the best interest of the child; the mechanisms available to ensure the exhaustion of other alternative care options prior to inter-country adoption; the potential

37. An application is classified as legal guardianship for purposes of intercountry adoption when the intention of adoption is clearly mentioned in the file; and as legal guardianship when there is no mention of such an intention.

of the proposed National Framework on Alternative Care in addressing existing legal and practice gaps; and the availability of sufficient remedies especially government interventions for OVC's including children in children's and babies homes among others.

1.4 Limitations of the study

The study was faced with a number of limitations as highlighted herein. Interpretation of study findings must thus take into account these limitations.

DESK REVIEW STAGE:

- The archived files in several courts registries are not properly preserved. A significant percentage of the physical files reviewed were tattered and/or missing important documents that are referenced in other available documents.
- A number of registries lack a proper logical and chronological filing system which results in a mix up of records pertaining to different cases. This made file tracing a daunting task. For some registries that had manual registry books, some were not properly kept and updated.
- Some of the registry officers were not co-operative and were reluctant to assist in tracing the required files. However, such instances were few and with a bit of persuasion, this limitation was minimized.
- In some files, the judgments were handwritten by the presiding judge and were not subsequently typed out and printed for filing. This posed a challenge as some of the handwritten orders were not legible.

PRIMARY RESEARCH STAGE:

- Some of the parents and guardians were reluctant to participate in the study for undisclosed reasons.
- Several respondents who had been identified in the primary research had either relocated to other places without a trace or provided vague physical addresses. This resulted in a substantially smaller study sample than had been anticipated.
- Most of the Local Councils identified in the field had no knowledge of children that had been adopted from their areas. For those that

wrote recommendations for persons relinquishing, they had no knowledge as to the progress of the adoption application. This made it difficult to attribute the information derived to specific cases from the desk review.

- Majority of the parents/guardians and LCIs upcountry were illiterate, posing a language barrier. The researcher therefore had to rely on interpreters and the accuracy of their interpretation cannot be guaranteed.



PART TWO

OVERVIEW OF ADOPTION AND LEGAL GUARDIANSHIP IN UGANDA

As highlighted in section 1.1.4, adoption is stipulated within section 44-50 of the Children Act chapter 59.

However, whereas the law on adoption is clear, the Children Act does not provide any legal regime or rules of procedure for legal guardianship for purposes of intercountry adoption. The courts primarily rely on Article 139 of the 1995 Constitution of Uganda which confers to the High Court unlimited original jurisdiction in all matters including in adoption and legal guardianship. In practice, this provision is read and interpreted together with: Section 2, 3, 4, 5, 6, 36 (1) (c), 44 (1), 45, 46, 51 Children Act; Section 14, 33, 39 Judicature Act; Rules 3, 5, 6, 7 Children (Adoption of Children) Rules; Section 2, 3, 4, 5, 6, 98, and 101 Civil Procedure Act; Order 52 Rules 1, 2, 3 Civil Procedure Rules; Article 4 of African Charter on the Rights of the Child; and Article 3 Convention on the Rights of the Child.

It was observed from the desk review that lawyers and the courts mainly interpreted these provisions in support of issues pertaining to: whether the court has jurisdiction; whether the grant of adoption/legal guardianship application is in the best interest of the child; whether the applicants are the suitable guardians for the child; and whether the foster care period of 36 months stipulated within the Children's Act is mandatory. The common conclusions from the deliberations on these issues were that:

- Orders of legal guardianship for purposes of intercountry adoption do not undermine the best interest and welfare of the child;
- The 36 months of fostering is not mandatory and dispensing it does not compromise the child's safety and protection especially in instance where there is an urgent need for medical care hence the provisions of the Children Act should not be given literal meaning;
- The 1995 Constitution appoints the High Court as the guardian of all children thus giving it full jurisdiction.

A number of cases were also cited in support of the above arguments. Such cases include: Adoption cause No. 9/1994 (1995) SC 16; FC No. 39 of 2010; 2002 KALR 532; F.C. No. 11 of 2012; HCT-00-FD-FC-0112/2008; F.C. No. 196 of 2010; F.C. No. 102 of 2010; F.C. No. 194 of 2008; adoption cause No. 005 of 2004; 2004 KALR; FC. No. 92 of 2009; F.C. No. 14 of 2011; F.C. No. 178 of 2009; C.A. No. 70 of 2011; C.A. No. 81 of 2011; F.C. No. 196 of 2010; M.A. No. 0121 of 2010; C.A No. 32 of 2006; HC Family cause No. 158 of 2009; (2007) HCB Vol 1/00; F.C. No. 138 of 2009; HCMA 775/97; M.A No. 0093 of 2010; F.C No. 118 of 2010; adoption cause No. 09/95; FC No. 78/2009; FC No. 104/2011; FC No. 86/11 Civil Appeal No. 33/2006; Family cause No. 237 of 2010; Family cause No. 273 of 2010; HCT-00-FD-FC-0078/2009; Adoption cause 164/2011; Gynagall (1893) 2 Q.B. 233- (CA) at 248; FC (25/2009); Family Cause No. 98/2009; Family Cause No. 17/2011; Civil Appeal No. 22/94 (SC); F.C. No. 100 of 2010; M.A. No. 120 of 2010; and F.C. No. 001 of 2010.

One of the leading precedents on legal guardianship is the matter of Richard Masaba (Civil Appeal No. 81 of 2011) and Deborah Joyce Alitubeera (Civil Appeal No. 70 of 2011). Richard Masaba was abandoned when he was just two days old and Deborah Joyce when she was two months old. With the intervention of local authorities, Richard was committed to St. Kizito Babies Home in Mbale and Deborah was committed to Mercy Child Care Ministry in Wakiso. An American couple filed for legal guardianship of Richard in 2011 and another for Deborah that same year³⁸. The applicants indicated that they needed to acquire travel documents for the children to emigrate to the USA. Both applications were denied on grounds that the applicants were not resident in Uganda and Court would lose jurisdiction and supervision over the children for purposes of ensuring their welfare.

Both applicants brought appeals against the High court decision where they were denied legal guardianship. The appeals were brought on grounds that the Judge had erred in fact and law when he ruled that the applicants did not qualify under Ugandan law to be granted legal guardianship, as he failed to evaluate the welfare and best interest of the child. The Court of Appeal argued that the Presiding Judge erred in focusing on the strict compliance with legal conditions for adoption. Rather, the decision should have been informed by the evidence on record and the best interest of the child. Dorothy was abandoned and her father lived in

38. Available at <http://www.ulii.org/ug/judgment/high-court/2012/4-0> (accessed on 22-11-14).

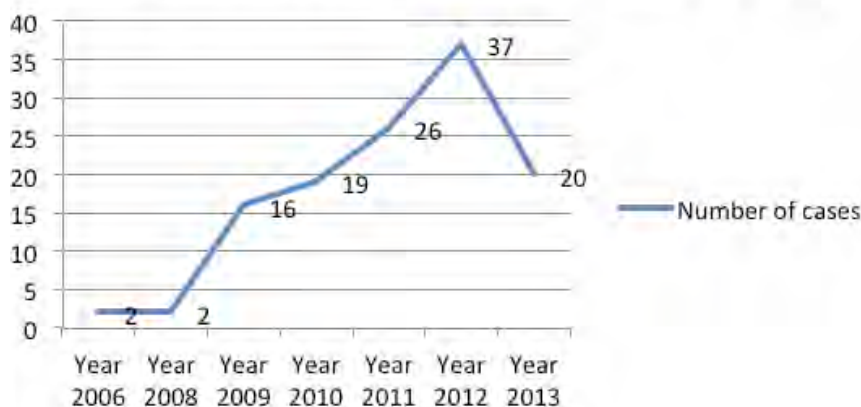
dire poverty yet he had 17 other children. Richard was also abandoned by unknown parents. The Court of Appeal also argued that the High Court has jurisdiction to grant legal guardianship orders. The Court thus took into account the appellants educational and employment status and concluded that the appellants were financially and emotionally stable to provide the necessary atmosphere for the children to develop to their full potential.

These interpretations of the law which accommodate legal guardianship for purposes of intercountry adoption have contributed to the rise of such applications.

2.1 Trend of adoption and legal guardianship

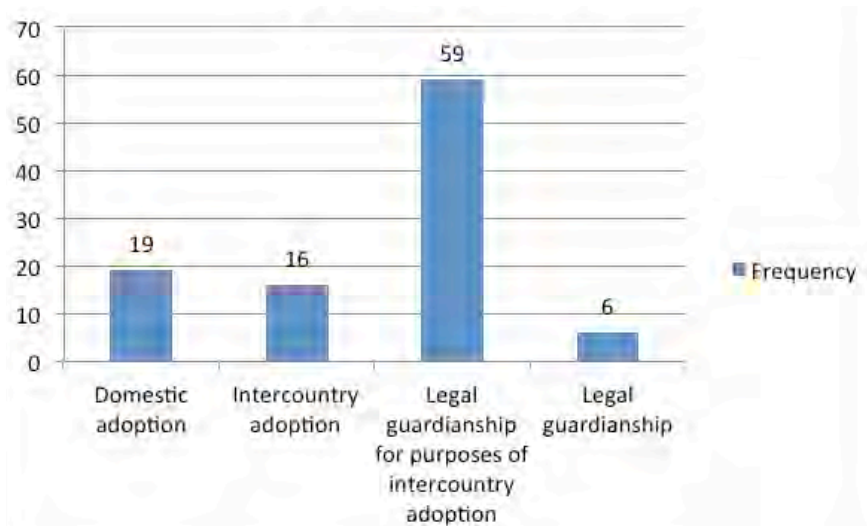
The statistical analysis of applications shows a steep rise in the number of applications between 2006 and 2012 especially for legal guardianship for purposes of intercountry adoption. However, between 2012 and 2013, there was a significant decline in the number of applications registered. These trends are showed in the figure below:

FIGURE 1: ADOPTION/LEGAL GUARDIANSHIP TRENDS BETWEEN 2006 AND 2013



The chart below shows that the highest applications were made for legal guardianship for purposes of intercountry adoption followed by domestic adoptions. Only 17 were made for intercountry adoption and 6 for legal guardianship.

FIGURE 2: THE TYPE OF APPLICATIONS



One of the common justifications for the resort to legal guardianship for purposes of intercountry adoption is the fact that this process is expeditious. The lawyers who participated in the primary research indicated that there is no legal requirement of fostering for applications of legal guardianship for purposes of intercountry adoptions.

Adoption is only preferred if the client has fulfilled all the requirements stipulated within the Children Act. However, even then, some lawyers and clients still opt for legal guardianship. In one case in Mukono, a prospective adoptive parent indicated that she had fostered for 3 years under the supervision of the PSWO but was advised by her lawyer to apply for legal guardianship rather than for adoption because attaining the former is expeditious. However, the process lasted six years, after which period she decided to apply for adoption.

Various participants including lawyers raised concerns as to the uncertainty of the rights and protections entitled to children under legal guardianship for purposes of intercountry adoption. These rights relate to property, health, and education among others. Several judicial officers reported that they had encountered some cases wherein the welfare of the child is uncertain subsequent to the award of a legal guardianship order, highlighting that they had nonetheless reluctantly awarded these orders because the children in question were either abandoned or in urgent need of medical attention. With such cases, the officers expressed that they had no choice but to hope for the best. One officer articulated that, *‘What choices do we have? We are often faced with two options, either to maintain the institutionalization of these children which in the long-term is not suitable for their development or to offer these children the possibility of growing up in a stable family setting?’* Even at immigration, a Consul at the US embassy in Kampala was puzzled by the abstract nature of legal guardianship. The Consul articulated that both legal guardianship and adoption orders are handled as adoption orders with respect to processing immigration visas, implying that there are no specific immigration requirements for children under legal guardianship orders.

TABLE 2: NATIONALITY OF PROSPECTIVE LEGAL GUARDIANS AND ADOPTIVE PARENTS

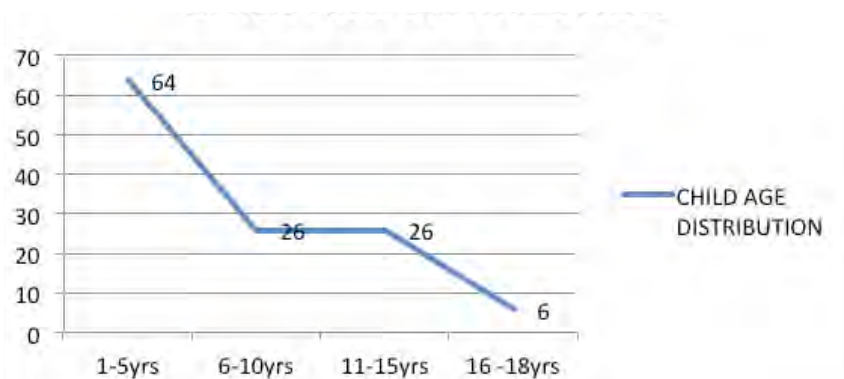
NATIONALITY OF ADOPTIVE PARENTS	NUMBER OF CHILDREN
AMERICAN	61
UGANDAN	34
BRITISH	8
SLOVAK	5
DUTCH	3
CANADIAN	3
CONGOLESE	2
ITALIAN	2
AUSTRALIAN	1
AUSTRIAN	1
GERMAN	1
ZIMBABWE	1
TOTAL	122

Most applications were made by Americans followed by Ugandans, British and other nationalities, as summarized in the table on the previous page. It should be noted that 24 out of 34 applicants for domestic adoptions attached identification documents to their applications, 17 out of 19 for intercountry adoptions, 61 out of 62 for legal guardianship for purposes of intercountry adoption, and 7 out of 7 for legal guardianship applications.

