

A SNAPSHOT OF ALTERNATIVE CARE ARRANGEMENTS IN KENYA



SOS CHILDREN'S
VILLAGES
INTERNATIONAL

*Based on SOS Children's Villages' assessment
of a state's implementation of the UN Guidelines
for the Alternative Care of Children*



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Together4Change

A loving home for every child

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Background

In 2011, SOS Children's Villages International, along with child rights experts Nigel Cantwell and Prof. June Thoburn, developed an assessment tool¹ to measure a state's implementation of the UN Guidelines for the Alternative Care of Children. This tool is meant to be used as research foundation for countries participating in the SOS Children's Villages global advocacy campaign: *Care for ME! Quality Care for Every Child*.

The assessment tool is a long and complex diagnostic instrument. Undoubtedly, many states will not have sufficient data available to answer all the questions contained in the assessment and no single state will have implemented all the provisions for family support and alternative care as laid out in the UN Guidelines for the Alternative Care of Children. Nevertheless, SOS Children's Villages national associations were asked to complete as much of the tool as possible, given the available data in their country. The three main steps for completing the assessment are:

1. Desk research of existing secondary and meta data, from state, non-state and international sources;
2. Interviews with key service providers, service users and management; and
3. Compilation of the final report, including this summary.

A full version of the original data can be made available upon request. Requests can take up to 90 days to complete. Please contact Emmanuel.sherwin@sos-kd.org for further assistance and questions.

The target groups of this study are:

Children in alternative care: those children and young people who, for any number of reasons, live outside their biological family and are placed in formal or informal care arrangements such as residential care, SOS families, foster care or kinship care.

Children at risk of losing parental care: children whose families are in difficult circumstances and are at risk of breaking down. They may be experiencing any number of challenges including, but not exclusively: material poverty, substance abuse, poor parenting skills, disability and behavioural issues.

Next Steps

SOS Children's Villages calls on all states, civil society partners, inter-governmental agencies, human rights institutions and individuals to use the data contained in this report to defend the rights of children and families – to work together or individually to bring about a lasting change in a child's right to quality care. If possible, in each of the countries where the assessment was carried out, SOS Children's Villages, in cooperation with key partners, will initiate an advocacy campaign on one or more of the recommendations contained within the report. Please contact the SOS Children's Villages national office if you wish to know more, support or become involved in the campaign.

Disclaimer

While all reasonable efforts have been made to ensure the accuracy and legitimacy of the data in this report, SOS Children's Villages cannot be held liable for any inaccuracies, genuine or perceived, of the information retrieved and presented in this document. The purpose of this report is to offer an insight into the state's attitude and recourse to alternative care and any human rights violations therein. SOS Children's Villages will not assume responsibility for the consequences of the use of any information contained in the report, nor for any infringement of third-party intellectual property rights which may result from its use. In no event shall SOS Children's Villages be liable for any direct, indirect, special or incidental damage resulting from, arising out of or in connection with the use of the information.

¹ The original version of the tool can be found here: www.sos-childrensvillages.org/What-we-do/Child-Care/Quality-in-Care/Advocating-Quality-Care/Pages/Quality-care-assessment.aspx.

Executive summary

Kenya has a well-established and progressive legal, policy and institutional framework on children's rights, but despite this it fails to adequately protect the 19.1 million children, which make up almost 50% of its population.² As a result, almost 2.4 million children are classified as either vulnerable or orphaned, with an estimated 1.2 million orphaned due to the HIV/AIDS virus.³

The country has ratified both the *UN Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child*; and article 53 of the Constitution makes special provision for the protection of children's rights, including an obligation to meet their socio-economic rights to health, education, nutrition and shelter. Despite these commitments and the dispersal of about 4.4 billion KES (approx. US\$51.6 million) to orphans and vulnerable children between 2005 and 2012, children's socio-economic rights remain far from fulfilled, increasing their vulnerability and need for alternative care.

