



# Kenya National Care System Assessment

A participatory self-assessment of the formal care system for children living outside of family care and for the prevention of unnecessary separation of children from families

July 2020

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## FOREWORD

The United Nations Convention on the Rights of the Child (UNCRC), in its preamble acknowledges the significance of the family as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children. Section 9.1. of the convention further gives responsibility that States' Parties shall ensure that a child shall not be separated from his or her parents against their will, except on competent due judicial determination that such separation is necessary for the best interests of the child. The African Charter on The Rights and Welfare of the Child is cognizant that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his/her personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding (Article 19). It is therefore established on the premise of these international and regional legal instruments that most children should live with and be cared for by their families of birth. Taking care of children is the primary responsibility of parents while the state is mandated to support parents to fulfil this responsibility.

Although children's institutions have played a part in caring for our vulnerable children, placing children in residential institutions solely so that they can access healthcare or education denies them their right to live with their families and to be included and participate in community life. Article 2 of the UNCRC emphasizes the need for *all* children, irrespective of their backgrounds or disability, to access *all* their rights. In line with the UNCRC, UN Guidelines on Alternative Family Care, and The African Charter on the Rights and Welfare of the Child (ACRWC), Kenya has made great strides in furthering the spirit of these conventions in as far as care reforms is concerned. Article 53 of the Kenyan Constitution emphasizes the need for children to be cared for by both parents and to be protected from abuse and exploitation while Article 45 recognizes the family as the natural and fundamental unit of society and the necessary basis of social order and shall enjoy the recognition and protection of the State.

Over 80 years of research from around the world has confirmed that there is potential harm to children's growth and development that is caused by institutional care. Studies have shown that children who remain in institutions after the age of six months often face severe developmental delays compared to their counterparts under family and community-based care. To this end, the Government of Kenya has remained committed towards improving and ultimately reforming care. It has progressively initiated efforts towards this by ensuring that the legal and policy framework in which the children's sector operates is aligned to globally acceptable standards of care. Kenya is currently working with like-minded non state actors to develop a National Care Reform Strategy. The Government has also instituted deliberate measures through social safety nets and initiated appropriate response programs aimed at ensuring children remain within their families and communities.

In its quest to acquire evidence-based insights to further its agenda of reforming care, the Government conducted this care system assessment. The assessment brought to light the perspectives of formal and informal care practices in the country. It identified gaps in the care system that should be addressed to ensure that it is fully aligned with desirable and acceptable prevailing standards of care. The findings of the Care System Assessment will lead to adoption and enforcement of laws and policies, development of responsive family-oriented programs, strengthening regulatory frameworks in childcare systems, developing and implementing a National Care Reform Strategy and also helping track the progress of initiatives towards strengthening and improving National Care Systems.

The Government is alert to the fact that changing established systems and long-standing beliefs on care is a herculean task as we embark on addressing these gaps. The requisite approach is indeed one that calls for

concerted effort and a great deal of expertise to ensure that children are cared for by their families or within their communities. We therefore call upon all stakeholders in the children’s sector and in particular parents and care givers to fully embrace care reforms towards family-based care options for all children.



**SIMON K. CHELUGUI, EGH**  
**CABINET SECRETARY**  
**MINISTRY OF LABOUR AND SOCIAL PROTECTION**

## WORD FROM THE NCCS CHAIRPERSON

An estimated eight million (8,000,000) children live in orphanages and other residential care institutions around the world, deprived of the love and support of a family. It is estimated that at least eight out of ten of these children are not orphans and that with appropriate support, their families could look after them. The situation in Kenya fits into this global scenario and there are many children in institutions who are deprived of parental love and care just to access basic services like education and healthcare. The Ministry of Labour and Social Protection, in response to the COVID-19 emergency, directed the release of all children in institutions to their families, caregiver or other alternative family care options. This resulted in the immediate release of an estimated 19,000+ children – illustrating that many of the children have living parents or relatives with whom they could be placed. However, it is critical and reflective of good practice that these placements be regularly monitored to ensure children are safe, their needs are being met and that families are supported in their ability to appropriately care for the child/children in their care.

Studies show that children fare better when they grow up within the family and the community. Further, studies on the effects of institutionalization on children over many decades reveal grim findings of long-life negative effects on children. Children’s emerging issues – from experiences in residential care and beyond, and now with the onset of COVID-19 – increasingly necessitate the need for family-based care options for children. In appreciation of this and in keeping with international standards of care, the Government continuously strives to improve the welfare of children. It progressively seeks to improve the legal and policy framework within which the children’s sector operates and has also come up with robust programs that seek to strengthen families and ensure that children are safely retained within their family and community.

The Government recently commissioned this assessment of the care system in Kenya and the findings confirm that many children in our institutions of care have parents or families that are able to take care of them. This assessment could not have come at a better time since its findings and recommendations will go a long way in informing the steps towards care reform in Kenya, and above all in the development of the National Care Reform Strategy. The National Council for Children Services (NCCS) will use the care system assessment findings to advise and develop policies that will improve care reform efforts. The same will also be instrumental to strengthen child welfare services, and childcare and protection systems. Moreover, this will greatly contribute to effective multi-sectoral collaboration with health, education and justice sectors among many others, while at the same time giving impetus to the active coordination among all relevant authorities.

It is my hope that these findings and recommendations of the assessment will be fully implemented and that we all shall eventually embrace family and community-based care for our children. I urge all of us to be committed collectively and individually in the actualization of these recommendations and the pursuit of our endeavor to ensure that children grow up in thriving family and community-based care.



**HON. JOYCE NGUGI**  
CHAIRPERSON  
NATIONAL COUNCIL FOR CHILDREN SERVICES



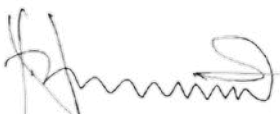
## ACKNOWLEDGEMENTS

The Ministry of Labour and Social Protection would like to thank all those who contributed to the process of realizing the National care system assessment for Kenya. The care system assessment has been made possible by staggering support and involvement of multiple stakeholders who participated to provide inputs. Special thanks goes to the National Council of Children Services secretariat who played a critical role in coordination and overall leadership to ensure that processes and timelines were met to produce the care assessment for Kenya.

This assessment would not have been possible without the National Care Reform Core Team comprised of the various government ministries and departments such as Judiciary (mainly Kadhis court), Ministry of Education, Ministry of Health, Ministry of Interior and Coordination of National government, Department of Children Services, Department of Social Development, Street Families Rehabilitation Trust Fund' Social Assistance Unit, National Council for Persons with Disability as well as other care reform partners including Stahili Foundation, Hopes and Homes for Children, UNICEF, SOS Children's Village Kenya, Association of Charitable Children's Institutions in Kenya, Kenya Society of Care Leavers, and other co-opted key experts who contributed overwhelmingly to generate the findings and refine recommendations. Their willingness to contribute immensely to the process and provide substantive feedback was essential to the final assessment.

This assessment was highly participatory whereby meetings, engagements and workshops led to agreeable approaches and consensus building that was critical to arrive at decisions that met the local realities in care reform in Kenya. Therefore, the findings and recommendations of this care assessment is a culmination of many different actors in Kenya.

Finally, the State Department for Social Protection would like to recognize with gratitude the work carried out by the global Changing the Way We Care Initiative (CTWWC) for their technical and financial support from the USAID, GHR and MacArthur Foundation, that made this assessment a success. This assessment will inform the national care reform strategy and future interventions of care reform in Kenya.



**NELSON MARWA SOSPETER, CBS**  
PRINCIPAL SECRETARY  
STATE DEPARTMENT FOR SOCIAL PROTECTION

## LIST OF ACRONYMS

AFC	Alternative family care
CCIs	Charitable Children’s Institution
CRC	Convention on the Rights of the Child
CRS	Catholic Relief Services
CSOs	Civil Society Organizations
CPIMS	Child Protection Information Management System
CTWWC	Changing the Way We Care
DCS	Department of Children’s Services
ECD	Early Childhood Development
FADV	Fondazione L’Albero Della Vita
FPE	Free Primary Education
GoK	Government of Kenya
KESCA	Kenya Society of Care leavers
NCCS	National Council for Children’s Services
NGOs	Non-governmental organizations
PAP	Prospective Adoptive Parents
SCCOs	Subcounty Children Officers
SCIs	Statutory Children Institutions
SoPs	Standards of Practice
ToR	Terms of Reference
UN	United Nations

## GLOSSARY OF KEY TERMS

**Alternative care:** A formal or informal arrangement whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his/her parent(s) or primary caregivers, or spontaneously by a care provider in the absence of parents.<sup>1</sup>

**Caregiver:** A person or guardian who is charged with responsibility for a child's welfare.<sup>2</sup>

**Care leaver:** A child or young person who is leaving or has left a formal alternative care placement. He or she may be entitled to assistance with education, finances, psychosocial support and accommodation in preparation for independent living.<sup>3</sup>

**Care reform** Refers to the changes to the systems and mechanisms that promote and strengthen the capacity of families and communities to care for their children, address the care and protection needs of vulnerable or at-risk children to prevent separation from their families, and ensure appropriate family-based alternative care options are available.