2.2 Child age, gender, and health distribution

An analysis of the child age and gender distribution was made in order to ascertain the category of children who are vulnerable to adoption and legal guardianship. The analysis considered 4 age categories in ranges of 1-5 years, 6-10 years, 11-15 years, and 16 years and above. Of the 122 children, 64 were between 1-5 years; 26 between 6-10 years; 26 between 11-15 years; and 6, 16 years and above. An analysis of the 122 individual applications shows that 10 of the 34 applications for domestic adoption annexed birth certificates, 13 of 19 for intercountry adoption, 53 of 62 for legal guardianship for purposes of intercountry adoptions and 6 of 7 for legal guardianship. The trends are shown in the figure below:

FIGURE 3: AGE DISTRIBUTION OF CHILDREN RELINQUISHED



The diagram suggests that there is a preference for younger children. Of the 122 children, 72 were boys and 50 were girls. This also shows that more applications are being made for boys as compared to girls.

The health condition of the child may be a determining factor that influences the decision whether to adopt a child or not. The health status of the child has also been used by courts in some instances to waive the requirement of the 36 months of pre-adoption fostering by prospective parents, as stipulated within Section 46 (1) (2) of the Children's Act. Of the 122 children who were relinquished for adoption and legal guardianship, 109 were in good health condition at the time the application was filed. The other 13 had varying pre-existing conditions ranging from physical disability, mental disability, HIV+ and other health conditions like sickle cells as shown below.

TABLE 3: CHILDREN WHO HAD PRE-EXISTING HEALTH CONDITIONS

PRE-EXISTING CONDITIONS	NUMBER OF CHILDREN
Physical disability	4
Mental disability	5
HIV+	8
Other health conditions	4

NB: It is possible for one child to have more than one pre-existing health condition

The data reveals that most adoptive parents were driven by the desire to provide better living conditions for the child, by religious convictions, and by the inability to have biological children. Better conditions range from health, education and overall standard of living. This suggests a correlation between a child's standard of living and their vulnerability to adoption/legal guardianship.

TABLE 4: REASONS FOR THE APPLICATION

REASONS FOR THE CURRENT APPLICATION	FREQUENCY
Better conditions for the child	82
Religious convictions	47
Inability to have biological children	6

NB: There can be more than one reason why an application for adoption/legal guardianship is made.



PART THREE

REQUIREMENTS FOR ADOPTION APPLICATIONS

The Children Act of Uganda and the Adoption of Children Rules of 1997³⁹ provide a list of requirements for adoption. These include a foster care order,⁴⁰ a foster care report for the period of fostering (at least 36 months) by the PSWO,^{41 42} and criminal clearance (police clearances)⁴³. In the case of inter-country adoption, a recommendation from a PSWO from the applicant's country of origin (home study report),⁴⁴ an undertaking that the applicant's country of origin will respect and recognize the adoption order,⁴⁵ and affidavits of consent⁴⁶ are also required. The other supporting requirements include proof of financial stability, marriage certificates if the applicant is married, identity documents of each applicant, birth certificates, affidavits from the children's home if the child was living in an institution, and a death certificate in case a parent(s) is (are) deceased.

As indicated in section 2, the Children Act does not regulate legal guardianship including legal guardianship for purposes of intercountry adoption. However, applications for legal guardianship for purposes of intercountry adoption have been assessed using the same requirements because they are ultimately for purposes of adoption. The seven applications for legal guardianship are excluded from the analysis in this section, even though five of the applications were by foreigners resident and working in Uganda and only 2 by relatives of the children as there was no expressed intent to adopt the children in question by the applicants.

In analyzing the requirements for adoption, the desk review entailed an examination of the documentation annexed to each case file in order to provide evidence as to the actual compliance with the legal framework relevant to adoptions. Conclusions were also drawn as to the proper or improper execution of documents. This was based on a list of considerations such as whether the document was: a notarized copy

39. Statutory Instruments 1997 N°52.

40. Section 19 and 20 Children Act.

41. Section 46(1) (2) of the Children Act of Uganda.

42. Section 45 (5) of the Children Act, rule 12 the Foster Care Placement Rules, and rule 10 (2) of the Adoption of Children Rules 1997.

43. Section 46(1) (3) of the Children Act of Uganda.

44. Section 46(1) (4) of the Children Act of Uganda.

45. Section 46(1) (5) of the Children Act of Uganda.

46. Rule 7 of the Adoption of Children Rules.

(for foreign applicants) or sworn before a commissioner of oaths; properly signed/witnessed and contained the name of the author; complete foster care application and report; and expired or not (such as identification documents, proof of registration); consistency of information provided (for instance some documents in an application conflicted as to the existence or whereabouts of the child's parents or relatives); and comprehensiveness of welfare reports. These conclusions were drawn based on the literal appearance of documents.

It is important to note that participating judicial officers indicated that they strived to verify the information in the applications by examining the parties on oath, explaining the implications of adoption/legal guardianship, observing and interacting with the child who is present in court, translating the proceedings, and a general review of documents. They however also stressed that they could not verify the information pertaining to foreign applicants and wholly relied on home study reports.

3.1 Requirement of consent

Section 47 of the Children Act provides that the consent of the parents of the child if known, and any other person having any rights and obligation in respect of the child by court agreement or customary law, is necessary for an adoption order to be made. Such consent can be revoked any time before the pronouncement of an adoption order. Although the Act does not expressly state how such consent must be given (oral or written), rule 7 of the Adoption of Children Rules of 1997⁴⁷ requires all statements and allegations contained in the petition to be verified by affidavits, certificates and any other documentation. The Adoption rules further provide that all consent must be written and sworn before a commissioner of oaths and must be submitted together with the petition.⁴⁸

Only 29 of 34 applications for domestic adoptions; 17 of 19 applications for intercountry adoptions; and 59 of 62 applications for legal guardianship for purposes of intercounbtry adoption attached affidavits of consent.

47. Statutory Instruments 1997 N°52.

48. Rule 8(2) of the Adoption Rules of Uganda.

TABLE 5: AFFIDAVITS OF CONSENT BY PARENTS/GUARDIANS

TYPE OF APPLICATION	# OF APPLICATIONS	# WITH AFFIDAVITS OF CONSENT
Domestic adoption	34	29
Intercountry adoption	19	17
Legal guardianship for purposes of adoption	62	59

It can be implied from the above provisions that firstly, the consenting persons should be informed of the legal effects of adoption/legal guardianship prior to their decision to consent. This standard is established within Article 21 (a) of the CRC and Article 24 (a) of the ACRWC which provide that all persons concerned should give their informed consent based on such counseling. Secondly, such consent should be voluntary and can be revoked at any time before pronouncement of the adoption order. These requirements are expounded below. The age of legal consent is also briefly discussed.

3.1.1 PRIOR APPRECIATION OF LEGAL EFFECTS OF ADOPTION AND LEGAL GUARDIANSHIP

Section 51 of the Children Act stipulates that adoption terminates the rights, duties, and obligations of the birth parents or guardians of the child in relation to future custody and confers upon the adoptive parent these rights, duties and obligations. This provision can be read with Section 55 which provides that the child who has attained the age of 18 or earlier, upon the child's request shall be informed of the identity of his or her natural parents unless it is not in his or her best interest.

An analysis of the content of the affidavits suggests that there is an appreciation of the legal effects of legal guardianship and adoption orders by those consenting. This was further corroborated by most of the parents/guardians interviewed during the primary research. For instance, some parents indicated that when the child attains the age of 18 years, he or she has the discretion to decide whether or not to return to Uganda. Moreover, they understood that they no longer had any parental responsibility over the child or children. Even then, all of the parents/guardians that were contacted as part of the primary research had no knowledge of the existing legal framework relevant to these practices.

There were however some parents/guardians who did not understand the adoption and legal guardianship process and the implications of the orders awarded. According to one father in Gulu, the legal guardianship order granted the adoptive parents temporary custody of the child who he assumed would be returned to him when he reaches the age of 7 years. An uncle in Mbale maintained that the child remained his after the legal guardianship order even though the legal guardianship had been granted for purposes of adoption. Another grandfather in Kisoro said that the child would be returned to him at the age of 20 years.

Termination of Parental Rights & Responsibilities

One of the contentious debates is on the relevance of adoption in Africa and in a country like Uganda wherein customary kinship care is still being practiced. Under customary kinship care, both the child and parents maintain contact. In such a context thus, the concept of termination of parental rights and responsibilities is quite alien and difficult to comprehend. It is no wonder then that some community members interpret adoption through the lens of customary kinship care, looking at it only as a temporary care arrangement in which their children will be provided with better care.

3.1.2 VOLUNTARY AND INFORMED CONSENT

Although the study of affidavits during the desk review indicated that parents/guardians had duly consented to the adoption, two main observations were made during the primary research.

Firstly, consent was largely influenced by recommendations from parents who had previously given up their children for adoption/legal guardianship, and the parents/guardians perception of the credibility of a children's home and of the PSWO. For instance a grandfather in Kisoro admitted that he did not know the applicants background but relied on a recommendation by a parent who had previously relinquished parental responsibility and the PSWO's guarantee of the credibility of the prospective adoptive parent. In another case, a grandmother consented to the adoption based on a recommendation by a children's home in Jinja. Her first encounter with the adoptive parents was after the application for legal guardianship was filed.

Secondly, consent in some cases was sought after the commencement of the adoption and legal guardianship process. This raises concerns as to the free-will with which such consent is given.

John (not real name) was abandoned at the age of 2 years in Iganga in 2000, from where he was placed in a children's home in the district. His birth relatives were not aware of his existence (as his mentally ill mother had left home and not maintained contact with them). With the passing of time, John was informed by his caretaker at the home that he had no parents nor any known relatives.

In 2008, a prospective adoptive parent was granted legal guardianship of John. As part of the proceedings for the legal guardianship, the PSWO and the applicants acknowledged having a discussion with and attaining consent from John's mother as to the issue of fostering.

Subsequent to the legal guardianship order, John's names and religion were changed. In 2011, John's legal guardian applied for adoption, and was requested by court to put an advert calling upon anyone who knew the boy or his mother to come forward. A radio advert was put out and John's maternal uncle responded to it.

The application for adoption was then rejected on grounds of suspicion of fraud, and misrepresentation as to the unknown whereabouts of the child's birth mother and relatives. A second application was filed in 2012 based on his maternal uncle's consent. At the time of application, the whereabouts of John's birth mother were still unknown.

This situation raises questions regarding the stage at which consent should be attained. While the legal framework on adoption emphasizes voluntary relinquishment of parental responsibility, the existing circumstances in John's case left the uncle with no practical choice. This consent was influenced by three factors. Firstly, the adoptive parents had already lived with the child for over 3 years. Secondly, the existing relatives were not financially stable and the adoption would legally guarantee the child inheritance and other benefits. Thirdly, the child who was (14 years at the time of the adoption proceedings) consented to the adoption. However, the uncle expressed frustration with the children's home for having deprived him the opportunity of looking after his nephew.

3.1.3 AGE OF LEGAL CONSENT

Under Article 257 (c) of the 1995 Constitution of the Republic of Uganda, section 2 of the Children Act, and the Foster Care Placement Rules in the second Schedule to the Children Act, a child is any person below the age of eighteen. The threshold of eighteen is considered the age of majority which is intended to determine civil liability of an individual. At age 18, it is expected that an individual has attained the mental and psychological maturity required for them to take full responsibility for their actions.

In the context of adoption, section 47 (5) provides that the court shall take into account the views of the child if he or she is able to understand the adoption proceedings. Part (6) of the same section explicitly provides that the court must obtain the consent of the child if he or she is at least 14 years of age. These provisions are however in regard to the child who is being adopted, and not a child mother relinquishing parental responsibility. In the latter, the child mother should assent to the adoption/legal guardianship, but she cannot consent.

The above distinction is relevant considering that there are many cases of teenage pregnancy in Uganda. According to a 2013 report on adolescent pregnancy by the United Nations Population Fund, 33% of Ugandan women aged 20-24 have given birth before the age of eighteen.⁴⁹ Moreover, a Report of the 1st Symposium on Teenage Pregnancy in Uganda by the Ministry of Health indicates that 135 out of 1000 female adolescent aged 15 -19 years give birth every year.⁵⁰

The study encountered an incident where an American couple attained legal guardianship for a 1-month old child of a 14-year old teenage mother in 2013. Prior to the application, both the mother and the child were temporarily resident in a rehabilitation home in Gulu for vulnerable girls such as former returnees from the Lord's Resistance Army, child mothers, and child prostitutes. The child's father was unknown, and the traced relatives were financially unable to look after the child. The children's home acted on behalf of the mother and relinquished parental responsibility during the legal guardianship process based on the consent of the child's mothers. The child currently lives in America and the child's mother is occasionally facilitated to visit.