The *Children Act* 2001 provides clear guidelines on matters affecting children, but it has failed to harmonise effectively with other relevant legislation.⁴ For example it was only in 2003 that child witnesses or victims of crimes could testify without the corroborating evidence of an adult,⁵ and in 2012 a labour law review proposed amendments to protect children; indicating remaining gaps in the law, including the lack of legal penalties for all forms of forced labour and underage military recruitment. Kenya has yet to adopt its draft list of hazardous work for children, or commit sufficient resources for enforcement efforts and children continue to be engaged in the worst forms of child labour particularly in dangerous activities in agriculture and fishing.⁶

In 2010 the government embarked on a holistic review of the *Children's Act* 2001, to bring its provisions in line with the Constitution. This review generally accepted international standards, resulting in the preparation of the *Children's Act (Amendment bill)* 2011. Although the bill was put before parliament for prompt attention,⁷ a second review of the original act is in progress following the realisation that the original amendments did not address some major issues and it is believed that the *Children's Act (Amendment bill)* 2013 will be completed before the end of the year for submission to parliament.⁸

Nonetheless, the *Children's Act* 2001, has provided guidance of the alternative care of children including matters concerning parental responsibility, foster care, adoption, maintenance, guardianship, care and protection of children, and the administration of childcare institutions. The National Council for Children's Services, established in 2003, has a mandate to coordinate children's services and advise the government. It has also created area advisory councils to carry out its work at the district, divisional and local levels. The Department of Children's Services is in charge of running four statutory children's rescue centres in Nairobi, Thika,

² 'UNICEF Overview: Kenya at a Glance', available at: www.unicef.org/kenya/overview_4616.html.

³ Ibid.

⁴ Including: Penal Code, Sexual Offences Act, Employment Act, Borstal Institutions Act, Matrimonial Causes Act, and the Separation and Maintenance Act with each other and with the Constitution. Significant gaps on the national law relating to children have been highlighted in the Save the Children 2012 workshop report on the reflections on key processes of children sector in Kenya from 1989 onwards. Mbugua, J.W., Promoting Child Rights: Reflections on Key Processes of Children Sector in Kenya from 1989 onwards as Recorded by some National Civil Society Actors, Save the Children, 2012, available at: resourcecentre.savethechildren.se/sites/default/files/documents/6628.pdf.

⁵ Section 124 of the *Evidence Act* was repealed by the *Criminal Law (Amendment) Act* 2003.

⁶ GOK, *Ministry of State for Planning and National Development and Vision 2030: Kenya Social Sector Protection Survey*, 2012, available at: www.vision2030.go.ke/cms/vds/Kenya_Social_Protection_Review_Final.pdf. Also available at: www.dol.gov/llab/programs/ocft/2012TDA/kenya.pdf.

⁷ *Universal Periodic Review of the United Nations Human Rights Council: National Mid Term Report*, September 2012, pp.34-36, available at: www.upr-info.org/IMG/pdf/kenya_mid-term_report_2012.pdf.

⁸ The NCCS, *Review of the Children Act*, 2013, available at: www.nccs.go.ke/index.php?option=com_content&view=article&id=71:review-of-the-children-act-2001&catid=1:latest-news&Itemid=54.

Machakos and Garissa. Many children without parental care are cared for informally through arrangements made by their extended family or community, but formal care is also available in the form of both family- and residential based care, with a number of state and non-state actors playing a crucial role in the care and protection of children during emergencies too.⁹

The research conducted by SOS Children's Villages found that despite high levels of child abuse and a concerted response to address this by the government, there remain legal gaps and concerns related to alternative care: including lack of coordination of legislation and services for children; a high number of children in unsupported and poorly monitored informal care; limited information collection or inspection of childcare facilities; and reluctance to report and lack of channels for reporting child abuse, either in the home or in alternative care.

⁹ Although care of children with special needs during emergencies could not be ascertained.

Key findings

As at December 2012, a total of 48,478 children (0.25% of the total children population) were in formal care settings.¹⁰ There is a lack of data on child abuse in Kenya, which makes it a difficult issue for the government to tackle. The data from the Child Services Department for 2011, however, shows that children suffer from a range of abusive treatment, including neglect, abandonment, sexual abuse, child labour, early marriage, child trafficking and harmful cultural practices such as female genital mutilation. Despite this knowledge, the institutional responses to such abuse are often inadequate and in some cases put children at further risk.