**Charitable Children's Institution:** A home or institution established by a person, corporate or non-corporate, religious or non-governmental organization, which has been granted approval by the National Council for Children's Services to manage a program for the care, protection, rehabilitation or control of children.<sup>4</sup>

**Child protection:** Measures and structures that prevent and respond to abuse, neglect, exploitation and violence affecting children.<sup>5</sup>

**Child headed household:** A household in which a child or children (typically an older sibling), assumes the primary responsibility for the day-to-day running of the household, providing and caring for those within the household. The children in the household may or may not be related.<sup>6</sup>

**Continuum of care:** A range of services and placement options for children beginning with family preservation or prevention of separation (i.e., remaining with biological parent(s)) through to placement in residential care centers/facilities. Other care options included within this continuum are kinship care, temporary foster family care, long-term foster care, domestic adoption, monitored child-headed households, small group homes, intercountry adoption, high-quality residential care (including orphanages) and supported independent living. A continuum should represent a wide range of options to provide the necessary and appropriate care.<sup>7</sup>

**Family-based care:** Short-term or long-term placement of a child in a family environment with one consistent caregiver and a nurturing environment where the child is part of a supportive family and the community.<sup>8</sup>

**Family preservation:** Interventions that are intended to help keep children at home with their families, safe and secure. Services might include household economic strengthening initiatives (e.g., social protection, income generation), links to community support mechanisms, specialized support for alcohol or drug addiction, parenting support and individualized coaching.

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<sup>1</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 141.

<sup>2</sup> Ibid, page 142.

<sup>3</sup> Ibid, page 142.

<sup>4</sup> Ibid, page 142.

<sup>5</sup> Save the Children International, *The Framework for the National Child Protection System for Kenya*, London, 2011, page viii.

<sup>6</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 142.

<sup>7</sup> Ibid, page 143.

<sup>8</sup> Ibid, page 144.



**Foster care:** Placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child.<sup>9</sup>

**Gatekeeping:** The prevention of inappropriate placement of a child in formal care. Placement should be preceded by some form of assessment of the child's physical, emotional, intellectual and social needs, matched to whether the placement can meet these needs based on its functions and objectives. Gatekeeping is the process of preventing children from entering inappropriate and unnecessary care and making decisions about care that are in the best interests of each and every child.<sup>10</sup>

**Kafaalah:** According to Islamic law, the commitment by a person or family to voluntarily sponsor and care for an orphaned or abandoned child. The individual or family sponsors the child to meet his/her basic needs for health, education, protection and maintenance.<sup>11</sup>

**Kinship care:** A private arrangement within an extended family whereby a child is looked after on a temporary or long-term basis by his/her maternal or paternal extended family, without it being ordered by an administrative or judicial authority. Family members include grandparents, aunts, uncles and older siblings.<sup>12</sup>

**Preventive services:** Child protection services that include supporting and strengthening families to reduce social exclusion and to lower risk of separation, violence and exploitation.<sup>13</sup>

**Reintegration:** The process by which a child is reunited and is able to integrate with his/her biological parents or extended family or legal guardian. During this process, activities are undertaken to equip the child and the family with the necessary skills and resources for proper reintegration and readjustment.<sup>14</sup>

**Statutory Children's Institution:** Children's institutions established by the Government of Kenya for the purpose of: i) rescuing children who are in need of care and protection (rescue homes); ii) for the confinement of children in conflict with the law while their cases are being handled in court (remand homes); and iii) for the rehabilitation of children who have been in conflict with the law (rehabilitation school). The court commits a child into one of these institutions as appropriate.<sup>15</sup>

**Supported independent living:** Where a young person is supported in her/his own home, a group home, hostel or other form of accommodation to become independent. Support/social workers are available as needed and at planned intervals to offer assistance and support but not to provide supervision. Assistance may include timekeeping, budgeting, cooking, job-seeking, counselling, vocational training and parenting.

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<sup>9</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 144.

<sup>10</sup> Ibid, page 145.

<sup>11</sup> Ibid, page 146.

<sup>12</sup> Ibid, page 146.

<sup>13</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 147.

<sup>14</sup> Ibid, page 35.

<sup>15</sup> Ibid, page 147.

## Contents

Foreword .....	i
Word from NCCS Chairperson .....	iii
Acknowledgements .....	iv
Glossary of Key Terms .....	vi
Executive Summary .....	1
Background children’s care in Kenya.....	8
Introduction to the care system assessment .....	11
Assessment methods & limitations .....	12
Assessment findings .....	13
<i>Cross-Cutting Areas</i> .....	13
<i>Prevention of Unnecessary Child-family Separation</i> .....	18
<i>Family Reintegration</i> .....	20
<i>Kinship Care</i> .....	21
<i>Foster Care</i> .....	23
<i>Guardianship</i> .....	26
<i>Supported Independent Living</i> .....	27
<i>Child-Headed Households</i> .....	30
<i>Adoption</i> .....	31
<i>Other Forms of Care</i> .....	34
<i>Residential Care</i> .....	35
<i>Transitioning Institutions</i> .....	37
Summary of Findings .....	39
Key recommendations.....	40
Annex.....	43
<i>List of Participants</i> .....	43

## EXECUTIVE SUMMARY

The government of Kenya is committed to moving away from institutional care towards family and community-based care. This is in line with international and national child rights instruments and informed by a growing evidence-based illustrating the benefits of family-based care on children’s development and the potential negative impacts of residential care. Kenya has made important strides and achieved key milestones over the past two decades in relation to children’s care and protection. Beginning in 2001, when the Children’s Act (referred hereafter as “The Act”) came into place. The Act includes important provisions related to children’s right to care including parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children. To support the oversight and implementation of the contents of the Children’s Act, Kenya has established the National Council for Children’s Services (NCCS) as the policy-making, coordination, regulatory, advocacy and advisory body and the Department of Children’s Services (DCS) the mandated government body to implement children’s services, including care.

The care system assessment is intended to support the Government of Kenya to assess and strengthen the national, formal care system. More specifically, the objectives of the care system assessment framework are to: 1) support the State Department of Social Protection through the National Council of Children Services and the Department of Children Services to lead an inclusive and participatory self-assessment of their national care system; 2) support country-level care reform stakeholders to build consensus on sector priorities and actions to advance the national care system; 3) provide information for government agencies and other stakeholders in care reform to use to develop policy documents/guidance, national care reform strategies and/or action plans; and 4) set a baseline to track progress of strengthening national care systems over time.

The assessment framework follows a system approach. This means that the assessment considers national policies and guidelines, the social service workforce, services provided, monitoring and evaluation, social norms and financing across the spectrum of prevention and alternative family-based care options. The original assessment framework was developed by Changing the Way We Care (CTWWC)<sup>16</sup> with the intent for each country to adapt based on the local context and priorities.

The assessment took an approach of a “participatory self-assessment.” Where the stakeholders involved in the care system responded to the assessment questions together and, through dialogue, the assessment team built consensus on responses, priority interventions and next steps. The Care Reform Core Team driven by the National Council of Children Services, doubled up as the assessment team because of their core function to develop the care reform strategy. A series of meetings with the Care Reform Core Team<sup>17</sup> were conducted prior to the assessment workshop. The Core Team’s focus prior to the assessment was on customization of the assessment framework and questions to ensure that the assessment speaks to the local realities and the Kenyan context. The Core Team then planned for a three-day assessment workshop in November 2019.

The assessment findings presented in this report have captured the thirteen sections of alternative care options and relevant care reform thematic areas as described in Guidelines for Alternative Family Care for Children in Kenya (2014) (AFC Guidelines). In addition, the assessment covered topics that cut across all areas of care. This is described as “Cross-Cutting Areas” and the findings apply to most or all of the areas of

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<sup>16</sup> The assessment framework developed by CTWWC is based off of the MEASURE Evaluation Tool for Assessing, Addressing, and Monitoring National Alternative Care Systems (2019), the Tracking Progress Initiative assessment tool and best practices from multiple documents including the Global Social Service Workforce Alliance/UNICEF Guidelines to Strengthen the Social Service Workforce for Child Protection (2019).

<sup>17</sup> The Care Reform Core Team includes members from the following: National Council for Children’s Services (5) Department of Children’s Services, Child Welfare Society of Kenya, National Council for Persons with Disabilities, Street Families Rehabilitation Trust Fund, Social Development Department, Social Protection Secretariat, Social Assistance Unit, Ministry of Health, Ministry of Education, Council of Governors, Probation and After Care Services, UNICEF, Stahili Foundation, Changing The Way We Care (2CRS and 1 Lumos), Hope and Homes, ACCIK, Association of Care Leavers, Association of Adoptive Parents, Association of Alternative Family Care, and Adoption Societies.

alternative care and care reform.