49. Edilberto Loaiza and Mengjia Liang (2013) Adolescent Pregnancy: A Review of Evidence. United Nations Population Fund, New York. 17.

50. Ministry of Health (2013) Report of the 1st Symposium on Teenage Pregnancy in Uganda. Theme: Teenage Pregnancy on Obstacle to Maternal Health: Let Us Stop It Now. Imperial Royal Hotel 15 November 2013.

Although mothers aged 14 and above possess the mental maturity to appreciate the implications of adoption, their decisions to relinquish parental responsibility may be influenced by a number of complex factors such as poverty, stigma from home and from the community, lack of a support system, domestic violence, and the need to return to school. The court should therefore exercise caution in admitting the opinions of such mothers as the basis for their decision making.

3.2 Pre-adoption Fostering

Prospective parents under section 46 are required to foster the child for at least 3 years under the supervision of a PSWO. Under rule 11 of the Foster Care Placement Rules in the second schedule to the Children Act, the PSWO is responsible for all aspects of fostering including ensuring compliance with these rules. The PSWO is also mandated under rule 12 to make periodic visits to the child and write a report which is placed in the child's case record. Such a report should detail the PSWOs observations on the child's welfare, progress, conduct, and any changes to the circumstances of the foster family. The report should also include the views of the child, any problems that arose and how they were resolved.

Overall, there is very limited compliance with the statutory requirement for pre-adoption fostering. The table below provides an overview of those who did not foster at all, those who fostered but fell short of the statutory requirement of 36 months, and those who fostered for at least 36 months, by type of application.

TABLE 6: THE FREQUENCY OF APPLICATIONS BY TYPE AND DURATION OF BONDING

TYPE OF APPLICATION	# OF APPLICATIONS	NO BONDING	BONDING > 36 MONTHS	36 MONTHS AND MORE
Domestic adoption	34	24	2	8
Intercountry adoption	19	7	3	9
Legal guardianship for intercountry adoption	62	51	10	1
Total	115	82	15	18

There was no fostering for up to 24 (71%) of the applications for domestic adoption and 7 (37%) of the applications for inter-country adoption.

Also, only 1 of the 62 cases of legal guardianship for purposes of intercountry adoption fostered the child for at least 36 months, meaning that the safe guards intended within the provisions relevant to adoption are not being implemented as intended even though legal guardianship is in this instance being used for purposes of adoption. This situation is partly attributable to the existence of contradicting standards among courts for the grant of legal guardianship for purposes of intercountry adoption. While some courts consider the 36 months pre-adoption fostering, others are of the view that this does not apply to applications of this nature.

During the primary research, some PSWO's did not know the foster care period as stipulated within the Children Act. According to one officer, the foster care period for intercountry adoption is 6 years while relatives do not have to foster the child. Another officer indicated that applicants of domestic adoptions need to foster for 2 years. This raises some fundamental questions regarding the induction of new PSWOs as well as on-going training and mentorship on key areas relevant to their work.

3.2.1 DEFINING FOSTERING

Both the desk review and the primary research revealed a tendency among courts, law firms, and children's homes to define fostering as any physical or informal interaction with the child as long as it is documented in the report of the PSWO. The courts have creatively coined fostering to embody any form of direct or indirect assistance remitted from the prospective adoptive parent/legal guardian to the child or their family. It is also seen to entail both physical and non-physical interaction. Some children's homes and law firms in Kampala, Buikwe, and Jinja indicated that physical interaction usually ranges from as low as 2 weeks to 3 months. Moreover, some applicants are granted orders even though they have no record of having fostered the child. Even among reports by some PSWO's, fostering was interpreted within the context of care, protection, and provision of basic needs towards the child with evidence of short term custody of the child. This "creative" definition of fostering has been supported by arguments on the primacy of the best interest of the child.⁵¹

51. In the matter of Deborah Joyce Alitubeera (Civil Appeal No. 70 Of 2011) and in the matter of Richard Masaba (Civil Appeal No. 81 of 2011).

The broadening of the definition of fostering to embody non-physical interaction with the child introduces the concept of ‘proxy fostering’. This contradicts the unanimous position presented by participating lawyers and judges who opposed the use of proxies in cases of adoption considering that the court needs to make an independent assessment of the applicants and verify the information presented. According to one Judge, ‘... You need to examine the parent not the proxy. If you want a child, there should be some attachment.’ This decision was upheld in the matter of *Lunyolo Brigatte (child)* and in the matter of an application for legal guardianship by *Coriova Vera and Radek Cori*,⁵² where Justice Stephen Musota opined that, ‘The law does not recognize adoption by proxy as the applicants want this court to do. This is unacceptable and is contrary to the law.’ In this case, the second applicant had never been in Uganda at any time. The order was subsequently denied by the Court.

While proxy fostering could be practical for prospective adoptive parents/legal guardians with jobs and families outside Uganda, such vague parameters as to what amounts to sufficient or reasonable fostering has the potential of increasing the vulnerability of children to abuse and trafficking. According to the 2014 Trafficking in Persons Report by the US Department of State, Uganda is a source as well as a destination country for children who are subjected to forced labor and sex trafficking.⁵³

3.3 Care orders

According to section 27 of the Children Act, the family and children court upon application by the PSWO or an authorized person, may grant a care order or an interim care order placing the child in the care of the warden of an approved home or with foster parents.⁵⁴ Section 28 provides that such applications are intended to protect the child from situations likely to cause them harm/suffering and provide an opportunity for the examination of the circumstances surrounding the situation. In section 29, these orders are valid for a maximum period of 3 years after which they need to be reviewed or until the child attains the age of eighteen, whichever is shorter.

52. HCT-04-CV-AC-0001-2013.

53. US Department of State (2014) Trafficking in Persons Report 2014 <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm> (accessed 14-09-14) 386.

54. Rule 4 of the Children (Approved Homes) Rules 2013 prohibits any person from operating a home to care for children without approval of the Minister. Supplement No. 30, S. I. No. 52.

In the context of adoption, the district PSWO is mandated to make applications for care orders on behalf of prospective parents in order to foster a child who is not committed to an approved home. For children committed to an approved home, section 43 of the Children Act provides that the PSWO and the social worker may place the child with a person who is willing to care for and maintain the child. Such persons who are referred to as foster parents shall make an application to the PSWO to foster the child. However, relatives of the child without a parent or guardian may foster the child without undertaking any such formal application.

The placement of a child with foster parents by a PSWO is regulated by the Foster Care Placement Rules in the second schedule to the Children Act. According to rule 4, persons interested in fostering shall complete an application form and submit it to the PSWO or the warden of an approved home. Prior to such placement, rule 6 provides that the PSWO should assess the suitability of the prospective foster parents, visit their home, ascertain their medical and physical fitness, ascertain their criminal record, determine the wishes of the child, and attain recommendations from two persons who know the prospective foster parents. One of these recommendations must come from the secretary for children's affairs of the village local council or the village chief. Once the application is approved, rule 9 provides that the parents must sign an undertaking on the day the child is placed with them.

In applying these provisions to adoption applications, it is a requirement that all prospective parents notwithstanding whether the child was institutionalized or not, should first attain care orders through the PSWO from the family and children court or apply to the PSWO to foster a child committed to an approved home. This standard also applies to applicants of legal guardianship for intercountry adoption considering that the intended outcome of these applications is adoption.

In practice, there are applicants that have been denied legal guardianship orders based on the absence of a foster care order based on the above understanding. Such was the case in the matter of Lunyolo Brigatte (child) and in the matter of an application for legal guardianship by Coriova Vera and Radek Cori before Justice Stephen Musota.⁵⁵ However, the statistical analysis indicates that the majority of applications do not annex care orders.

55. HCT-04-CV-AC-0001-2013.

TABLE 7: ANNEXING OF CARE ORDERS IN APPLICATIONS

TYPE OF APPLICATION	# OF APPLICATIONS	APPLICATIONS WITH CARE ORDERS	
		#	%
Domestic adoptions	34	3	9
Intercountry adoptions	19	3	16
Legal guardianship for purposes of intercountry adoption	62	24	39

Even for those that attached care orders, it was a common finding that care orders especially for children residing in children's homes were attained long after the child had physically resided with the home or the prospective foster parents, implying that the pursuance of a care order is motivated by a prospective interest in adoption and legal guardianship with regard to a specific child, and not necessarily as a result of following due process. Such practice among children's homes clearly contradicts rule 8 of the Children (Approved Homes) Rules 2013 which provides for two ways under which an approved home can receive children. Firstly, in emergency cases through referrals by the police, PSWO, and any other person for a maximum period of 48 hours pending the child's appearance in court. Secondly, on an interim care order or a care order.

3.4 Welfare and home study reports

Section 45 (5) of the Children Act stipulates that the PSWO shall submit a welfare report which will assist the court in considering the application. According to the Foster Care Placement Rules in the second schedule to the Children Act, the PSWO is responsible for all aspects of fostering and for ensuring compliance with the stipulated rules. The PSWO is mandated under rule 12 to make periodic visits to the child and to write a report which is placed in the child's case record. Such reports according to rule 12 of the Foster Care Placement Rules and rule 10 (2) of the Adoption of Children Rules 1997⁵⁶ should include:

- The relationship of the child and the foster parent(s), other members of the foster family, neighbors, other persons outside the

56. Statutory Instrument 1997 No. 57.

- foster family, and any other person who is not a parent but may have rights under a court order or agreement under customary law;
- The medical record and current health status of the child and foster family;
 - The educational background;
 - The views and wishes of the child if ascertainable;
 - The nature and type of residential home the child lived in during fostering;
 - Financial and criminal background of foster family;
 - Nature of involvement of the PSWO including verification of statements by the applicant;
 - Nature of involvement of Secretary for Children's Affairs of the Local Council Committee if any;
 - A recommendation to the court on the course of action that advances the best interest and welfare of the child.

Such comprehensive investigations are also emphasized in section 4 of the Probation Act.⁵⁷ The information in a welfare report has to be attained during supervision of the foster care period which is intended to be undertaken in Uganda.

An examination of the annexures to the applications showed that 5 of 34 applications for domestic adoptions attached a foster care report, 11 of 19 for intercountry adoption, 17 of 62 for legal guardianship for purposes of intercountry adoption.

TABLE 8: APPLICATIONS WITH FOSTER CARE REPORTS

TYPE OF APPLICATION	# OF APPLICATIONS	# THAT PROVIDED REPORTS
Domestic adoption	34	5
Intercountry adoption	19	11
Legal guardianship for purposes of adoption	62	17

For foreign applicants, section 46(4) provides that such applications must be accompanied with a recommendation (home study report) from a competent authority from his or her home country regarding his or her suitability to adopt a child.

57. Statutory Instrument 122—1.

However, a review of the case files sampled as part of the study shows that there are a significant number of applications that are successfully granted without such documentation. Only 13 of the 34 applications for domestic adoptions and 46 of the 62 applications for legal guardianship for purposes of adoption attached welfare reports pertaining to the child. All applicants for intercountry adoption attached welfare reports, but only 9 of the 19 applications provided home study reports. 55 of the 62 applications for legal guardianship for purposes of intercountry adoption also provided the home study reports.

The information contained in all welfare reports examined during the desk review suggests that PSWOs had actually carried out background investigations on the child and his or her family. These investigations informed the recommendations cited in the reports which included: the full adoption of the child subsequent to the return of the prospective parent or guardian to their home country; periodic reports on growth and development of the child to be submitted by applicant on a quarterly basis; prospective parent to ensure that the child maintains contact with birth relatives in Uganda; access of the child to education and willingness of the PSWO to follow up on the child in the country of the prospective adoptive parents/guardian; and adopted child to maintain his or her nationality. However, there is a lack of consistency in content and format of these reports, and some of these reports tend to be written as advocacy reports in favour of the prospective adoptive parents. One PSWO recommendation read as follows: *“The opportunity for adoption don’t come easily so when a chance like this comes, we should catch it quickly.”*

However, although all participating PSWOs maintained that they actually carried out comprehensive investigations prior to writing the welfare reports, there were some incidents where parents or guardians disputed this. For instance, a grandfather of a child in Jinja stated that the PSWO never made any visits to his home at all. Instead, they were the ones who visited the PSWO in his office. A similar incident was recorded in Gulu. In another incident in Rubaga, the adoptive parent indicated that the PSWO only made one visit with no follow up on an application for adoption. In Mukono, another adoptive parent indicated that the PSWO made the initial visit and then sent interns for subsequent visits.