A regional distribution of child abuses in Kenya in 2011

Province		Types of child abuse				
Region	Neglect	Abandonment	Sexual abuse	Child labour	Early Marriages	Harmful cultural practices
Nairobi	3,642	253	110	41	6	4
Western	4,439	441	66	82	19	0
Central	5,671	757	79	35	6	2
Eastern	7,926	495	65	270	45	4
Coast	5,722	231	200	41	210	0
N/E	1,800	14	40	10	6	1
Nyanza	3,350	230	120	68	5	5
R/Valley	5,522	331	30	20	130	10
Total	38,325	2,752	710	527	427	26

Source: Children Services Department.

Informal care

Informal care widely used in Kenya, where children are placed under kinship care or the care of family friends. Various factors contribute to children being cared for in this way, including migratory work, the location of a secondary school or better schooling, the inability of parents to provide for their children or due to family illnesses or becoming orphaned. However, it is not known precisely how many children are cared for informally, as many families do not register informal care, making it difficult to collect data.

Although structures for the registration of informal care givers exist, informal care arrangements are often made by the child's family and community without proper awareness of the requirements of registration or even the possible child protection risks children might face for lack of registration. Lack of records on informal care leads to lack of oversight and monitoring of children's wellbeing putting them at risk of abuse and exploitation, which is difficult for the authorities to identify. Nonetheless, there is a rising awareness of the need to ensure the actual registration of informal care arrangements, which will go a long way towards ensuring the safety of children in what is often the most effective and nurturing form of alternative care.

Poor coordination of services

Although there is robust national legislation on child protection, there has been an observed lack of clarity over the roles of the National Council for Children's Services, the Department of

¹⁰ Children's Services Department.

Children's Services and by implication the area advisory councils.¹¹ At times this has led to duplication of effort or conflict between the institutions, compromising the quality of child protection services.

An example of this is the process of vetting and training of staff working at childcare centres. The research found that although most organisations comply with the law and that some receive financial support from the government to do so, there is no national policy or state funding in place. As a result, levels of staff vetting and training are variable, ranging from a day or a month in some institutions to year-long programmes, such as at SOS Children's Villages Kenya.

These shortcomings have been acknowledged by the government and on 16 October 2005 it issued Legal Notice no. 145, the Children (Charitable Children Institutions) Regulations 2005, to regulate the admission, placement and review procedures on alternative care for children.

Inspections and monitoring

There is a lack of information on the quality of alternative care, with little centralised documentation, as each facility maintains its own records with different standards and levels of detail. This limits the government's ability to monitor facilities and keep track of children's welfare. Kenya Info and the Kenya National Bureau of Statistics have responsibility for centralising data collection and analysis and disseminating information through appropriate platforms, but it is not always up to date or adequate to meet stakeholders' broad information needs. Although gaps still exist, as a result of increased awareness of the importance of data collection due to government campaigns and increased regulation, there has been an improvement in data collection since 2009.

The National Centre for Children Services also lacks the resources to conduct inspections and reviews as regularly as required by law. As a result, they are infrequent, not adequate to protect children and follow up inspections are rare. This situation, coupled with slow court processes and lack of cooperation from some care providers means that children are at risk of abuse when in care, which is not often reported to the authorities.

Reporting child abuse and reporting

Although it is widely known that there are high levels of child abuse in Kenya, there is a reluctance to report these crimes to the authorities, particularly where the families know the perpetrators. Abuse that occurs within alternative care institutions is rarely reported or is inadequately addressed when allegations involve care givers.

National policy provides for child abuse complaints reporting mechanisms and research has confirmed that most children know their rights to complain and the processes available, including suggestion boxes, designated officers and Childline 116. However, there are inadequate structures for dealing with these complaints once they are made.

¹¹ Mbugua, 2012, available at: resourcecentre.savethechildren.se/sites/default/files/documents/6628.pdf.