Overall, the assessment findings and recommendations were reviewed and validated by the Care Reform Core Team. Over a period of three months, the refinement of the findings and recommendations by 15 members from the core team was made possible through in-person and virtual meetings. The intention is for NCCS to use the finding to develop the Kenya National Care Reform Strategy and also for NCCS partners to identify high priority actions in care reform agenda in Kenya.

## SUMMARY OF FINDINGS AND RECOMMENDATIONS

Below is a summary of the key findings, organized by system component, followed by draft priority recommendations that are also presented at the end of this report.

### Legal and Policy Framework

Overall, care for children is supported through several laws and policies, namely The Constitution, The Children’s Act (2001), the Guidelines for Alternative Family Care for Children in Kenya (2014) (AFC), the Adoption Regulations (2005) and Guidelines, the CCI Regulations (2005), National Standards for Best Practices in CCI’s 2013, the National Case Management for Reunification and Reintegration Guidelines (2019) and the forthcoming National Gatekeeping Guidelines. While this presents a strong foundation for care, the assessment highlights several areas for improvement.

First, while the AFC Guidelines provide for many best practices, the guidelines are not fully enforced through national policies and strategies. This applies to provisions for family reintegration, kinship care, child-headed household, independent living, and kafaalah. In other words, the provisions to support all areas of care that are described in the AFC Guidelines have not yet been translated into national policy documents to support implementation, enforcement and quality assurance.

In addition, while foster care and adoption are provided for within legal and policy documents, these documents need to be reviewed and revised. Among several issues not currently covered are a process to recruit, train and retain prospective foster carers and adoptive parents, definitions and provision for services to support foster carers/adoptive parents and children, specialized services for children with disabilities, and provisions for respite services. Participants also noted that although the National Adoption Committee is not currently in effect, the membership will need to be reviewed to include other key stakeholders.

There are also “other forms” of care that are widespread practice in Kenya. This is sometimes referred to as “informal/cultural” care placements and often when a child is looked after by a family member without involvement of administrative or judicial bodies. While these type of arrangements are seen as important and often a positive option for children, it is encouraged to provide at least basic assessments, support and monitoring in order to prevent maltreatment and children in these informal placements. At large, support for these types of “other forms” of informal care are not provided for within the current legal framework.

There is a regulatory framework to ensure authorization/registration of residential care facilities. Together, NCCS, DCS, Probation and Aftercare Services and the Prisons Department are all official state bodies that are responsible to ensure residential care facilities comply with national standards, including through inspections. This being said, in 2016, the CRC Committee noted that “the majority of childcare institutions, such as CCIs, are not yet registered, the inspection and monitoring of the care provided at CCIs are weak and there are no complaint mechanisms through which children can denounce violence in care institutions.” There is currently a moratorium on registration of new CCIs which provides some legal backing to prevent new, large-scale institutions from being set up. There is currently no strategy for transitioning residential care into more family-based support, however NCCS is currently in the process of developing a national care reform strategy with

support from UNICEF.

Overall, the legal and policy framework should be further enhanced to support implementation of the AFC Guidelines, including providing services after a child is placed into alternative family care. In addition, specialized support for children with disabilities and their carers requires greater attention. It is important to note that training of prospective foster carers and adoptive parents is not yet standardized, and that, in general, there is still a need to train governmental and non-governmental actors in their roles and responsibilities related to all areas of care. In addition, under current policy, NCCS is the official state body spearheading care reform, including transitioning institutions, however there are no national guidelines on how to appropriately transitioning care facilities to family-based care service providers.

## Service delivery

Overall, existing services to support care are believed to often show promising practices, but the coverage of such services is insufficient. All services are provided for under DCS, and many services are supported through non-governmental actors. While DCS has the mandate to monitor and inspect service providers, in general, this is not always occurring in practice.

When it comes to preventing unnecessary child-family separation, there are social assistance programs such as cash transfer for orphans and vulnerable children, however the coverage of these programs is limited. In addition, psychosocial support and services for people with disabilities are articulated in national documents (the AFC Guidelines and the Disabilities Act respectively), however availability of such services is limited.

Services to support family reintegration do exist, however support after reunification is less frequently available. Kinship care services are not standardized and not regulated, although formal and informal kinship care placements are known to be occurring. Foster care services are provided by non-governmental actors, with oversight from DCS. While many NGOs are believed to be providing foster care services that show promising practices, some CCIs are believed to be providing potentially poor-quality foster care services. One of the reasons DCS is believed to not provide direct foster care services is because there is inadequate number of SCCOs. Another weakness is that prospective foster carers are not being made available by DCS.

For guardianship placements, the only known support for guardians is the national cash transfer program. The Probation and Aftercare Services under Ministry of Interior and Coordination is providing some support for independent living, which is seen as a potentially promising practice.

The Adoption Regulation and Guidelines provides national standards to promote quality adoption placements which are used by government and non-governmental organizations. Overall, participants stated that recent adoption placements (in the last 12 months) are authorized and registered and that prospective adoptive parents (PAPs) are assessed for their ability to meet children's needs and any support they may require. There are, however, a few areas to improve upon including (among others) assessment of children being adopted, family tracing, best interest determinations, and preparation and support for PAPs and children before, during and after placement.

There are several types of residential care settings described in the legal and policy framework (e.g. temporary placement centers, emergency transit centers, residential special schools, rehabilitation services, children's homes, and more). The most common form of residential care are the charitable children's homes, mostly owned by individuals or religious organizations. There are no known residential family centers and the other forms of residential care listed above are only slightly available.

Overall, there is a monitoring mechanism for DCS to do inspections provided for within The Children's Act, however regular monitoring/inspections per the regulations are not often occurring. Further, there is a general lack of support services for children with disabilities and to support carers of children with disabilities.

## Monitoring and Evaluation

Overall there is a general lack of data for decision-making related to the care of children in Kenya. The Child Protection Information Management System (CPIMS) is designed to host data related to the protection and care of children. This system currently includes some data on reunification and reintegration and residential care, however there are several gaps. For example, while CCIs and SCIs are supposed to input monthly caseload data into the CPIMS, not all institutions are doing so and those of the institutions reporting, the regularity is not always consistent.

There are currently no standard indicators to monitor kinship care, other forms of care, independent living, and kafaalah. There are some data that exist on the number of children in adoption placements, the number of prospective adoptive parents, and the number of children eligible and waiting for an adoption placement. There are also standardized registers for DCS to monitor foster care and guardianship placements, however these registers are believed to not be fully in use. There are no standard indicators in place to track progress on transitioning institutions.

Overall, roles and responsibilities to collect and report data cross actors involved in care are not clearly defined and documented.

## Workforce

Workforce cadres that support alternative care include cadres outlined in the Revised Scheme of Service for Children's Service Personnel (2016) which include the following: Directors of Children's Services, Children's Officers (at national, County and Sub-County levels), Assistant Children's Officers. There are also Child Protection Volunteers. These cadres are regulated through various bodies, including the National Council for Children/s Services. Included in the regulations are provisions for professional development/continuing education of the workforce, registration and licensing, a code of ethics, and a standard for remuneration and career progression. Although these areas exist within regulations, however, participants do not believe any of these areas are adequately covered. In terms of training the workforce on specific issues related to care, there is an overall lack of availability of training. Some training programs exist on family strengthening, foster care, residential care, guardianship and adoption, however no training exists that covers support for supported independent living, kafala, and child-headed households. Of the training that does exist, none of it is sufficiently reaching relevant staff.

## Social norms and practices

There have been small efforts to change the negative social norms around residential care being and appropriate form of protection for children without parental care. Recent activities to-date have focused on the pilot counties and targeted the general public, national and county government staff and frontline staff. Additional awareness raising related to foster care has also occurred, focusing on the general public and frontline staff, however fewer government staff have been targeted with messages related to foster care. Awareness about kafaalah is discussed as part of religious education in mosques. In general, existing awareness raising has not focused on kinship care nor independent living. There is not currently a national advocacy and communication strategy to guide such awareness raising activities.

## Financing

An estimate of the costs associated with most of care options and services have not been calculated with the exception of some cost calculations exist for adoption and residential care. Importantly, there is currently no estimate of the costs required to transition to a system that prioritizes family-based care.

The government does provide financial support for Children's Officers who conduct social inquiry



reports/assessments of guardianship cases. However, in most of the other care options, some components are only slightly budgeted for at the national level. The government is providing some limited financial support for reunification and reintegration, namely through the budget of the Probation Department's head office. Very little funding is available to support kinship care services, with the exception of families that benefit from the national cash transfer program. Overall, the government is not budgeting for foster care services, nor allocating any money towards it.

In some cases, adoption is included as a budget line item in national government budgets, however funding to support adoption is generally believed to not be allocated nor released. The national level budgets also include a small amount of funding for SCIs and some counties budget for both SCIs and CCIs. Government budgets do not currently include costs to support transitioning of residential care to family-based service providers. As transitioning to family-based care occurs and savings is realized, there is currently no plan on how to redirect this savings to community-based support services.