It was noted that PSWOs were in some instances charging adoptive parents to facilitate the preparation of welfare reports. In Gulu, the PSWO

indicated that he charged between 100,000 to 200,000 Uganda shillings. Such fees were also confirmed by an adoptive parent in Mukono who indicated that she had to bear some financial costs towards the processing of a welfare report. She explained that such financial contributions were supposedly used to cover transport costs during the home visits and other places where information pertaining to the child is to be attained. This practice could be attributed to the fact that PSWO lack sufficient resources to comprehensively and timely carry out investigations pertaining to children. This limitation was raised by all participating PSWO who also indicated that they are overwhelmed by the case load.

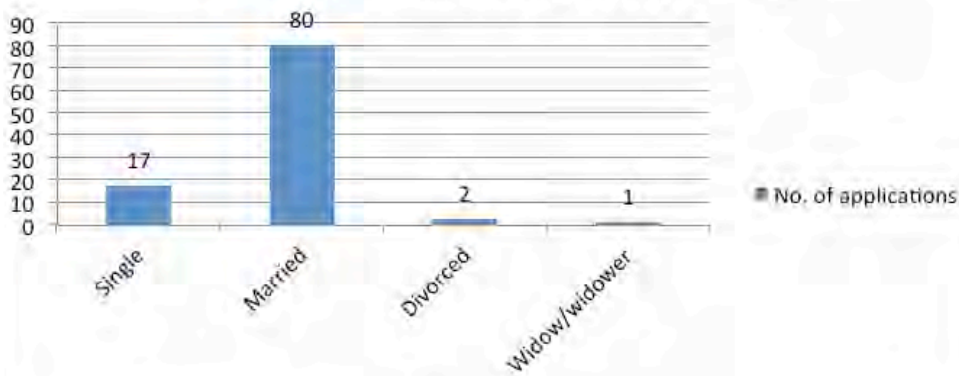
The participating lawyers and judges also raised concerns as to the nature of welfare reports produced by some PSWO. For instance, some reports are copy and paste, and barely entailed the required information as stipulated in rule 10 (2) of the Adoption of Children Rules 1997. Similar observations were also made during the desk review.

3.5 Marital status of adoptive parents and legal guardians

Section 5 of the second schedule to the Children's Act provides for persons who may lawfully foster and ultimately apply for adoption and by implication legal guardianship for purposes of adoption. These include a married couple whether polygamous or monogamous subject to the conditions therein and a single woman or man above the age of twenty one years. However, a single man may not foster a female child. There are no explicit restrictions for a single woman to foster a male child under any circumstance. The data from the desk review showed that there were no applications that contravened the above mentioned conditions.

Although the marital status of the applicants does not necessarily guarantee a stable family, it could contribute to a balanced environment for the child. This research therefore categorized the status of the applicant as single, married, divorced, widow/widowed.

FIGURE 4: MARITAL STATUS OF ADOPTIVE PARENTS



The highest applications were made by married couples.

The table below shows the number of applicants that had actually annexed marriage certificates. Only married applicants are required to adduce such documentation.

TABLE 9: MARRIED COUPLES WITH MARRIAGE CERTIFICATES

TYPE OF APPLICATION	# OF MARRIED APPLICANTS	# OF MARRIED APPLICANTS THAT ANNEXED THEIR MARRIAGE CERTIFICATE
Domestic adoptions	11	7
Inter-country adoptions	15	14
Legal guardianship for purposes of inter-country adoption	54	54

3.5.1. JOINT APPLICATION BY SPOUSES

Section 45(1) of the Children Act provides that an adoption order may be granted to a sole applicant or jointly to spouses if the applicant or atleast one of the joint applicants has attained the age of 25 years and is atleast 21 years older than the child. Section 45(6) of the Children Act clearly states that except for joint applications by spouses, an adoption order shall not be made for more than one person to adopt.

On the contrary, there was a case in Mbale High Court where two female applicants from the Czech Republic [one is single and the other married] filed 3 joint applications and were awarded adoption orders for 3 female children (in the matter of Mercy Kharunda, an infant of Bubentsye No. 0001-2011; in the matter of Sharon Namakoye No. 0002-2011; and in the matter of Nekesa Biuwa No. 0004-2011). The second applicant simultaneously applied for a fourth girl child with her husband (in the matter of Docus Kakayi No. 0003-2011). All the orders were granted simultaneously. The applications indicted that all the 4 children did not have any known relatives and parental responsibility was relinquished by a single guardian who lived with them prior to the adoption.

3.6 Criminal record of applicant

Section 46 (3) of the Children Act provides that foreign applicants with a criminal record shall not be allowed to adopt. The section is not clear as to whether this applies to all criminal records notwithstanding the nature of the offence and the age at which it was committed. For instance, there is no indication as to whether it only applies to offences against children or to any offence. The Children Act also makes no reference to the implications of criminal background on domestic applications, and does not specify whether an applicant has to attain police clearance in all countries of previous and current residence.

Nonetheless, the analysis of supporting documentation showed that 18 of the 34 domestic applications, 17 of 19 for intercountry applications, and 60 of 62 legal guardianship applications for purposes of intercountry adoption attached valid police clearances. The statistics indicate that whereas applications by foreigners largely comply with this requirement, there is significant laxity among domestic applications.



PART FOUR

CIRCUMSTANCES OF THE CHILDREN

Uganda's Children Act and National OVC policy upholds 'the family as the basic unit for growth and development of children'. However, family support services are greatly lacking, contributing in part to the ease with which parents/guardians are willing to relinquish parental responsibility.

This part presents an analysis of the children for whom adoption and legal guardianship applications were made to provide an insight into the categories of children who are vulnerable to adoption and legal guardianship, and makes an assessment of the extent to which other alternative care options were sought prior to the resort to adoption/legal guardianship.

4.1 Status of the child(ren)

The findings from the desk review and primary research established that children who are vulnerable to adoption and legal guardianship are classified as 'orphans' and 'abandoned' children' as later discussed. 50 of the 122 children were living in children's homes at the time of the application for adoption/legal guardianship; 43 were living with their parents/guardians and 29 with the applicants/petitioners. This indicates that children's homes play a central role in the processes of adoption and legal guardianship.

TABLE 10: RESIDENCE OF THE CHILD PRIOR TO THE PROCEEDINGS

RESIDENCE AT THE TIME OF APPLICATION	# OF CHILDREN
Parents/guardians	43
Childcare institutions	50
Applicants/petitioners	29
Total	122

The primary research identified a tendency among parents/guardians in Jinja and Iganga to transfer children to a children's home just before the

commencement of an adoption/legal guardianship process. This transfer is motivated by the expectation that it would not only speed up or make the process easier, but also immediately relieve the birth parents/ guardians of their responsibilities during the process. The practice is made worse by the fact that some children's homes have memorandums of understanding with foreign adoption agencies to source for fit and proper parents for the children under their care. It is not clear what qualities are considered by such homes in determining whether a person is fit and proper to parent a specific child in question.

4.2 Orphanhood

In Uganda, an orphan is defined as any person below the age of 18 years who has lost one or both parents.⁵⁸ Uganda doesn't have a separate/specific definition of who an orphan is for purposes of adoption/legal guardianship.

This is however not the case with countries like America whose Immigration and Nationality Act section 101(b)(1)(F) defines an orphan for purposes of immigration to the United States as a child under the age of 16 at the time of the petition, who has lost both parents as a result of death, desertion, abandonment, disappearance, and separation. A child of an unmarried mother or surviving parent may also qualify as an orphan if the parent is unable to take care of the child and has in writing permanently relinquished the child for emigration and adoption. The child is eligible if the unmarried mother or sole surviving parent has not remarried which would result in the child having a step-parent. It also applies to a child of an unmarried mother who has not been legitimated by his or her biological father. This definition qualify's thousands of Ugandan children as orphans eligible for intercountry adoption and legal guardianship.

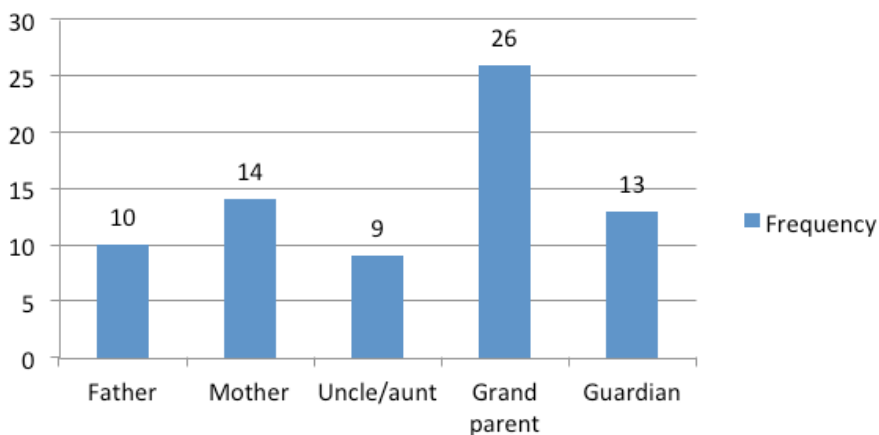
The differences in definition and interpretation of who an orphan is points to a need for a clear definition of which children should qualify for adoption/legal guardianship and under what circumstances such qualification should be evoked. This is important considering that 'orphanhood' has largely been used in Uganda to justify the resort to adoption or legal guardianship.

58. The National Orphans and Other Vulnerable Children Policy p.15.

The findings of the desk review reveal that the family status of 50 of the 122 children was not known, while 72 had known relatives. Of the 72 children with known relatives, 32 of them had lost one parent and 21 were total orphans living with other relatives/guardians. For applications for orphans, death certificates of the deceased parent(s) have to be annexed. From the statistical analysis, only 15 of the 53 applications for orphans annexed death certificates of the deceased parent(s).

The chart below indicates the frequencies of the persons who relinquished parental responsibility for the 72 children whose family status is known.

FIGURE 5: PERSONS WHO RELINQUISHED PARENTAL RESPONSIBILITY



The table above indicates that grandparents relinquish the highest number of children. This finding could be attributed to the increasing role of grandparents in raising children notwithstanding their advanced age and inadequate income, a situation which makes the resort to adoption/legal guardianship a viable option.

4.3 Abandoned children

It was established during the primary research that abandoned children formed the bulk of committals in the 8 participating children's homes which are currently accommodating between 20-63 children each, although this number varies depending on the availability of children in

need of care. These homes reported that abandoned children are mainly referred by the police, PSWO, and community members. The table below provides an overview of the reasons provided for institutionalizing the children.

TABLE 11: REASONS FOR INSTITUTIONALIZATION OF CHILDREN

REASONS FOR INSTITUTIONALIZATION	NUMBER OF CHILDREN
Orphans	7
Abandoned	38
Incapacity of caregiver	16
Special needs	6
Living on streets	1

NB: There can be multiple reasons why a child may be committed to a childcare institution

4.3.1 ACTUALITIES OF ABANDONED CHILDREN

There are cases where children have been falsely classified as ‘abandoned’ for purposes of adoption and legal guardianship. For instance in Iganga, an adoptive parent claimed that he adopted the child because she had been abandoned by her birth parents. However, the father of the child (who is a well-known religious leader) bluntly disputed these allegations. Nonetheless, the participating children’s homes and PSWO acknowledge that there are genuine cases where children have been abandoned in dustbins, fields, and the gate of some homes. The question thus is whether children’s homes actually prioritise family tracing, reunification, and reintegration of abandoned children with their birth family prior to putting the children up for adoption/legal guardianship.

A number of the children’s homes visited during the primary research in Gulu, Jinja, and Mukono had rather vague processes for undertaking family tracing and supporting the reunification/resettlement of the children with their birth family on the whole, especially for abandoned children. Some homes were actually involved in active recruitment of children from their communities. For instance, a home in Mukono actively identified orphans and vulnerable children from within their communities and admitted them into care to provide for their education and health needs until they are grown up and are able to take to independent living. Children

with known relatives were allowed to make visits during holidays.

The case of John highlighted in section 3.2.1 exposes the hasty resort to adoption and legal guardianship for abandoned children in some of these homes. This significantly undermines the development of the child within his or her family and cultural setting. In this case, a mentally ill mother from Kampala reportedly abandoned her child in Iganga who was then taken to a children's home in Iganga and financially supported by a prospective adoptive parent. The child's maternal relatives had no knowledge of the child but were looking for their sister (the child's mother who had reportedly run away from home). No sustained efforts were made at the time of admitting the child into the children's home or thereafter to trace for the child's birth family beyond the placement of a single advert.

Despite cases like the one above, there are some children's homes that make an effort to keep children with their birth family. One of the homes that participated in the study offers small business/financial loans to parents/guardians of the children under their care as part of their reunification and reintegration program. These loans are offered at a low interest rate and intended to economically empower parents/guardians to be able to provide for their child(ren). The home has some success stories where single parents were able to gain financial stability and were subsequently reunified with the child. The home also offers special day care for children with special needs and those whose parents are experiencing financial limitations. This gives parents/guardians an opportunity to recover financially and those with children with special needs are taught how to look after such children.