Recommendations

1. **Formal care:** There is need to develop initiatives towards promoting fostering, training and providing social support to foster parents and developing a data bank of accredited foster care centres that can be reached as the situation arises. The District Child Officers should compile foster care data and regularly send it to the national level for update to the national databank on foster care registrations completed at the local level. Residential care placements pose no cost to the state or the community, as most funds are externally raised; the state has little control of placement and length of stay. There is need for the state to start supporting the private residential facilities. The government should conduct a survey on the child rights of the children in public residential facilities and publish reports that can be accessible to interested parties.
2. **Preventive services:** There is need for a continuous review of the current structures for the provision of preventive support services. The state should build and strengthen households and local community structures to enhance the protection of orphaned and vulnerable children and maximise effective utilisation of the available resources. This can be done through a baseline study on orphans and vulnerable children's household economic needs, in order to facilitate the identification of successful economic strengthening interventions and instituting mechanisms for monitoring progress and sustainability of community strengthening initiatives.
3. **Youth leaving care:** Develop a national structured exit curriculum for the youth leaving care to ensure that they are adequately equipped with requisite skills and capacities to be self-reliant after leaving care regardless of the care giver, including psychosocial support, housing assistance, education and vocational training and employment opportunities.
4. **Legal and institutional framework:** The government should prioritise child protection issues, especially by speeding up the on-going review of the *Children Act* 2001 and other legislation in conflict with the 2010 Constitution and international standards on child protection, in the best interests of the child. There is also need for an analysis of all the disjointed child protection policies in the different sectors such as health, education, labour and justice in order to come up with an all-conclusive national child protection policy.
5. **Poor coordination, inspection and monitoring services:** Clarify and streamline the roles and responsibilities of the different state and non-state actors in child protection services especially the District Child Officers and the National Council for Children Services. The Department of Children Services should also develop a database on all public and private alternative care facilities, their registration status and the status of child protection. Similarly, the government needs to strengthen the capacity of the National Council for Children's Services and District Child Officers to enable them to effectively play their oversight role in child protection.
6. **Informal care:** The government should continue efforts to ensure the registration of children under informal care arrangements and similarly conduct an analysis of informal care givers to enable it to understand the needs of children in informal care settings and ways to ensure that they are safe and protected.

7. **Reporting child abuse:** The government should establish more effective procedures for children to report complaints and allegations of child abuse while in alternative care facilities, and build the capacity of officers to deal with child abuse cases. Education and awareness programmes should be conducted within communities, with chiefs, assistant chiefs and village elders to ensure that they are aware of the need to report cases of child abuse in informal care.

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Glossary

Aftercare	Professional support young people receive after they leave care, including psycho-social support, housing assistance, education and vocational training and employment opportunities.
Alternative care	A formal or informal arrangement whereby a child is looked after, at least overnight, outside the parental home, whether by decision of a judicial or administrative authority or duly accredited body; an initiative of the child, his/ her parents or primary care givers; or spontaneously by a care provider in the absence of the parents.
Charitable Children's Institutions (CCIs)	Defined in section 58 of the Children Act 2001, as "a home or institution which has been established by a person, corporate or unincorporate, a religious organisation or a non-governmental organisation and has been granted approval by the NCCS to manage a programme for the care, protection, rehabilitation or control of children".
Child	Any person below eighteen (18) years of age.
Children Rescue Centres	Provisional and transitional safety, protection and care centres for children in need of care and protection (CNCP), such as abused, marginalised and lost children, and which facilitate their speedy referral and community re-integration appropriately.
Children without parental care	All children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.
Duty bearer	Body or individual who has responsibilities and obligations towards the rights holders, as enshrined in international and national law and human rights instruments.
Formal care	All care provided in a family environment which has been ordered or authorised by competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures.
Foster care	The placement of a child by a competent authority in the domestic environment of a family other than the child's own family, for the purposes of alternative care. The family is selected, qualified, approved and supervised in the provision of such care.
Guardianship	Legal relationship created when a person or institution is assigned by the court to take care of a child.
Informal care	Any private arrangement provided in a family environment, whereby the child is looked after on an on-going or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/ her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body.
Kinship care	A form of alternative care whereby children are placed within the extended family or with close friends of the family known to the child, whether formal or informal in nature.
Quality care standards	A written document outlining ideals and conditions that should be in place in a child care facility in order to ensure that a child receives quality care.
Residential care	A non-family based group living arrangement for children, where care is provided by remunerated adults, who would not be regarded as traditional carers within wider society and who would normally work in shifts and includes children's homes.

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