## Recommendations

Given the status of the care system in Kenya, the stakeholders carefully prioritized recommendations. A total of 56 preliminary, high-level recommendations emerged for consideration in future investments, programs and policy work. This list was collated from assessment participants in each section and is not intended to be comprehensive, detailed nor exhaustive. Any national strategies or action planning should take these recommendations as preliminary suggestions to guide future interventions.

### Cross-cutting

1. Fast track the development of the national care reform policy
2. Develop a policy that describes the linkages on care reform and existing government interventions/programs (across sectors)
3. Build capacity of all relevant stakeholders in the national care reform policy and linkages across existing government interventions/programs
4. Develop National Standards of Respite Care
5. Develop a national monitoring and evaluation strategy for alternative care
6. Advocate and plan for increased government financial commitment for care reform and alternative care
7. Cascade training for the new case management for reintegration guidelines
8. Improve the current CPMIS system to capture additional data on children in alternative care
9. Improve planning and provision of funding to support the workforce at all levels
10. Develop and implement a National Communication Strategy for Alternative Family Care

### Prevention of Unnecessary Family separation

11. Complete and operationalize the bills, policies and guidelines to help in streamlining issues of family strengthening and prevention of unnecessary separation
12. Advocate for more engagement of policy implementers at both national and county levels for prevention efforts
13. Develop National Standards on Prevention of Separation and Family Strengthening
14. Build capacity of implementers at both national and county government in issues of family prevention and strengthening

### Family Reunification and Reintegration

15. Ensure existing Family Reunification and Reintegration Guidelines are translated into appropriate national policies
16. Develop a National Policy and Strategy on Family Tracing and Reunification
17. Further improve the CPIMS to capture the Family and Reunification data

18. Establish a system to monitor and track finances on reunification and reintegration from CSOs

### **Kinship**

19. Develop a policy framework to support kinship care including linking kinship carers to social protection schemes such as the national cash transfer program
20. Develop kinship care guidelines to ensure children are retained in families and where biological parents are not there, kinship is the first priority.
21. Sensitize the public on kinship care

### **Foster Care**

22. Develop a national policy/strategy for foster care
23. Establish foster care agencies that are regulated by the NCCS
24. Develop national standards of practice for foster care services (informed by existing guidelines where they exist)
25. Advocate and plan for increased financial commitments from government, private sector and development actors to support foster care

### **Other forms of care**

26. Update existing legal framework to provide for other forms of care (i.e. “informal care” support)
27. Explore, identify and document best practices in other forms of care and sensitize communities
28. Advocate and plan for increased government financial commitments to support other forms of care
29. Further improve the CPIMS to capture support to other forms of care

### **Guardianship**

30. Develop a National Guardianship Strategy
31. Increase support for guardianship services
32. Advocate and advertise guardianship support services
33. Advocate and plan for increased government financial commitments to provide support services to guardianship placements

### **Supported independent living**

34. Develop a National Strategy for Supported Independent Living
35. Register/track children who exit institutions for supported independent care arrangements

### **Kafaalah**

36. Provide for Kafaalah in the existing legal framework
37. Raise awareness of Kafaalah processes
38. Advocate and plan for increased government financial commitments to provide support services to Kafaalah
39. Document Kafaalah care and the process (for learning and advocacy)
40. Collect data on Kafaalah to inform policy and planning

### **Child-Headed Household**

41. Eliminate “child-headed households” as a form of care in the national framework and link child-headed households up to guardianship and kinship care

### **Adoption**

42. Build capacity of the workforce dealing with adoption processes to accommodate the increasing demand for domestic adoptions
43. Advocate and plan for increased government financial commitments for adoption placement and regulation for post-adoption placements
44. Raise awareness on adoption to change the African mindset to help people embrace local adoption

45. Establish a monitoring and evaluation committee for adoption
46. Establish an Adoption Board instead of an Adoption Committee and include all key stakeholders
47. Develop a national standard training for adoptive parents and adoptee children

### **Residential Care**

48. Fast-track development of the national gatekeeping guidelines
49. Build capacity of existing social welfare workforce based on real needs of children living in residential care
50. Fast-track development of an advocacy and communication strategy aiming at redirecting resources from institutional care to family/community care

### **Transitioning Institutional care**

51. Identify stakeholders to leads transitioning of institutional care
52. Conduct a national residential care situation analysis that includes: residential care processes; reasons for admission; length of stay; and outcomes for children, this could help identify those who are inappropriately admitted and who can be reunited.
53. Establish a process and/or policy to regulate unregistered residential care facilities
54. Advocate and plan for government financial commitments for the transitioning process
55. Establish and implement a database for CCI monitoring
56. Develop and disseminate communication, attitude and cultural change strategy on care reform towards child protection

## BACKGROUND OF CHILDREN'S CARE IN KENYA

There is a global shift in care for the children from institutional care to family and community-based care. The Government of Kenya (GoK) and its partners have made efforts towards care reform overtime and dedicated significant resources to realize this change. Through the National Council for Children's Services (NCCS) as the policy making body, the Department of Children's Services (DCS) as the implementer and other like-minded stakeholders, Kenya is embarking upon a crucial change in the way it delivers services for its most vulnerable children. The GoK efforts coincides with a shift in care systems across East Africa, from institutions as the primary model of care for vulnerable children towards family and community-based care models.

In 2001, the Children's Act was enacted in Kenya. The Act addresses provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children. The Act also legally establishes NCCS and appoints a Director of Children's Services (within DCS). These are the two primary agencies with a mandate to oversee child protection and childcare in Kenya per the Children's Act.

In, 2008 an assessment on guardianship, foster care, adoption, residential care and tracing and reintegration practices in Kenya was commissioned by the Ministry of Gender, Children and Social Development's Department of Children Services, with support from UNICEF, provided the basis for a number of proposed amendments to the Children Act as well as the development of Guidelines for the Alternative Family Care of Children.

In 2010 the new Constitution of Kenya (Article 53) was passed and recognizes the need for all children to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous or exploitative labor. It affirms that children have basic rights, including the right to education, nutrition, shelter, health care and parental care.<sup>18</sup> In addition, the Kenya Vision 2030 is Kenya's long-term national strategy that focuses on investing in people and reducing poverty and vulnerability. Child protection issues are broadly aligned with Vision 2030's social pillar and modalities are included to facilitate alternative family care services and completion of related policies.<sup>19</sup>

In 2014, the Ministry of Labour, Social Security and Services released National Guidelines for the Alternative Family Care for Children. Thereafter, a series of processes and engagements followed to assist and support government and partners in the implementation of alternative care services for children in Kenya. These include, among others, a moratorium on intercountry adoption in 2014 to stop the adoption of Kenyan children by foreigners. The objective of the moratorium was to enable Government to intervene and conduct a comprehensive audit of policy and legal framework, processes, procedures and players involved in the practice of adoption in Kenya. This moratorium was put into law in 2018, through an amendment to the Children's Act.

On 1 November 2017, the Cabinet Secretary of the Ministry of East African Community, Labour and Social Protection wrote to NCCS and DCS calling for the "Suspension of Registration of New Charitable Children's Institutions (CCIs)"<sup>20</sup>. The reasons given for this were that many children were "inappropriately placed in CCIs" when they could be placed in alternative family-based care and it was therefore "not in their best interests" and they were being "denied the opportunity to be raised within families". It also stated that some CCIs were involved in "unscrupulous practices which may include child trafficking". The Cabinet Secretary called for no further registration of new CCIs until the current situation was "streamlined to ensure proper care and protection of vulnerable children". This moratorium on new CCIs is still in effect.

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<sup>18</sup> Constitution of Kenya 2010, Article 53.

<sup>19</sup> Taking Child Protection to the Next Level in Kenya, UNICEF, 2015, page 9.

<sup>20</sup> Ministry of East African Community, Labour and Social Protection. 1 November 2017. *Suspension of Registration of New Charitable Children's Institutions (CCIs)*. Letter from the Cabinet Secretary.

In 2017, the momentum was gained and like-minded organizations came together with an aim of taking the care reform agenda to the next level. These organizations included NCCS, DCS, UNICEF, Changing the Way We Care, SOS Children's Village and Hope and Homes for Children. Through various meetings and discussions this group agreed that taking care reform to the next level in Kenya requires a multi-sectoral approach. The Care Reform Core Team involving key stakeholders, drawn from multiple sectors in care reform and child protection was established. The Care Reform Core Team developed concept note and roadmap to develop of National Care Reform Strategy for Kenya, which is currently underway.

More recently, since 2018, several noteworthy steps have been made. The DCS recently included care reform within its annual workplan,<sup>21</sup> specifically focusing on decreasing reliance on residential care, promoting family-based alternatives and increasing prevention services for children at risk of family separation. CTWWC also facilitated a Strategic Transforming Care Training course for high level professionals which drew participants from the Ministry of Labour and Social Protection, UNICEF and Civil Societies Organizations was conducted. Multi-sectoral government representatives from Ministry of Labour and Social Protection, NCCS, DCS, Child Welfare Society, UNICEF, and CTWWC went on study visits on to Rwanda, USA and UK to learn about care reform and best practices around the world.