It is also common practice for abandoned children to be advertised in newspapers subsequent to the commencement of an adoption/legal guardianship process. Section 10 (7) of the Children Act mandates the Local Councils to advertise abandoned children in mass media as part of tracing and reunification efforts. However the reality is that these adverts are mainly placed by law firms representing prospective adoptive parents. Unfortunately, some of these adverts are inconspicuous because they are jumbled with other classified adverts like property and land sales, job vacancies, business adverts, car sales, and persons wanted by police. Moreover, the photos used are usually in black and white print and blurred. This makes it difficult for relatives to identify their child. Some

adverts are also restricted to local mass media where the child was found and not necessary the place of origin of the child's parents even when this is known. For instance, in the case of John an advert was placed in Iganga where the child was found and not in Kampala where the mother originated from.

The Children Act generally provides for 'publication through mass media' but does not specify how and when an advert should be placed in order for it to be considered sufficient. It is however recommended best practice to investigate and advertise as soon as the child is found or received in a home while the information of the abandonment is still fresh within the communities. Such adverts should also be placed prior to any anticipation of adoption/legal guardianship both in local and national media.

There are a few children's homes that attempt to do this. A home in Kampala takes the first face shots of the child within 48 hours of receiving the child and then places newspaper adverts and displays the child's photo within the area the child was abandoned in order to collect as much information as possible about the child for purposes of tracing and subsequent reunification/resettlement. This has enabled the home to reunify 75% of the children that they receive with their birth parents or relatives after determining their suitability and the best interest of the child. It is only when the child's birth parents or relatives cannot be found or if such reunification is determined not to be in the best interest of the child that the child is made available for possible fostering (short term and long term), domestic adoption, or intercountry adoption.

PART FIVE

COURT DECISIONS

5.1 Justification of awards

It is an established practice that the best interest of the child is paramount in all matters affecting the child including in adoption and legal guardianship. Article 3 of the Convention on the Rights of the Child provides that ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’ This principle is a substantive right entitled to every child, a vital interpretative principle which embodies various interpretations that advance the child’s best interest in different contexts, and a rule of procedure that entails an assessment of the impact of the decision on the child concerned. The determination of the child’s best interest shall be based on a specific criteria and other considerations in each case.⁵⁹

In Uganda, the considerations to be taken into account in granting adoption/legal guardianship are derived from the first Schedule of the Children Act.⁶⁰ Paragraph 3 provides for the criteria in determining any questions relating to the upbringing of the child. The court or any other person must:

- Ascertain the wishes and feelings of the child (depending on their age and understanding);
- Ascertain the child’s physical emotional, and educational needs;
- Consider the likely effects of changes in the child’s circumstances;
- Consider the child’s age, sex, background and any other circumstances;
- Assess any harm suffered and likely to be suffered by the child;
- Assess the capacity of the child’s parents, guardians or others involved in the child’s care to provide for the needs of the child.

The sampled courts generally use the physical/emotional needs of the

59. Paragraph 6 Committee on the Rights of the Children, General comment No. 14 (2013) on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (art. 3, para. 1)*

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14_&Lang=en

60. Guiding principles in the implementation of the Act.

child as the basis for their decisions. However it must be noted that courts are usually guided by a combination of factors as shown below:

TABLE 12: REASONS FOR JUSTIFICATION OF THE AWARD

JUSTIFICATION FOR THE AWARD	FREQUENCY
Wishes of the child	31
Physical needs of the child	76
Effects of changes in the child's circumstances	59
Child age, sex and background	71
Harm suffered by child	21
Capacity of parents/guardians	63

Within capacity of parents/guardians, the courts considered the physical incapacity of parents/guardians especially of grandparents. For instance, an 84 year old grandparent in Kisoro who relinquished parental responsibility was considered to be too old of age to be able to care for the child.

The decisions that based on the physical needs of the child, and capacity of parents/guardians were usually argued with respect to the financial incapacity or poverty of the child's birth parents/guardians vis a vie that of the applicants. In assessing the financial stability of prospective parents, the courts primarily relied on the financial statements/documents which were annexed to the application such as bank statements, appointment letters from employers, and tax returns among others. The table below provides a statistical analysis of these documents.

TABLE 13: PROSPECTIVE PARENTS WHO PROVIDED FINANCIAL DOCUMENTS

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF APPLICATIONS THAT ANNEXED FINANCIAL DOCUMENTS
Domestic adoptions	34	19
Inter-country adoptions	19	14
Legal guardianship for purposes of inter-country adoption	62	60
Legal guardianship	7	6

The justification of orders primarily on the financial status of birth parents/guardians and prospective adoptive parents suggests a general acceptability of the correlation between proper child development and financial ability or capacity. This is contrary to the UN Guidelines on Alternative Care of Children which holds that a child will not be removed from their birth parents/family solely on grounds of ‘material and financial poverty’ as such factors should be used as indicators for the need to render support to the family.⁶¹

The study established an overlap between actual poverty and an effortless approach to exonerating parental responsibility as motivators for the resort to legal guardianship and adoption. This is influenced by the common misconception that foreign adoptive parents have a great deal of resources to take care of the child as well as support the birth family in Uganda. For instance, a child in Oyam was given up for intercountry adoption on the premise that the father was poor to provide for the child subsequent to the mothers death during delivery. The father remarried and indicated that he plans on having more children notwithstanding his financial limitations. Interestingly, he was offering the children currently under his care for adoption. It is therefore important to adopt inclusive strategies aimed at changing such perceptions among communities as well as prioritize the advancement of the growth and development of a child within the family as stipulated within the Children’s Act.

The study also established that the birth parents or relatives decision to relinquish parental responsibility was influenced by financial incentives from adoptive parents and children’s homes. This was in the form of school fees for the child’s other siblings, establishment of a business, and remitting of financial support towards the family. This was elaborated by one judicial officer who stated that *‘...biological parents are bribed and deceived... so when the promises do not materialize they report the incidence for instance, I was told that I would be given money annually. So when I explain to them the implications of adoption. They are shocked yet they are busy giving children away for adoption.’* There was also a general perception among the birth parents/ guardians that the adopted child would in future remit support towards the family in Uganda.

61, UN Guidelines for the Alternative Care of Children 15 June 2009 A/HRC/11/L.13 available at http://www.unicef.org/aids/files/UN_Guidelines_for_alternative_care_of_children.pdf (accessed on 13-01-2013) Paragraph 14.

5.2 The conditions of the order

The majority of courts issue diverse conditions to the orders granted. The applicants were to varying degrees obliged to:

- Submit state and welfare reports every 2 years or yearly and in some instances every 6 months to the Family Division High Court Kampala, PSWO, and in some instances the mother of the child till the child is 18 years (and in one case till the child attained the age of 21 years;
- Register with Registrar of birth and death, Uganda Registration Service Bureau, Ministry of Justice and Constitutional Affairs, Registrar Family Division, Ministry of Foreign Affairs, the Embassy in Uganda, and the Ugandan Embassy in the respective foreign country;
- Communicate change of address;
- Raise the child in awareness of his or her religion/faith;
- Finalise the adoption in their home countries;
- Bring the child to Uganda to the High Court after a specific duration of time.

The actual fulfilment of these obligations is however dependent on the willingness of the adoptive parent or legal guardian as there are no mechanisms to monitor compliance and even then, there are no specified sanctions for failure to comply. Also, some of the obligations such as raising the child in awareness of his or her faith are vague considering that most adoptive parents change the name and religion of the child to align with their own faith.

The court orders entailed disparities for instance some cases entailed no reference to issues pertaining to: when and where to submit post adoption/legal guardianship reports; whether the child is allowed to leave Uganda or not; and whether the child is allowed to be adopted in a foreign country.

5.3 Revocation of orders

The Children Act is silent as to the grounds under which an adoption order can be revoked and the implications of such revocation. It is evident from the facts of some of the cases discussed throughout this report that there have been instances of fraud.

According to section 381 of the Penal Code Act 1950, any person with intent to defraud, falsely represent oneself as another person living or dead commits a misdemeanor. Moreover, section 159 adds that any person with intent to deprive any parent or guardian or any other person who has the lawful care or charge of a child below the age of fourteen of the possession of such a child commits a felony and is liable to 7 years imprisonment.

It is cardinal law that fraud vitiates everything including in matters of adoption and legal guardianship. This principle was established by Denning LJ in the case of *Lazarus Estates Ltd v Beasley* (1956) as follows, *'No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court... can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved it vitiates judgments, contracts and all transactions whatsoever'*⁶². This principle has been relied on in Uganda's legal system.

This implies that if fraud is established, the adoption or legal guardianship order should be revoked. The practicality of such revocations subsequent to the child's departure from Uganda raises a lot of issues pertaining to: the effect of fraud on adoption and legal guardianship orders; the implications of revoking such orders in instances where the child is outside Uganda; whether it is in the child's best interest to be returned to Uganda; and whether the parents/relatives right to raise the child should be taken into account. The complexity of this case was emphasised during an interview with the Co-ordinator Anti-Human Trafficking National Task Force.

Lawyers and Judges interviewed as part of the study indicated that an adoption order should be revoked if it is in the best interest of the child, in situations of extreme abuse and immorality, if adoptive parents fail to fulfil their parental rights and responsibilities, and in instances where

62. 1QB702, page 712.

fraud/false information is used to attain the order. In expounding on the aspect of fraud one of the judges noted that:

Yes, it's a cardinal principle of law that fraud vitiates a contract. ... The child be brought back home as long as the parents can provide basic necessities of life. The luxuries a child enjoys abroad are immaterial for instance education in an international school. The law does not take into account such standards but considers basic standards. In cases of fraud/misrepresentation, the order should be cancelled, the child returned and the parents given the right to raise their child. Therefore, parents should not be denied this right because they are poor. We are all poor, so what is the standard for poverty?

On the other hand, there were also arguments against the revocation of adoption and legal guardianship orders. A lawyer in Gulu equated adoption to a marriage covenant which is regarded as permanent and enjoys minimal interruptions. As such, there was preference for reviews rather than revocations considering its implications on the development of the child as well as the monetary costs involved especially for children out of Uganda. The stand was that revocations should be sought in instances of extreme abuse.

One judicial officer indicated that her Court had so far reviewed 3 cases. One of the cases was reviewed on grounds of misrepresentation of the child as a total orphan. Rather than revoke the order, the adoptive parents were subsequently allowed to reapply using the correct information in order to rectify the process. In all 3 cases, the review of the orders did not result in the return of the child because the court supposedly took into account the best interest of the child which is paramount in all matters pertaining to children.

Prioritisation of the best interest of the child

In a case in Iganga, a father is seeking to have the legal guardianship order revoked before the child leaves the country. In this case, a married couple had their son adopted earlier in 2002 and their 2 year old daughter in 2012 by the same adoptive parents. The daughter was at the time of the study still residing in Uganda awaiting her visa to the United States. However, the parent has so far unsuccessfully attained assistance from the relevant authorities to stop the child from leaving the country and have the guardianship order revoked. While the parent agrees that he provided full consent and fully understood the

implications of the legal guardianship which was for purposes of adoption, he insists that he regrets his decision and desires to have his child back with him. It was observed during the primary research that the child is well looked after and has greatly bonded with the adoptive parents. In this case, it is appropriate to prioritise the best interest of the child as well as ascertain the parents' objective when they relinquished the child and what influenced their change of mind.

As previously mentioned, although it is an established principle that fraud vitiates everything including dealings and judgements pertaining to children, the courts are nonetheless currently reviewing judgements instead of revocating them even when it is clear that the orders were fraudulently obtained. Moreover, there is a dearth of evidence on the punitive measures the courts have handed down in order to discourage such unscrupulous behaviour.

It could be argued that the review of cases is not suitable in instances where the child has already left the country or where the child has lived with the applicant for a long period of time. Revocation may also not be possible for children who have been fully adopted in foreign countries and assume a new identity prior to the establishment of fraud. However, such lenient measures could encourage fraudulent acts. It should be noted that adoption/legal guardianship processes are more complex than an ordinary contract. The court has to take into account various factors such as the welfare and best interest of the child, the child's background, and his/her needs. It is therefore important for the Children Act to regulate both the revocation and review of adoption orders which will be used on a case to case basis. Such processes should be accompanied by a well-defined criteria.

While the review of cases have so far not resulted in the return of the children, the study sample entailed a case where the child was returned to Uganda by her adoptive parent. In a 2006 case before the Chief Magistrate Court in Gulu, an adoption order was granted to an auntie of the child in question.⁶³ The uncle of the child explained that the child was taken abroad but was later returned after 2 years without any prior communication to him or any other of the child's relatives. He stated that the adoptive parent returned overseas, retained the child's passport, and has never remitted any form of assistance to the child who has had to forfeit 2 years of studies due to lack of school fees. The Children Act is silent on the available remedies to the child in such a scenario.

63. In the matter of Marion Amber MC.



PART SIX

RECOMMENDATIONS

This section will explore recommendation that are proposed to enhance the accuracy and facilitate the processes of adoption and legal guardianship in Uganda. These recommendations are derived from examination of the adoption and legal guardianship processes, as well as discussions with key stakeholders including lawyers, judges, PSWO's, the police, the MGLSD and children's homes.