Several documents have been developed which include and not limited to Case Management and Reintegration package and Alternative Family Care Training Facilitator's Guide Manual. DCS staff from headquarter and implementing counties were trained on Case Management and Reintegration package and AFC Training Manual. Sensitization workshops to the Area Advisory Council (AAC), front line officers, managers of CCI'S and the community on Alternative Family Care in the 5 demonstration counties have been conducted. In addition, a team drawn from government departments was trained on Gatekeeping Mechanisms<sup>22</sup> and the government is in the process of finalizing National Gatekeeping Guidelines.

GoK is now carrying out pilot programs on care reform in Kisumu County with the help of UNICEF, and, with support from CTWWC, has now scaled up to another three counties (Kisumu, Kilifi and Nyamira counties). Stahili Foundation is also carrying out care reform activities in Murang'a County, complementing care reform work in the country.

A situation analysis (SITAN) on care reforms in Statutory and CCIs was carried out in the 5 demonstration counties already mentioned. The SITAN Report findings will inform the development of National Care Reform Strategy in Kenya and priorities picked by various stakeholders.

The Committee on the Rights of the Child on its concluding observation in 2016, noted and recognized the amendment of laws and regulations on adoption, including relevant provisions under the Children Act (2001), was still pending. It also proposed strong recommendation and urged the State party to expedite the amendment of the Children Act (2001) and other regulations on adoption in line with article 21 of the Convention.<sup>23</sup> Currently, the Children's Bill 2019 is under review and awaiting its first reading in Parliament. There have been efforts to ensure comprehensiveness of the Children's Bill, from the perspective of care reform and children without parental care. These discussions are ongoing by all the key players to capture the concerns and emphasizing children access full range of alternative family care as provided for in the Guidelines for the Alternative Family Care of Children in Kenya.

Similarly, The Committee, among other recommendations, urged GoK to establish a system of foster care for children who cannot stay with their families. The African Committee of Experts on the Rights and Welfare of

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<sup>21</sup> Department of Children's Services Annual Workplan; Institutional Care and Alternative Family-Based Care Sections, 2019.

<sup>22</sup> The aim of gatekeeping is to deter children from being unnecessarily separated from their families and successfully re-integrate the ones in institutional care to their biological families or other alternatives of care.

<sup>23</sup> Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Kenya, March 2016.

the Child recommends raising awareness on the value and importance of family for the wellbeing of children, raising the budget allocated for the protection of the family and preventing breakdown of families by providing mediation and addressing the root causes of family breakdown.<sup>24</sup>

Despite such progress, there is a substantial amount of work to be done on the journey of care reform. In 2019, DCS reported that an estimated 854 registered CCIs and 29 SCIs, care for more than 45,000 children.<sup>25</sup> These figures were prior to the COVID-19 global health pandemic, which, in Kenya, has resulted in thousands of children leaving residential care settings, many without proper support services offered.

This document presents results of an assessment that highlights strengths and areas for improvement in the care system. This includes consideration for preventing unnecessary child-families separation in the first place, as well as both formal and informal alternative family-based placements for children and a systematic and carefully executed approach to transitioning existing residential care facilities to be in line with national and international standards.

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<sup>24</sup> Concluding recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Kenya 1st periodic report on the status of implementation of the African Charter on the Rights and Welfare of the Child, 2016.

<sup>25</sup> Data received from the Department of Children's Services (DCS).

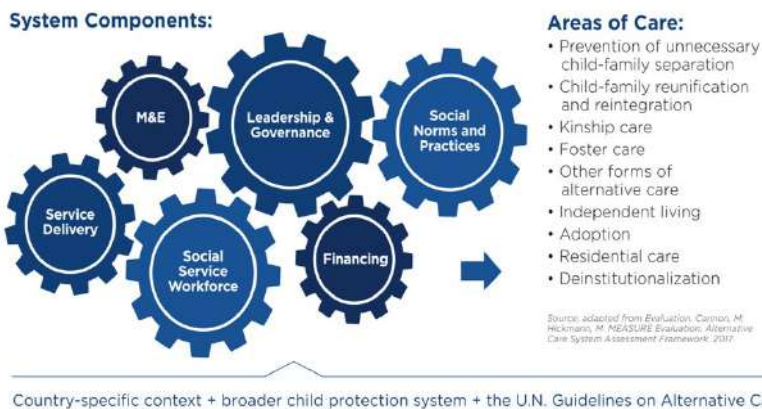


# INTRODUCTION TO THE CARE SYSTEM ASSESSMENT

The care system assessment is intended to support the GoK to assess and strengthen the national, formal care system. More specifically, the objectives of the care system assessment framework are to:

1. Support State department of social protection through the National Council of Children Services and the Department of Children Services to lead an inclusive and participatory self-assessment of their national care system
2. Support country-level care reform stakeholders to build consensus on sector priorities and actions to advance the national care system
3. Provide information for government agencies and other stakeholders in care reform to use to develop policy documents/guidance, national care reform strategies and/or action plans
4. Set a baseline to track progress of strengthening national care systems over time

## CTWWC Care System Assessment Framework



The assessment framework follows a system strengthening approach (see diagram to the left). This means that the assessment considers national policies and guidelines, the social service workforce, services provided, monitoring and evaluation, social norms and financing across the spectrum of prevention and alternative family-based care options.

To develop the care system assessment framework, CTWWC leveraged multiple existing tools,

guidelines and best practices in care and care reform to inform the development of the assessment framework (see the box below). It is important to emphasize that this assessment framework aligns with the U.N. Guidelines on Alternative Care for Children, and further, will support Kenya to address the U.N. Guidelines sustainably, through strengthening their national systems.

In general, the framework supports the following principles:

- Easy to adapt to country-specific contexts: in a format where questions can be easily edited to fit the country context.
- Offline and Excel-based: not reliant on internet connectivity and in a format that is familiar to most stakeholders (Microsoft Excel).
- Comprised mostly of questions answered through Likert scales: with minimal open-ended response options to help manage the consensus building process across stakeholders.
- Linked to automated analysis: so that initial results can be observed to make preliminary conclusions and recommendations without waiting for a more in-depth analysis of information.
- Directly useful to inform national strategy: provide information that is useful for national governments to use in national strategies for care reform (or the equivalent).

### Existing sources that informed the assessment framework:

- MEASURE Evaluation Tool for Assessing and Monitoring National Alternative Care Systems (2017/18)
- The Interagency Online Tracking Tool
- Guidelines to Strengthen the Social Service Workforce for Child Protection (2019)
- De-Institutionalization and Transforming Children's Services: A Good Practice Guide (2018/19)
- 10 Elements of Deinstitutionalization Handbook. Lumos. 2018.
- Family Care for Children with Disabilities (2018)
- Guidance on Developing Integrated Case Management Systems for Vulnerable Children (2017)
- Transitioning to Family Care for Children Toolkit
- UNICEF global toolkit for child protection system mapping (2010)

## ASSESSMENT METHODS AND LIMITATIONS

The assessment took an approach of a “participatory self-assessment”. This means that stakeholders involved in the care system answered the questions together and, through dialogue, the assessment team built consensus on responses, priority interventions and next steps. During the assessment, a total of 37 stakeholders participated and they included 1 from Child Welfare Society of Kenya, 6 from Department of Children Services, 2 from Social Development, 1 from Ministry Human Resource, 1 from Ministry of Health, 1 from Ministry of Education, 1 from Judiciary, 7 from National Council for Children’s Services,, 1 from National Council of Persons With Disabilities and 16 from Civil Society Organizations.

The Care Reform Core Team driven by the National Council of Children Services, doubled up as the assessment team because their core function to develop the care reform strategy. A series of meetings with Care Reform Core Team were conducted prior to the assessment workshop. The Core Team’s focus prior to assessment was on customization of the assessment framework and assessment questions to ensure they speak to the local realities and Kenyan context. The Core Team also co-opted other care reform experts whose work have been instrumental in care reform in Kenya to participate in the review of assessment questions. The Core Team then planned for a three-day assessment workshop which took place in November 2019.

The assessment is comprised of a series of questions for prevention of unnecessary child-family separation, alternative family-based care options, residential care and the transitioning of residential care to family-based alternatives. The majority of questions are answered through Likert scales, as described in the box below. Some questions, however, are open-ended, requiring written responses. Overall, this approach produces qualitative information. While quantitative data are not the focus of the assessment questions, it is highly recommended to complement the qualitative results with available quantitative figures.

### LIMITATIONS

Given that the method is a self-assessment, conducted by actors involved in care reform, bias is inherent. The methodology aims to reduce potential bias through involving different stakeholder groups that will hold each other accountable, as well as verification of responses with existing documents and data sources where possible. While bias cannot be completely eliminated and is a limitation of the approach, involving people who are decision-makers in the assessment itself supports buy-in and use of the results. Another limitation is that the framework is not meant to provide information that should be directly compared across different countries and context.

#### Box1: Likert response options

##### Likert response #1

**Completely** = this area is adequate or exceeds expectations and no further improvements are necessary

**Mostly** = this area is almost adequate, but requires minor improvements

**Partially** = this area is underway, but moderate improvements are still required

**Not at all** = this area has not

##### Likert response #2

**Yes** = this area exists and no change is necessary

**Not** = this area does not exist and change is necessary

Although the framework is based on international best-practices, it is meant to be customized for the unique circumstances of the country in which it is applied. This includes tweaking language to questions based on in-country norms and/or policies. As such, comparisons across different countries cannot assume complete standardization of assessment questions and, as a result, should not be expected.

## ASSESSMENT FINDINGS

### ORGANIZATION OF REPORT

Assessment findings are presented in this report in the thirteen sections described below. There is one section for each area of care described in the Guidelines for Alternative Family Care for Children in Kenya (AFC Guidelines). In addition, the assessment covered topics that cut across all areas of care. This is described as “Cross-Cutting Areas” and the findings apply to most or all of the areas of alternative care and care reform. At the end of this document, a series of preliminary recommendations exists to guide further discussions on national care reform strategies, action plans, programs and activities.

1. Cross-Cutting Areas
2. Prevention of unnecessary child-family separation
3. Family Reintegration
4. Kinship Care
5. Foster Care
6. Guardianship
7. Supported Independent Living
8. Kafaalah
9. Child-headed Households
10. Adoption
11. Other forms of care
12. Residential Care
13. Transitioning Institutions

### 1. CROSS-CUTTING AREAS

#### Child Protection System Foundation

Kenya, per the Constitution, defines “family” as the natural and fundamental unit in society which shall enjoy the recognition and protection of the state. Children’s rights are recognized under the Constitution including children’s rights to parental care and protection, including equal responsibility of the mother and father to provide for the child, whether they are married to each other or not. Under the Constitution, all children have the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment and hazardous or exploitative labor.<sup>26</sup>

The protection of children falls under the leadership of the National Council for Children’s Services (NCCS) and the Department of Children’s Services (DCS), whereby NCCS is responsible for general supervision, control, planning, financing and coordination of children’s rights and welfare activities, while DCS is mandated with the responsibility of implementation, including safeguarding and establishment, promotion, coordination and supervision of services and facilities supporting the wellbeing of children and their families<sup>27</sup>. Under this

<sup>26</sup> <https://www.unicef.org/kenya/child-protection>

<sup>27</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, pages 9-11.

structure, governance for child welfare is currently centralized. Participants noted that while the mandates, roles and responsibilities of the government for the care and protection of children are clear, they are limited in their ability to execute these due to insufficient human and financial resources.

Kenya does not currently have a clear strategy that describes the type of system the government aims to implement for childcare and protection at large. There are, however, various legal and policy documents defining and supporting care for children, such as the Children's Act (2001), The Guidelines for Alternative Family Care for Children in Kenya (AFC Guidelines for short) and a National Care Reform Strategy (currently in process).

In Kenya, civil society plays a large role in caring for and protecting children. Part of NCCS' mandate is to oversee these civil society organizations (CSOs). In general, government and civil society organizations mostly coordinate on child protection policy, legislation and programs, however participants believe this could further be enhanced.

### Overall Governance for Alternative Care

The National Council for Children's Services is the official coordination body that provides multisectoral oversight to ensure compliance with alternative care policies. NCCS officially has the right to inspect and investigate alternative care services at large. Overall, the legal and policy framework supporting alternative care complies with many best practices and guidelines in the UN Alternative Care Framework, however these are not completely followed nor implemented in practice.

The legal and policy framework provides for the following:

- Children are to be removed from care of the family only as a measure of last resort, temporarily and for the shortest possible duration;
- Poverty should never be the only justification for the removal of a child from parental care;
- All children without parental care should be provided a legal guardian or other recognized responsible adult or competent public body;
- Removal of a child against the will of his/her parents is only to be done by an authorized administrative or judicial body;
- A standard complaint mechanism for children in formal care should exist;
- Children in alternative care must be enabled to understand the rules, regulations and goals of their care plan and their rights;
- Alternative care placements must be as close as possible to the child's place of origin (if/when appropriate);
- Siblings must be placed together, unless it is contrary to their best interests;
- Contact between the child and biological/extended family must be maintained while the child is in alternative care when possible and in the child's best interest;
- Children should participate in all matters affecting them, including administrative and judicial proceedings;
- Parents and carers should participate in all matters affecting the care of their children, including administrative and judicial proceedings;
- Children under three years old who require alternative care must only be placed in a family-based setting, unless specific circumstances apply;
- Children with disabilities who are in alternative care should receive specialized support; and
- Children in emergency/special circumstances should be placed in temporary care.

Gatekeeping, a process for referrals and admission of a child to all types of alternative care settings is currently outlined in the Area Advisory Council Guidelines, however in practice the implementation is quite weak. At the time of writing this report, the NCCS is currently leading a process of developing a standardized set of guidelines, the National Gatekeeping Guidelines (forthcoming). NCCS is responsible at the national level for coordination and oversight of the implementation of the National Gatekeeping Guidelines. At the county and

sub-county levels, the County Coordinator, Sub-county Children's Officers and Area Advisory Council are responsible for gatekeeping. These gatekeeping mechanisms – both at the national and county levels – mostly exist, but not completely and will be enhanced through the forthcoming new guidelines.

Despite this progress, there are several areas that would further strengthen governance of care. First, although NCCS has the authority to inspect and investigate alternative care services, these inspections are not always occurring on a regular and systematic basis. Second, while participants state that the legal and policy framework provides for a standard complaint mechanism for children in formal care, it does not provide for a standard complaint mechanism for parents or children in formal care (otherwise known as carers). Lastly, despite the existence of these gatekeeping mechanisms, most admissions into formal care placements are believed to be made without going through authorized agencies or processes.

### Cross-Cutting Services for Alternative Care

Although there is a fairly strong legal and policy framework to support alternative care, there remains significant room for improvement in terms of the implementation. are not completely followed in practice. Overall participants suggest that the following areas are mostly occurring in practice: (a) children are only being removed from family as a measure of last resort, (b) poverty is not often the only justification for removal, (c) siblings are often being placed together, (d) contact between the child and their biological/extended family is mostly maintained while the child is in an alternative care placement, and (e) both children and parents/carers are mostly participating in matters affecting the care of the child, including administrative and judicial proceedings. Despite fairly good implementation of these areas, it is noted that there is still room for improvement.

On the other hand, there are several areas that are not frequently being practiced. These include: (a) children without parental care are not often being provided a legal guardian (or other recognized adult or competent body); (b) when formal placements are made, they are not often as close as possible to the children's place of origin; (c) children under three years old who require an alternative placement, are not always being placed in a family setting; (d) children in emergency settings are not often placed into temporary formal care; (e) children with disabilities who are in alternative care are not often receiving specialized support and care; (f) children in alternative care are not often being enabled to understand the rules, regulations and goals of their care plan and their rights as a child; and (g) complaint mechanisms, both for children in formal care and their parents/carers, are only slightly being used in practice.

The National Standards of Practice for Case Management and Reintegration (also referred to as CM for Reintegration Package) are new and were officially endorsed by DCS in July 2019. The CM for Reintegration package is yet to be disseminated to duty bearers or practitioners at the time of this report. While some government and non-governmental staff have been trained in the CM for Reintegration Package, the majority have not. The new CM for Reintegration Package include tools and guidance to assess the circumstances of families and of children, including consideration for the child's immediate safety and wellbeing as well as their longer-term care and development. The CM for Reintegration Package also includes a care plan, procedures for monitoring care placements including benchmarks and procedures for closing a case, procedures for the child's case file to follow the child and procedures to register and trace unaccompanied or separated children in emergency situations.

There are a few additional areas pertaining to case management for alternative care that are still being developed and strengthened by NCCS and its partners. One area is that procedures for specialized case management to support children with disabilities have not yet been finalized. Additionally a policy is currently being developed that provides for the regular, standardized review of care plans towards making permanent family care placements.

### Child & Youth Participation

Children and young adults are mostly able to meaningfully participate and engage with policy makers to

influence services that directly affect them through the different relevant platforms that give them a voice to air out issues that affect them. These platforms include Children Assemblies, Child rights clubs established in various schools. Although they have been establishment, full participation has not been realized because they are weak, not supported financially thus lacking vibrancy.. Although the legal and policy framework provides for participation of children in all matters that affect them, participants believe it is not always adhered to in practice. There is an active association that engages careleavers, the Kenya Society of Careleavers (KESCA), which seeks to empower careleavers to lead a meaningful life and to actively participate in the promotion of the rights of children without parental care.<sup>28</sup> Members of KESCA has been involved in the development of key documents such as the AFC Guidelines, the CM for Reintegration Package as well as developing their own guidance document on how to engage careleavers in care reform.<sup>29</sup>

### General Monitoring, Evaluation and Information Systems for Alternative Care

Data related to the care and protection of children in Kenya is reported into the Child Protection Information Management System (CPIMS). The CPIMS includes data from both the government statutory institutions and CCIS. While the system includes some data related to alternative care,<sup>30</sup> there are plans underway to review and enhance the relevant CPIMS modules.