6.1 Recommendations regarding the legal, policy and regulatory framework

Adoption of the Hague Convention as a priority: With the ever increasing numbers of children being adopted from Uganda, there is an urgent need for the country to adopt the Hague Convention which currently provides the most comprehensive international instrument regulating inter-country adoptions.

Separate provisions on domestic adoptions: The Children Act should create a separate section which caters for domestic adoptions as was done for intercountry adoptions. This will check the problem of laxity in compliance to prescribed procedure even for domestic adoptions.

Standard conditions on adoption orders: Standard conditions should be set in order to ensure consistency in adoption and legal guardianship cases. Such standards should for instance specify where the adoption should be completed and whether the child is allowed to travel out of Uganda prior to the completion of the process.

Specify what amounts to valid consent: The Children Act is clear on the attainment of consent through affidavits. However, it is silent as to what amounts to valid consent. For instance, at what stage such consent should be attained (whether prior/subsequent to the application). Kinship plays a significant role in child care in Uganda. It would therefore be relevant for applications to be accompanied with affidavits from a specified number of relatives to corroborate affidavits of parents/guardians.

Measures of authenticating information on affidavits: The Children Act should put in place mechanisms to authenticate the information sworn in affidavits, and other documents. For instance, it could provide that all parties should be present and examined on oath.

Comprehensive list of supporting documentation: The Children Act and or subsequent regulations should provide a standardised list of supporting documents for application purposes. This could include proof of financial stability (bank statements and letter from employer), police clearance from Interpol in all countries of residence, and medical report etc.

Advertising as evidence of attempt at family tracing and reunification: The Children Act and or subsequent regulations should provide conditions under which an advert will be considered sufficient evidence of efforts directed at tracing for the birth family of an abandoned child. This should address the stage at which an advert should be made; the photo (either colour or black and white); where the advert should be made; media coverage; who is responsible for making the adverts; the duration of the advert; and the information to be included.

Temporary suspension of legal guardianship for purposes of intercountry adoption: The inconsistencies in legal guardianship proceedings for purposes of intercountry adoption necessitates urgent legal and policy reforms. Such reforms could be accompanied with temporary suspensions of these proceedings. This will give room for finalization of the amendment process of the Children's Act and institution of mechanisms proposed within the recently adopted National Framework for Alternative Care to address existing system and procedural gaps. Such a suspension occurred in Togo where the government in February 2008 suspended intercountry adoption citing a number of unlawful adoptions. This suspension was later lifted after significant legal reforms.⁶⁴ Kenya has also recently suspended the same sighting similar concerns.⁶⁵

Attach photos to all documents annexed to application: All documents annexed to the application should be accompanied with photos of the author in order to curb forgeries, for identification,

64. Such suspensions also occurred in Chad, Zambia, and Lesotho. ACPF (2012) Africa: The New Frontier for Intercountry Adoption. Addis Ababa: The African Child Policy Forum 6/11-12.

65. Daily Nation, Cabinet: No more foreign adoptions Thursday, November 27, 2014 Available at <http://www.nation.co.ke/news/Cabinet-No-more-foreign-adoptions/-/1056/2537564/-/feyt4qz/-/index.html> (accessed on 01-12-14)

verification, tracing, and for future reference. It was challenging during the primary research to identify participants using their names some of which had been changed. This would have been easier if photos had been attached.

6.2 Recommendations regarding courts

Maintain organized court registries/archives: One of the challenges faced during the study was the lack of organization in court registries and archives. A number of archived files were missing or did not have some documents that were on record/received. Such files serve as public records of proceedings which must be carefully stored for posterity. It is recommended that registry officers must adopt a logical and chronological filing system to enable authorized persons to quickly and conveniently consult these archives.

Courts should have a supervisory role over PSWOs: Courts should have and take a more proactive role in supervising PSWOs to ensure that the provisions of the Children Act are followed. This recommendation stems from the fact that the High Court is the upper guardian of all minor children within the jurisdiction of Uganda. Therefore, when it is in the best interest of the child, the court must take extra steps to ensure that officers like PSWOs properly execute their mandate. Secondly, the PSWO should supervise the compliance with the conditions of orders given. It must be noted that this role would be limited in cases where the applicants and the child are living outside the jurisdiction of Uganda.

Courts should avoid expedited hearing of cases: The desk review phase of the study revealed cases that had been expedited in as little as four days especially for legal guardianship applications, even when this was being used for purposes of intercountry adoption. While this is not in itself evidence of irregularity, it must be noted that these orders embody radical changes and effects on the life of the child in question. Moreover, if proceedings are fast-tracked, there is a danger that attention to detail may be overlooked thus missing certain irregularities that may be in the application. Well as it is illogical to prescribe a time in which cases must be heard because of varying circumstances, such expedient decisions should only be maintained in instances where all the requirements have been complied with.

Courts should avoid laxity in granting domestic adoptions: It was noted with concern that there was laxity in granting domestic adoptions. Several of the petitions for domestic adoptions lacked the necessary documentation for example identification documentation, criminal clearances and birth certificates and yet these were granted. This could be explained by the fact that a large proportion of these petitions are filed by the relatives of the children in question. However, this leaves room for abuse of the process and drawing of unsubstantiated conclusions. It should never be assumed that an adoption or legal guardianship order is in the best interest of a child just because the applicant/petitioner is a relative. Moreover, there is a need to maintain a basic standard for all adoption and legal guardianship matters keeping in mind the vulnerability of the children.

6.3. Recommendations regarding PSWOs

PSWOs should be re-trained: A review of reports by PSWOs reveals a lack of consistency in content and format with some of the reports tending towards advocacy statements in support of the prospective adoptive parents. The role of the PSWO report is to assist the court determine whether the adoption petition is in the best interest of the child and not to latch at any opportunity. It is no wonder that PSWO have been wrongly perceived as child sellers. There is a need to re-train PSWOs on their role towards the protection of children under their care.

Need for monitoring and supervising of PSWOs: PSWOs play a critical role in assisting courts determine whether an adoption petition is in the best interest of the child and whether the child is suited to the adoptive parents. This is a huge responsibility that comes with immense demands as well as powers. The likelihood of abusing such powers and contravening ethics is a grim reality. There is a serious need to monitor the work of PSWOs to ensure accuracy with the adoption and legal guardianship process and requirements.

Provide operational resources to PSWO and train/hire more staff: The study revealed that PSWO were in some instances charging prospective adoptive parents for carrying out activities that are part of their core function because they are not provided with operational resources to facilitate their work. Also, PSWOs are overwhelmed by the

caseload that they have to handle. This essentially encourages shortcuts like duplication of reports without actual fieldwork. There is therefore an urgent need to reconsider the workload as well as provide for operational resources in order to improve the quality of the services rendered by PSWOs.

6.4. Recommendations regarding adoptive parents

Sensitization of adoptive parents on Ugandan values: It would be vital for prospective adoptive parents especially for foreign applicants and those with no parenting experience to undergo a short parenting orientation on the positive Ugandan values and cultures which could be embraced. This approach could reinforce the child's sense of identity without undermining his or her development.

Prospective parents should undergo a child abuse check: Prospective parents should undergo child abuse history clearance in order to determine their suitability. Such a provision should clearly indicate the nature of offences, and the age at which they were committed.

Direct delivery of documents to court: The current practice is that applicants personally deliver the various documentations attached to the application. Such documentation could be tampered with. It would therefore be necessary for the issuing authorities in the applicant's home countries to directly send such documents to the courts or some other person or institution as mandated by the Children Act.

6.5. Recommendations regarding the MGLSD and government

Appointment of an independent counsellor: During the interviews with judges and lawyers, there was common consensus that there is a need to appoint independent counsellors to assess the parties to establish whether they are ready for the outcome of the proceedings. However, there was divided opinion as to what stage within the proceedings the counsellor should be involved. There was a suggestion that the counsellors should fall under the direct mandate of the MGLSD and should be the

first point of contact with the children and prospective adoptive parents.

Prioritization of children's rights and protection in the national budget: It was noted by various stakeholders that in order to better protect children, government needs to dedicate more funding to the relevant sector. It is imperative that government sets aside a portion of the national budget to support institutions whose mandate is to protect and promote children's rights and in particular monitor and supervise children's homes.

Prioritisation of the role of LCI: Need to prioritise the role of LCI in these processes. It should be mandatory for applications to be accompanied with a letter or report from the LCI. This information could be used to corroborate the information pertaining to the child's background. The limited participation of LC's was evident in the primary research where 3 of the participating 6 LCI reported that they were not aware that children had been adopted from their village. Even the 3 that had written introductory letters were not aware as to whether the application was successful or not.

Sensitization of all stakeholders: Need to sensitize all stakeholders on the existing legal and policy framework on adoption and legal guardianship in Uganda. This should start from the grassroot level that includes persons like parents/guardians, the LCI. All the 6 LCI had no knowledge of the existing framework on adoption yet 3 out of the 6 had written introductory letters in support of such applications.



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ANNEX A

Tools for Desk Review

File ID: _____

GENERAL INFORMATION

1. Case Citation _____

2. Type of Application ☐

- 1) Domestic adoption
- 2) Intercountry adoption
- 3) Legal guardianship for purposes of intercountry adoption
- 4) Legal guardianship

3. Number of children for whom an application(s) was made ☐

1) If more than one, relationship between the children _____

4. Court where application was made _____

5. Date when application was filed _____

6. Order awarded _____

7. Date when the order was granted _____ / _____ / _____

(Day) (Month) (Year)

SECTION A

CHILD RELINQUISHED

A1: Name _____

A2: Age _____ (years)

A3: Gender ☐

- 1) Male
- 2) Female

A4: Religious affiliation: ☐

- 1) Christian
- 2) Muslim
- 3) Other (*Specify*) _____

A5: Where the child is from (Point of 1st contact) ☐ (*See Index of districts for codes*)

- 1) County: _____
- 2) Sub-county: _____
- 3) Local Council/village: _____

A6: Health condition of the child (*1=Yes, 2=No*)

- ☐ 1) No pre-existing conditions
- ☐ 2) Physical disability
- ☐ 3) Mental disability
- ☐ 4) Chronic disease
- ☐ 5) Other (*Specify*) _____

A7: Family status of the child (*1=Yes, 2=No*)

- ☐ 1) Lost both parents
- ☐ 2) Lost one parent (*if yes, specify*) _____
- ☐ 3) Known existing relatives
- ☐ 4) Other siblings (*if yes, how many*) _____
- ☐ 5) Not known

A8: Residence of the child prior to application (*1=Yes, 2=No*)

- ☐ 1) Parents/relatives
- ☐ 2) Living on the street
- ☐ 3) Child care institution
- ☐ 4) Other, specify _____

A9: Residence of the child during process (*if different*) _____**A10: Reason for institutionalization:** (*1=Yes, 2=No*)

- ☐ 1) Orphan
- ☐ 2) Abandoned by caregiver/parent/relative/guardian
- ☐ 3) Unfit or incapacity by caregiver/parent/relative/guardian
- ☐ 4) Care order by family and children court
- ☐ 5) Special needs
- ☐ 6) Living on the streets
- ☐ 7) Other, specify _____

A11: Duration of institutionalization: (*months*) (*days*)**A12: Legal status of the child at departure or immigration from Uganda:** ☐

- 1) Full adoption
- 2) Legal guardianship
- 3) Care order

A13: Educational level of the child: ☐

- 1) Nursery/pre-school
- 2) Primary
- 3) Secondary
- 4) Tertiary
- 5) None

NOTE: For an application for more than one child, complete separate sheets of **SECTION A** for each child.