Currently there is little data available that describe the reasons why children are placed in alternative care in Kenya. Similarly, there is also insufficient data to monitor children leaving formal care placements across the country. Data on the number of children who are unaccompanied or separated in emergency situations does not exist at either a national or sub-national level.

In terms of using data for decision-making, there are currently no multisectoral forums – at national nor county levels – where the data on alternative care are regularly shared and reviewed to inform policy and/or programs.

### Workforce Supporting Alternative Care

Workforce cadres that support alternative care within the government include Children’s Officers (present at national, County and Sub-County levels) within the Department of Children’s Services. The Revised Scheme of Service for Children’s Services Personnel (2016)<sup>31</sup> establishes several cadres of personnel with a number of grades in each cadre. For purposes of child protection, there are three cadres of workers and one cadre of management/leadership at Children’s Services.<sup>32</sup> The three worker cadres are: 1) Children’s Assistants (4 grades), 2) Assistant Children’s Officers (6 grades), and 3) Children’s Officers (9 grades). The management cadre is called 4) Directors (4 grades).

The workforce engaged in child protection also includes a cadre of Child Protection Volunteers engaged at the local level and primarily responsible for identification of child protection risks, promotion of positive social norms and other key messages related to child protection and referrals, when needed by Children’s Officers. Furthermore, many practitioners engaged in child protection work through non-governmental organizations and community-based organizations.

A 2015 study showed that the number of children officers at the county and sub-county levels were woefully inadequate to meet the child protection needs and many of the other child protection related structures were

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<sup>28</sup> <https://www.kesca.org/>

<sup>29</sup> KESCA and CTWWC (2018). How to Engage Care Leavers in Care Reform. <https://bettercarenetwork.org/library/principles-of-good-care-practices/leaving-alternative-care-and-reintegration/how-to-engage-care-leavers-in-care-reform>

<sup>30</sup> <http://www.childrenscouncil.go.ke/faqs.html>

<sup>31</sup> *Ibid.*

<sup>32</sup> This analysis excludes Early Childhood Development Teachers and Approved Teachers as their main roles are not consistent with child protection and child welfare, but rather, with teaching. This could be debated as there are overlaps in their functions as teachers and child protection roles.



not in place.<sup>33</sup> However, DCS with UNICEF support has as a priority strengthening of the social service workforce for child protection which has included a rapid mapping of the existing workforce and a standardized ten-day training. The goal is to have all Children's Officers (more than 400) trained in the curriculum which is designed to be a comprehensive package of information designed for Professional Child Protection Practitioners.<sup>34</sup>

The County Child Protection Systems Guidelines provide some helpful information as to what members of the child protection workforce must know, implement and participate in.<sup>35</sup> The Guidelines specifically mentions the importance of the training, skills and competency of the child protection workforce, stating, "a capacity assessment and capacity development plan will be developed, financed and implemented to ensure that both formal and informal actors continuously improve on their skills."<sup>36</sup>

There is a professional association of social workers in Kenya, namely the Kenya National Association of Social Workers (KNASW). As part of conducting the social welfare workforce mapping in 2013, a working group was formed that included the KNASW indicating that the KNASW were considered an important actor within the social service sector. However, the website seems to be inactive at this point in time (January 2019). A quick search on Google found the following information about the association on their Facebook page, dated February 2018: *The Kenya National Association of Social Workers is a membership organization of individuals, organization or private companies that work in the social work field in Kenya. We work to improving the welfare of humanity through having a recognized, legislated and qualified social workforce. We are members of the International Federation of Social Workers and affiliated to International Association of schools of social workers (ASSW) and The International Council of Social Welfare.*

The National Standards for Best Practices in Charitable Children's Institutions (CCIs) (2013) establish overall staff composition for CCIs and a national minimum standard for the workforce per child in the CCI. The overall ratio is 1:10 (one staff member for every 10 children) and specific staff minimum ratios are 1:20 for social workers, 1:20 for counselors, and 1:20 for nurse aides. CCI "caregivers" (e.g. housemothers/fathers, etc.) are given different minimum ratios for different age ranges of children as follows: 1:6 for children 0-3, 1:8 for children 4-6 years, and 1:10 for 7 years and above).<sup>37</sup> Caseload thresholds do not exist for government social workers, child therapists, child counselors/psychologists, community health volunteers, youth officers and probation officers. In addition, a formal system to supervise and support the workforce does not currently exist.

In terms of training the workforce on specific issues related to care, whilst sporadic training is made available, primarily by civil society partners, it is often county or project specific and does not ensure inclusivity of all child protection actors thus limiting the possibility of a standardized approach. Some topic-specific training programs exist on family strengthening, foster care, residential care, guardianship and adoption however no training exists that covers support for supervised independent living, kafala, and child-headed households. Of the training that does exist, none of it is sufficiently reaching all relevant staff. Another gap is that there is no national system in place to routinely collect and monitor data on the social service workforce (e.g. number of positions, vacancies, etc.).

However, over the past two years, the DCS, with support from UNICEF has prioritized strengthening of the social service workforce for child protection including the aforementioned rapid mapping, development of a standardized ten-day training for professional child protection practitioners and a five-day training for child

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<sup>33</sup> Republic of Kenya, Global Affairs Canada, and UNICEF (2015). Taking child protection to the next level in Kenya. [https://www.unicef.org/protection/files/Kenya\\_CP\\_system\\_case\\_study.pdf](https://www.unicef.org/protection/files/Kenya_CP_system_case_study.pdf)

<sup>34</sup> Information provided by Maestral International who is contracted by UNICEF to work jointly with DCS to conduct the mapping and design and implement the ten-day training package.

<sup>35</sup> Government of Kenya. (2011). County child protection systems guidelines.

<sup>36</sup> *Ibid.*

<sup>37</sup> Republic of Kenya, Ministry of Gender, Children and Social Development. National Standards for Best Practices in CCIs. 2013, pages 35-36.

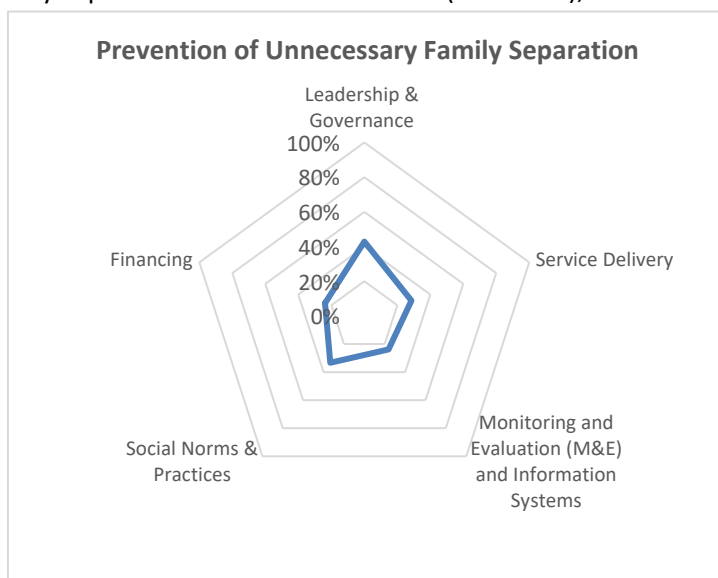
protection volunteers as well as the forthcoming framework to guide a longer-term process aimed at continued strengthening and supporting of the workforce.

## 2. PREVENTION OF UNNECESSARY CHILD-FAMILY SEPARATION

### Legal and Policy Framework

The core laws that guide prevention of child-family separation are The Constitution (Article 53), the Children’s Act (2001) and the National Family Promotion and Protection Policy. Additional policies/strategies exist to guide general prevention services including the following:

- Social Protection Policy (2011): provides for various forms of social assistance (see below), social security, and health insurance. <sup>38</sup>
- Social Assistance Act (2013): outlines different forms of social assistance for the following groups of people: orphans and vulnerable children, older persons (>65 years), unemployed persons, persons with disabilities, and widows/widowers. <sup>39</sup>
- Government of Kenya (2006) National Early Childhood Development Policy Framework
- Free Primary Education (FPE) Policy (2003) and Free Secondary Education Policy (2008): providing for free primary and secondary education
- Universal Health Care Plan included in the Kenya Health Sector Strategic and Investment Plan (2013-2017)
- National Protocol for Treatment of Substance Use Disorders in Kenya, part of the Kenya Health Policy (2014-2030)
- Persons with Disabilities Act No. 14 of 2003



In addition, the Guidelines on AFC include proposal on providing psychosocial support, respite services, supporting parents with disabilities, supporting children with disabilities and services for children born in custody (i.e. when their mother is in prison).