SECTION B**PARENTS/RELATIVES/OTHER PERSONS WHO RELINQUISHED PARENTAL
RESPONSIBILITY****INDIVIDUAL NO. 1****B1: Name** _____**B2: Age** _____ (years)**B3: Relationship with child/children** ☐

- 1) Father
- 2) Mother
- 3) Uncle/Aunt
- 4) Grand parent
- 5) Guardian
- 6) Other (*specify*) _____

B4: Religious affiliation ☐

- 1) Christian
- 2) Muslim
- 3) Other (*Specify*) _____

B5: Place of origin

- 1) District: ☐ (*See Index of districts*)
- 2) County: _____
- 3) Sub-county: _____
- 4) Local Council/village: _____

B6: Occupation _____**B7: Contact details** _____
_____**B8: Home address** _____
_____**B9: Work address** _____

INDIVIDUAL NO. 2**B1: Name** _____**B2: Age** _____ (years)**B3: Relationship with child/children**

- 1) Father
- 2) Mother
- 3) Uncle/Aunt
- 4) Grand parent
- 5) Guardian
- 6) Other (*specify*) _____

B4: Religious affiliation

- 1) Christian
- 2) Muslim
- 3) Other (*Specify*) _____

B5: Place of origin

- 1) District: (*See Index of districts*)
- 2) County: _____
- 3) Sub-county: _____
- 4) Local Council/village: _____

B6: Occupation _____**B7: Contact details** _____

B8: Home address _____

B9: Work address _____

INDIVIDUAL NO. 3**B1: Name** _____**B2: Age** _____ (years)

B3: Relationship with child/children

- 1) Father
- 2) Mother
- 3) Uncle/Aunt
- 4) Grand parent
- 5) Guardian
- 6) Other (*specify*) _____

B4: Religious affiliation

- 1) Christian
- 2) Muslim
- 3) Other (*Specify*) _____

B5: Place of origin

- 1) District: (*See Index of districts*)
- 2) County: _____
- 3) Sub-county: _____
- 4) Local Council/Village: _____

B6: Occupation _____**B7: Contact details** _____

B8: Home address _____

B9: Work address _____

INDIVIDUAL NO. 4**B1: Name** _____**B2: Age** _____ (*years*)**B3: Relationship with child/children**

- 1) Father
- 2) Mother
- 3) Uncle/Aunt
- 4) Grand parent
- 5) Guardian
- 6) Other (*specify*) _____

B4: Religious affiliation

- 1) Christian
- 2) Muslim
- 3) Other (*specify*) _____

B5: Place of origin

- 1) District: (*See Index of districts*)
- 2) County: _____
- 3) Sub-county: _____
- 4) Local Council/Village: _____

B6: Occupation _____**B7: Contact details** _____

B8: Home address _____

B9: Work address _____

B10: Documented reasons for relinquishing parental responsibility (*1=Yes, 2=No*)

- ☐ 1) Orphan
- ☐ 2) Abandoned by caregiver/parent/guardian
- ☐ 3) Physical or mental unfitness/incapacity by caregiver/parent/guardian
- ☐ 4) Special needs
- ☐ 5) Political instability
- ☐ 6) Other (Specify) _____

B11: Consent by those person who relinquished parental responsibility (*1=Yes, 2=No*)

- ☐ 1) No.1
- ☐ 2) No.2
- ☐ 3) No.3
- ☐ 4) No.4

SECTION C

PROSPECTIVE LEGAL GUARDIANS AND ADOPTIVE PARENTS

1st APPLICANT**C1: Name** _____**C2: Age** _____ (years)**C3: Gender** ☐

- 1) Male
- 2) Female

C4: Religious affiliation ☐

- 1) Christian
- 2) Muslim
- 3) Other (*specify*) _____

C5: Nationality _____**C6: Country of origin** _____**C7: Country of permanent residence** _____**C8: Race** ☐

- 1) Black
- 2) White
- 3) Arab
- 4) Asian
- 5) Other (*Specify*) _____

C9: Marital status ☐

- 1) Single (never married)
- 2) Married
- 3) Divorced
- 4) Widow/widower

C10: Relationship with 2nd applicant (*for joint applications*) _____**C11: Occupation** _____**C12: Contact details** _____**C13: Home Address** _____**C14: Work address** _____

2nd APPLICANT *(if joint applicants)***C1: Name** _____**C2: Age** _____ *(years)***C3: Gender** ☐

- 1) Male
- 2) Female

C4: Religious affiliation ☐

- 1) Christian
- 2) Muslim
- 3) Other *(specify)* _____

C5: Nationality _____**C6: Country of origin** _____**C7: Country of permanent residence** _____**C8: Race** ☐

- 1) Black
- 2) White
- 3) Arab
- 4) Asian
- 5) Other *(Specify)* _____

C9: Marital status ☐

- 1) Single (never married)
- 2) Married
- 3) Divorced
- 4) Widow/widower

C10: Relationship with 2nd applicant *(for joint applications)* _____**C11: Occupation** _____**C12: Contact details** _____**C13: Home Address** _____**C14: Work address** _____

C15: Number of biological children (1=Yes, 2=No, 3=Not specified)

1) Girls

2) Boys

C16: Number of prior legal guardianship/adoption applications in Uganda

1) Case citations

2) Number of successful/failed applications

a) Successful

b) Failed (*give reasons*) _____

c) Pending

3) Number of children fully adopted in/from Uganda

C17: Number of prior legal guardianship/adoption applications in other countries

1) Specify Countries

2) Case No.

3) Number of successful/failed applications

1) Successful

2) Failed (*give reasons*) _____

3) Pending

4) Number of children fully adopted in/from these countries

C18: Reasons for current legal guardianship/adoption application: (1=Yes, 2=No)

- ☐ 1) Charity
- ☐ 2) Companionship
- ☐ 3) Religious convictions
- ☐ 4) Inability to have biological children
- ☐ 5) Better conditions for the child (health/education/standard of living)
- ☐ 6) Other (Specify) _____

C19: Bonding/fostering of the child prior to legal guardianship/adoption process

- 1) Duration (months) (days)
- 2) Supervision by PSWO during the bonding/fostering period ☐ (1=Yes, 2=No)
- 1) Type of officer
- ☐ PSWO
- ☐ Other officer, specify _____
- 2) Duration of supervision (months) (days)
- 3) Name and contact of officer
- _____
- _____

C20: Support to the child/family prior to application ☐ =Yes, 2=No)**a) Type of support**

- ☐ 1) Financial/material
- ☐ 2) Emotional/psychological
- ☐ 3) Other (specify) _____

2) Duration of support (months)

SECTION D

INSTITUTIONS/PERSONS INVOLVED IN LEGAL GUARDIANSHIP/ ADOPTIONS

CHILD CARE INSTITUTION

D1: Name of institution: _____

D2: Physical location of institution:

- 1) District: (See Index of districts)
- 2) County: _____
- 3) Sub-county: _____
- 4) Local Council: _____

D3: Contact details _____

D4: Names of the directors/staff members if available:

- 1) _____
- 2) _____
- 3) _____
- 4) _____

D5: Persons who acted on behalf of institution during the legal guardianship/adoption process _____

D6: Documented approval/registration (1=Yes 2=No)

- ☐ 1) Ministry of Gender, Labour and Social Development
- ☐ 2) District Local Government
- ☐ 3) Uganda Registration Services
- ☐ 4) NGO Board
- ☐ 5) Other, specify _____

D7: Registration No. _____

D8: Duration of operation if stated: (years) (months)

D9: Documented fees charged to facilitate legal guardianship/adoption: ☐ (1=Yes, 2=No)

1) If yes, specify amount _____

D10: Documented obligations from prospective parents/parents/agencies/others:

☐ (1=Yes, 2=No)

1) If yes, specify _____

D11: Documentation on the exhaustion of alternative care options prior to existing process:

(1=Yes, 2=No)

☐

1) Pro-activities to prevent abandonment/separation (support the child within the family)

☐

2) Short term foster care

☐

3) Reunification

☐

4) Community/kinship care

☐

5) Domestic adoptions

☐

6) Long term foster care

☐

7) Intercountry adoption

☐

Other, specify _____

D12: Availability of international adoption programme: ☐ (1=Yes, 2=No)

D13: Availability of qualified social worker ☐ (1=Yes 2=No)

1) If yes, details of qualification _____

D14: Prior legal guardianship/adoption processes over the child ☐ =Yes 2=No)

If yes, specify _____

ADOPTION AGENCIES

D1: Name of institution: _____

D2: Physical location of institution:

1) District: (See Index of districts)

2) County: _____

3) Sub-county: _____

4) Local Council: _____

D3: Contact details _____

D4: Names of the directors/staff members if available:

1) _____

2) _____

3) _____

4) _____

D5: Persons who acted on behalf of institution during the legal guardianship/adoption process _____

D6: Documented approval/registration ☐ (1=Yes 2=No)

☐

1) Ministry of Gender, Labour and Social Development

☐

2) District Local Government

☐

3) Uganda Registration Services

☐

4) NGO Board

☐

5) Other, specify _____

D7: Registration No. _____

D8: Duration of operation if stated: (years) (months)

D9: Documented fees charged to facilitate legal guardianship/adoption: ☐ (1=Yes, 2=No)

2) If yes, specify amount _____

D10: Documented obligations from prospective parents/parents/agencies/others:

☐

(1=Yes, 2=No)

2) If yes, specify _____

D11: Documentation on the exhaustion of alternative care options prior to existing process:

(1=Yes, 2=No)

- ☐ 1) Pro-activities to prevent abandonment/separation (support the child within the family)
- ☐ 2) Reunification
- ☐ 3) Community/kinship care
- ☐ 4) Domestic adoptions
- ☐ 5) Intercountry adoption
- ☐ Other, specify _____

D12: Availability of international adoption programme: ☐ (1=Yes, 2=No)**D13: Availability of qualified social worker** ☐ (1=Yes 2=No)

1) If yes, details of qualification _____

D14: Prior legal guardianship/adoption processes over the child ☐ (1=Yes 2=No)

If yes, specify _____

JUDGE/CHIEF MAGISTRATE**D1: Name** _____**D2: Contact details** _____**D3: Physical address** _____**LEGAL REPRESENTATIVE OF PROSPECTIVE LEGAL GUARDIANS/ADOPTIVE****PARENTS****D1: Name of law firm** _____**D2: Contact details** _____**D3: Physical address** _____**D4: Advocates involved**

- 1) _____
- 2) _____
- 3) _____

D5: Participating social worker employed by firm ☐ (1=Yes 2=No)

1) If yes, name and contact of social worker _____

**LEGAL REPRESENTATIVE OF PERSONS/INSTITUTION RELINQUISHING
 PARENTAL RESPONSIBILITY** (if available)

D1: Name of law firm _____

D2: Contact details _____

D3: Physical address _____

D4: Advocates involved

1) _____
 2) _____
 3) _____

D5: Participating social worker employed by law firm ☐ (1=Yes 2=No)

1) If yes, name and contact of social worker _____

INDEPENDENT LEGAL REPRESENTATIVE FOR THE CHILD/CHILDREN

(if available)

D1: Name of law firm _____

D2: Contact details _____

D3: Physical address _____

D4: Advocates involved

1) _____
 2) _____
 3) _____

D5: Participating social worker employed by firm ☐ (1=Yes 2=No)

1) If yes, name and contact of social worker _____

OTHER INSTITUTIONS/PERSONS INVOLVED (if available)

D1: Name of institution/organization _____

D2: Name of person involved _____

D3: Position within institution/organization _____

D4: Contact details _____

D5: Physical address _____

D6: Nature of involvement in the process _____

PROBATION AND SOCIAL WELFARE OFFICER (PSWO)

D1: Name of PSWO _____

D2: Contact details _____

D3: Physical address

1) District: ☐ (See Index of districts)

2) County: _____

3) Sub-county: _____

4) Local Council/Village: _____

D4: Documented welfare report by PSWO ☐ (1=Yes 2=No)

1. Name (if written by different PSWO) _____

2. Physical address

1) District: ☐ (See Index of districts)

2) County: _____

3) Sub-county: _____

4) Local Council/Village: _____

D5: Documented recommendations by PSWO

- 1) _____
- 2) _____
- 3) _____

**FOREIGN INSTITUTIONS WITHIN COUNTRY OF ORIGIN OF PERSONS SEEKING
LEGAL GUARDIANSHIP/ADOPTION**

D1: Adoption agency

- 1) Name _____
- 2) Individuals involved _____
- 3) Contact details _____
- 4) Physical address _____

- 5) Nature of involvement _____

D2: Case workers

- 1) Name _____
- 2) Individuals involved _____
- 3) Contact details _____
- 4) Physical address _____

- 5) Nature of involvement _____

D3: Others

- 1) Name _____
- 2) Individuals involved _____
- 3) Contact details _____
- 4) Physical address _____

- 5) Nature of involvement _____

SECTION E

DOCUMENTATION REQUIRED FOR LEGAL GUARDIANSHIP/ADOPTION ORDERS

TABLE OF DOCUMENTATION

NO.	Type of document	Document required (1=Yes, 2=No)	Document provided (1=Yes, 2=No)	Availability and accessibility during desk review (1=Yes, 2=No)	Properly executed (1=Yes, 2=No)
Prospective legal guardians/adoptive parents					
1	Home study/assessment report from Case worker/authorised institution from country of origin				
2	Affidavit of consent				
3	Affidavit of consent from other applicant (<i>joint applicants</i>)				
4	Police clearances from all countries of residence				
5	Proof of financial stability (e.g. bank statements)				
6	Marriage certificate				
7	Valid identification documents (Passport, LC letter, voters card, others)				
Child's File					
8	Welfare report from PSWO in respect of the child				
9	Report on the fostering period detailing the child's welfare, observations, and progress				
10	Foster child case record				

11	Any other report by other persons/local authority to support PSWO welfare report				
11	Proof of registration/approval of children's home by the <i>Ministry (if institutionalised)</i>				
12	Childcare order issued by chief magistrate court				
12	Police reports (<i>if applicable</i>)				
14	Death certificate of parent(s) (<i>if applicable</i>)				
15	Birth certificate of child				
16	Affidavit from children's home director/social worker				
17	Affidavits from child's parents/guardians				
18	Affidavit from any other person having rights and responsibilities with respect to the child				

SECTION F

THE COURT DECISIONS

F1: Legal provisions relied upon

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____

F2: Interpretation of these provisions

- 1) _____
- 2) _____
- 3) _____
- 4) _____

F3: Cases/precedents cited

- 1) _____
- 2) _____
- 3) _____
- 4) _____

F4: The courts considerations for the best interest of the child (1=Yes 2=No)

- ☐ 1) Financial stability
- ☐ 2) Emotional/psychological stability
- ☐ 3) Social and cultural needs of the child (e.g. education, health, food, shelter)
- ☐ 4) Wishes of the child
- ☐ 5) Other (Specify) _____

F5: Participation of the child depending on maturity ☐ (1=Yes 2=No)

- 1) If 2, give reasons _____

F6: Consideration given to the child's views if he or she was able to understand proceedings ☐ (1=Yes 2=No)

- 1) If 2, give reasons _____

F7: Participation of persons relinquishing parental responsibility ☐ (1=Yes 2=No)

1) If 2, give reasons _____

F8: Alternative care options prior to legal guardianship/adoption ☐ (1=Yes, 2=No)

1) If 1, specify _____

F9: Steps undertaken by court to ascertain that everyone whose consent is required understands the nature and effects of adoption/legal guardianship for adoption (termination of parental responsibility)

- 1) _____
- 2) _____
- 3) _____

F10: Steps undertaken by court to establish validity of documents

- 1) _____
- 2) _____
- 3) _____

F11: Steps undertaken by the court to ascertain that there were no financial benefits or rewards to applicant or from applicant to persons in charge of the child

- 1) _____
- 2) _____
- 3) _____

F12: Justifications for the award

- ☐ 1) Wishes and feelings of the child
- ☐ 2) Physical, emotional, and educational needs
- ☐ 3) Physical, emotional, and educational needs
- ☐ 4) Likely effects of any changes in the child's circumstances
- ☐ 5) Child's age, sex, and background
- ☐ 6) Harm suffered by the child or is at risk of suffering
- ☐ 7) Capacity of parents/guardians or persons involved in child care
- ☐ 8) Other, *specify* _____

F12: Obligations of prospective parents subsequent to legal guardianship/adoption award*(1=Yes 2=No)*

- ☐ 1) Submit state and welfare reports of the child
- ☐ 2) Communicate change of address
- ☐ 3) Others, (*specify*) _____
- 1) Specify where and when _____

F13: Specific contents of the report _____**F14: Appeals to the decision, if any** _____

INDEX OF DISTRICTS

CODE	DISTRICT	CODE	DISTRICT	CODE	DISTRICT	CODE	DISTRICT
1	Abim	29	Gomba	57	Kitgum	85	Mukono
2	Adjumani	30	Gulu	58	Koboko	86	Nakapiripirit
3	Agago	31	Hoima	59	Kole	87	Nakaseke
4	Alebtong	32	Ibanga	60	Kotido	88	Nakasongola
5	Amolatar	33	Iganga	61	Kumi	89	Namayingo
6	Amudat	34	Isingiro	62	Kween	90	Namutumba
7	Amuria	35	Jinja	63	Kyankwanzi	91	Napak
8	Amuru	36	Kaabong	64	Kyegegwa	92	Nebbi
9	Apac	37	Kabale	65	Kyenjojo	93	Ngora
10	Arua	38	Kabarole	66	Lamwo	94	Ntoroko
11	Budaka	39	Kaberamaido	67	Lira	95	Ntungamo
12	Bududa	40	Kalangala	68	Luuka	96	Nwoya
13	Bugiri	41	Kaliro	69	Luweero	97	Otuke
14	Buhweju	42	Kalungu	70	Lwengo	98	Oyam
15	Buikwe	43	Kampala	71	Lyantonde	99	Pader
16	Bukedea	44	Kamuli	72	Manafwa	100	Pallisa
17	Bukomansimbi	45	Kamwenge	73	Maracha	101	Rakai
18	Bukwa	46	Kanungu	74	Masaka	102	Rubirizi
19	Bulambuli	47	Kapchorwa	75	Masindi	103	Rukungiri
20	Buliisa	48	Kasese	76	Mayuge	104	Sembabule
21	Bundibugyo	49	Katakwi	77	Mbale	105	Serere
22	Bushenyi	50	Kayunga	78	Mbarara	106	Sheema
23	Busia	51	Kibaale	79	Mitooma	107	Sironko
24	Butaleja	52	Kiboga	80	Mityana	108	Soroti
25	Butambala	53	Kibuku	81	Moroto	109	Tororo
26	Buvuma	54	Kiruhura	82	Moyo	110	Wakiso
27	Buyende	55	Kiryandongo	83	Mpigi	111	Yumbe
28	Dokolo	56	Kisoro	84	Mubende	112	Zombo

ANNEX B

Questionnaires

PERSONS RELINQUISHING CHILDREN

1. Name

2. How many children have you relinquished for adoption of legal guardianship?

3. What is your relationship with the child/children relinquished?

4. Did you relinquish the child/children to a childcare institution? If yes, what was the procedure followed?

5. Whose idea was it to relinquish the child/children?

6. Why did you give the child/children up for adoption/legal guardianship?

7. How much time did you have to make up your mind on whether to relinquish the child/children?

8. Did you consult the clan/relatives before you relinquished the child and what were their attitudes towards the idea of adoption/legal guardianship?

-
-
9. Please explain the process of adoption/legal guardianship

10. Were you visited by the Probation and Social Welfare Officer? If yes, was it before or during proceedings? Can you recall the number of visits?

11. Were the documents/proceedings in a language you could understand?

12. Did you meet the adoptive parents? Was it before or after you relinquished the child/children?

13. Did they bring you gifts e.g. clothes, shoes, money?

14. Do you still receive assistance from the adoptive parents? Specify the nature

15. In your understanding, what were the implications of relinquishing the child/children? Would the child/children remain yours? Could you visit the child? Would the child/children be taken out of the country?

CHILD CARE INSTITUTION

1. Name and location of institution _____

2. Name and position of person(s) interviewed on behalf of institution _____

3. How long has this institution been operational? _____
4. Is your institution registered? _____
5. Is the registration still valid? _____
6. Under which category is your institution registered? (e.g. NGO, MGLSD, LG or Uganda registration services etc.) _____
7. What is the capacity of children the institution can accommodate? _____
8. How many children does the institution currently accommodate? _____
9. How many children pass through the institution annually? _____
10. Do you have a comprehensive database of these children? _____
11. What is the main source of the children admitted in your institution?

12. Does the institution have an international adoption programme? Specify its nature

13. In the last 3 years, how many children has your institution successfully put up for:
 Domestic adoption _____
 Intercountry adoption _____
 Legal guardianship _____
14. What are the determinants for placing a child for legal guardianship/adoption? _____

15. What are the considerations for the welfare and best interest of the child in the context

of legal guardianship/adoption? _____

16. What alternative care options does the institution exhaust prior to placing the child for legal guardian/adoption? _____

17. What child protection programs or policies are available to foster the exhaustion of such options? _____

18. What protections are available within the institution for children with special needs before and during legal guardianship and adoption processes? _____

19. Does your institution receive assistance from adoptive parents? In what form? _____

20. Does the institution offer any post-adoption services such as follow-up to ascertain the wellbeing of the child? Specify _____

21. What is your perception of the efficiency of the legal guardianship/adoption practices in Uganda? _____

22. Are there any challenges encountered within the adoption/legal guardianship processes? If so, please specify _____

23. Do you have any suggestions that could improve these processes? _____

LEGAL GUARDIANS/ADOPTIVE PARENTS

1. Occupation _____
2. What is the adoption/legal guardianship process in Uganda?

3. What motivated your decision to adopt or apply for legal guardianship? _____

4. How did you first hear about the child/children?

5. What motivated your choice of the law firm that handled legal proceedings? _____

6. Did you visit the child/children before you applied for adoption/legal guardianship?

7. Did you foster the child/children under the supervision of a Probation Officer? If yes, for how long?

8. Did you ascertain whether the person who relinquished the child/children had the authority to do so?

9. What motivated your decision to take custody of the child/children rather than assist the child/children in his/her natural family setting?

10. Does the child/children maintain communication with his/her relatives? Specify the nature and frequency of communication.

11. Has the child/children retained his/her native name and religion?

12. If the child/children so wished, would you be willing to help him/her trace their biological relatives?

13. How did you prepare to receive the child/children in your family?

14. Is/are the child/children still living with you? If not, where is/are the child/children staying?

15. Are you experiencing any difficulties with the child/children? If so, please specify

16. Where was the final adoption process concluded? _____

17. How many other children have you adopted? _____

18. How much did you pay to facilitate the adoption/legal guardianship process? Please specify the individuals/institution to which fees were paid

Individual/institution

Amount of fees paid

19. What is your perception of the efficiency of the legal guardianship/adoption practices in Uganda? _____

20. Did you encounter any challenges during the adoption/legal guardianship processes? If so, specify _____

21. Do you have any suggestions on how the adoption/legal guardianship process can be improved? _____

JUDGES/MAGISTRATES

1. Have you had proxies appear before you in adoption/legal guardianship proceedings and what is your view on this practice? _____

2. What are the factors that court considers to be in the best interest of the child? _____

3. How does court involve children who are subject to adoption or legal guardianship proceedings? _____

4. Is there is a need for court to appoint an independent counselor who evaluates the parties to ensure that they are ready for the outcome? _____
5. What steps do you take to verify the information adduced by the parties in evidence during these proceedings? _____

6. What measures can court implement to keep track of adopted children and to ensure compliance of conditions set out in the judgments? _____

7. Should an adoption/legal guardianship order be revocable? If yes, under what circumstances? _____

8. What challenges have you encountered in handling adoption/legal guardianship cases? _____

9. Should adoption orders be granted in phases (*nisi* and *absolute*) _____

10. Which aspects of adoption/legal guardianship need urgent reform? _____

LAW FIRMS

1. What is the ratio of adoption/legal guardianship cases your firm handles in relation to other matters? _____
2. What are the average legal fees for:
 - Domestic adoption _____
 - Intercountry adoption _____
 - Legal guardianship _____
3. How does your firm get linked to prospective adoptive parents who are out of the country? _____
4. On average, how long does the process of adoption/legal guardianship take? _____

5. What influences the choice of forum in which to lodge an application for adoption/legal guardianship? _____

6. Does your firm engage qualified social workers or councillors to carry out any investigations that may arise during adoption/legal guardianship procedures? _____
7. For the successful applications handled by your firm, do you receive post adoption reports as stipulated in the court orders? If yes, how many

8. Do you take any measures to ensure that the conditions stipulated in the adoption/legal guardianship orders are complied with? If yes, please specify _____

9. Have there been instances where the adoptive parent does not appear in person? What is your view on parties not appearing in person? _____

10. In your view, should an adoption/legal guardianship order be revocable? If yes, under what circumstances? _____

11. Should adoption orders be granted in phases (*nisi* and *absolute*) _____

12. What is your understanding of best interest of the best interest of the child? _____

13. Do you have any suggestions on how the best interest of the child can be ensured during and after the adoption/legal guardianship process? _____

LOCAL COUNCIL

1. Name

2. Area

3. Have you received any reports of abandoned children? _____

4. Who mainly refers cases of abandoned children to you and approximately how many cases do you handle per month?

5. What ways have you pursued reunification as an option and at what stage do you seek to reunify these children with their relatives? _____

6. What are the legal provisions that govern adoption and legal guardianship in Uganda?

7. Do you know how many children in your area have undergone adoption/legal guardianship processes in the past 5 years?

8. What nature of pre and post adoption assistance have you offered to the child/children and their families, and any other persons before and during adoption/legal guardianship?

9. What challenges have you generally encountered during your involvement in

adoption/legal

guardianship

processes?

10. Do you have any suggestions that could inform reforms within these processes? _____

PROBATION AND SOCIAL WELFARE OFFICERS

1. Name of PSWO and district _____
2. What are your educational qualifications? _____
3. What are the legal provisions that govern adoption and legal guardianship in Uganda?

4. Is there a prescribed/recommended format you follow when writing welfare reports for purposes of adoption/legal guardianship? _____
5. What is your understanding of the best interest of the child in the context of adoption/legal guardianship? _____

6. How do you collect information that is included in your reports? _____

7. For individuals who are not resident in Uganda, how do you ascertain the correctness of the information given to you? _____

8. What kind of investigations/consultations do you conduct pertaining to a child prior to the writing of the welfare report? _____

9. How much does it cost to write a welfare report for adoption/legal guardianship?

10. Where you present in court during the proceedings? How were you involved? _____

11. Are you linked with any law firm? _____

12. Who mainly refers cases concerning children to you and approximately how many cases do you handle per month? _____

13. What ways have you pursued reunification as an option and at what stage of proceedings do you seek to reunify these children with their relatives? _____

14. What nature of pre and post adoption assistance have you offered to the child/children and their families during adoption/legal guardianship?

15. On what basis have you made an application for a care order in the past? _____

16. What challenges have you generally encountered during the process of adoption/legal guardianship? _____

17. Do you have any suggestions that could inform reforms within these processes? _____



STUDY ON
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IN UGANDA



THE REPUBLIC OF UGANDA