There are a few gaps within this legal and policy framework. These laws and policies are seen by participants as lacking adequate preventive measures and services, particularly for unnecessary child-family separation. Of note, this includes that the legislative and policy documents do not cover a strategy to strengthen and support families, including to improve parenting skills, provisions for single parents nor provisions for adolescent parents.

### Service Delivery

The legal and policy framework described above does not always translate into implementation and supporting the prevention of unnecessary child-family separation. In addition, there are no national standards of practice to promote the quality of family strengthening services.

<sup>38</sup> <https://socialprotection.or.ke/images/downloads/kenya-national-social-protection-policy.pdf>

<sup>39</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97356/115476/F1496882450/KEN97356.pdf>

Participants described issues or concerns with coverage and quality of existing prevention services as the following:

- National social assistance programs can help unnecessary child-family separation (e.g. cash transfers for orphans and vulnerable children (OVC), people with disabilities and older persons >65 years), however the coverage of these programs is limited and does not reach the entire country.
- Free primary and secondary education programs is a positive development, however there are still concerns over the quality of Persons with Disabilities Act No.14 of 2013 education children are receiving.
- Universal Health Care is being rolled out, and generally speaking, children under the age of five years have free access to health care, however access to and affordability of health care is still limited in some parts of the country.
- Psychosocial support is mentioned in the AFC Guidelines but service delivery is limited in practice.
- The National Protocol for Substance and Abuse Disorders is not clear on supporting vulnerable populations, and rehabilitation services are not accessible nor affordable.
- Services provided under the Disabilities Act are very limited in practice.

In addition, although not guided by national policies or strategies, the following services slightly exist but are insufficient: support to improve parenting skills, respite services, support for children born in custody (i.e. when the mother is in prison). In addition, participants are not aware of any services available to specifically support single parents and adolescent parents (although there is a policy to support teenage mothers to go back to school).

## Monitoring and Evaluation

Overall, standard indicators to monitor prevention services at large do not exist and data on prevention services exists, but is limited. There are some existing data on households benefiting from the national cash transfer program, and the CPIMS has additional related data. Although data within the CPIMS is disaggregated by sex, age, county, disability and ethnicity of the child, it is limited in the type of prevention related information it contains. Overall, roles and responsibilities to collect and report data across actors involved in prevention (both government and non-governmental actors) are not clearly defined and document.

## Social Norms and Practices

In the pilot counties where care reform is being implemented, there have been some awareness raising activities encouraging the prevention of child-family separation over placement of children in residential care. These existing awareness raising messages targeted the general public, government staff, and frontline staff (i.e. case workers). There is not currently a national advocacy and communication strategy to guide such awareness raising activities.

## Financing

Government funding is mainly directed toward the national cash transfer program. Although additional funding for care in general is provided by the government, where and how much funding is directed towards other prevention services is not released to the public. That being said, participants expressed that some government funding is released to support prevention activities. Costs for activities to strengthen/support families at-risk of child-family separation is not an explicit line item in the government budget nor has an estimation of unit costs of key prevention services been fully calculated to support accurate budgeting.

## Summary of prevention findings

Overall, legal and policy provisions generally exist to strengthen families and respond to circumstances that may put them at-risk of child-family separation, however these are not seen as adequate for preventing unnecessary child-family separation. Of the prevention related programs that do exist, there are still gaps in service coverage and quality. Similarly, existing data to inform decision-making and financing for prevention largely focus on the national cash transfer program. Additional data on prevention programs is needed, along

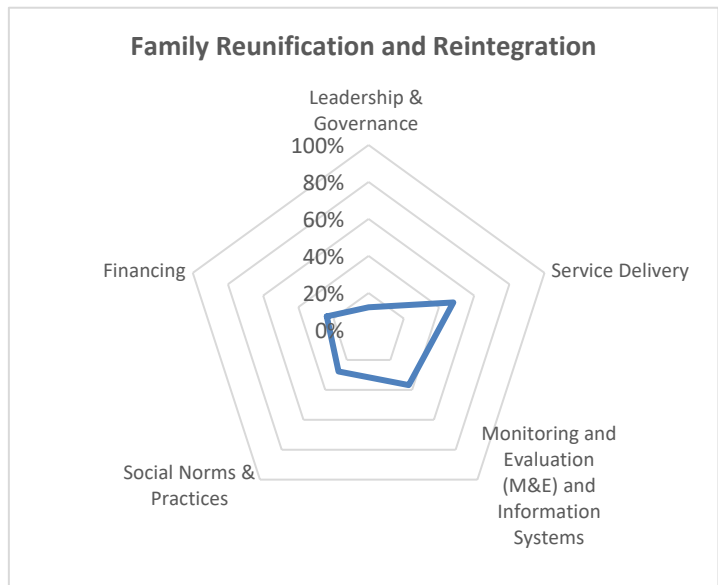
with costing and additional financing for prevention services.

### 3. FAMILY REINTEGRATION

#### Legal and Policy Framework

The legal provision for family reunification and reintegration is provided for under the Children’s Act (section 125 (2)(a)) and Article 10 of the UNCRC. While there are not standalone national guidelines for reunification and reintegration, there are relevant guidelines in the National AFC Guidelines. In addition, there are National Case Management Guidelines for Reintegration and Reunification, developed and adopted by NCCS in 2019, which have yet to be fully rolled out. These new case management guidelines do provide for a process for involving children and parents in reunification and subsequent reintegration decisions; the need to complete a good-quality transition plan that includes preparing family and children for reunification; a process to assess every child and the family prior to reunification; specialized support for reintegration of children with disabilities; and a description of the types of preparation and support that will be provided before, during and after reunification.

Although the AFC Guidelines provide for family reunification and reintegration, this area is not fully covered in national policy/strategies. In other words, the reunification and reintegration guidelines in the AFC Guidelines should be translated into national policy documents that provide specifically for reunification and reintegration. In addition, components of the new case management guidelines for reunification and reintegration are not currently captured in a national policy for reunification and reintegration.



#### Service Delivery

Family reunification and reintegration services are provided through both governmental and non-governmental actors. Common types of support services include family tracing, family empowerment (i.e. income generating activities), family mediation/counselling and case follow-up/monitoring. DCS, the Child Welfare Society of Kenya, the judiciary and the National Police Service all support reunification /reintegration. In addition, there are probation and aftercare services provided by Ministry of Interior and Coordination (Probation Department) which serves children and young people in conflict with law and children who have completed rehabilitation either in a statutory institution or borstal institution (i.e., youth detention center). Several non-governmental actors also provide support, including Trace Kenya and Missing Child Kenya, amongst several. All of these services (government and non-governmental) are seen as having promising/emerging programs.

Such reunification and reintegration services are generally provided according to best practices. In most cases, when reintegration and reunification is being supported, children and families are assessed, specialized support for children with disabilities is provided, children’s views are given weight in reunification decisions, and children receive support before and during placement. What is occurring less frequently, however, are support services after reunification has occurred.

At this time, there is not a sufficient national monitoring mechanism to ensure quality of reunification/reintegration services. While it is anticipated that the quality of family reunification and

reintegration services will be monitored through the new national case management guidelines, these are new and has not been disseminated across the country yet. Further, there is currently no guideline that describes the consequences of service providers should they not meet the national standards.

### Monitoring and Evaluation

There are a few standard indicators on reunification and reintegration in the CPIMS, however overall indicators for reunification and reintegration have not yet been fully agreed upon. Overall, there is not routine data regularly collected to monitor reunification/reintegration programs and there is need for an effective system to collect these data. Further, data quality assurance activities are not currently undertaken for the data that does exist. On the research side, there are no surveys to monitor satisfaction of child and families that have been supported to reintegrate, nor are there plans in place to evaluate the effectiveness nor impact of reintegration programs.

### Social Norms and Practices

In the pilot counties where care reform is being implemented (Kisumu, Nyamira, Kilifi, Murang'a), there have been some awareness raising activities encouraging people to prioritize reintegration instead of residential care. This has targeted the government staff (national and county), general public and frontline staff (case workers). However, even in the pilot counties, these activities are not seen as sufficient compared to what is required. A national advocacy and communication strategy for care does not yet exist, nor does a specific strategy for reunification and reintegration.

### Financing

Although the government is providing some limited financial support for reunification and reintegration, associated costs are only slightly included as a line item in government budgets, namely the budget of the Probation Department's head office. An estimate of the costs to support child-family reintegration has not been calculated to inform budgeting. And, government funding to support reunification and reintegration is only partly allocated and released. It is believed that very little, if any, non-governmental funding supporting reunification and reintegration services is tracked by the government.

### Summary of reunification and reintegration findings

Although reunification and reintegration exists in legal instruments, it is not included in national policy instruments. While the AFC Guidelines provide recommendations for reunification and reintegration, these recommendations are not yet supported by national policies. Although reunification and reintegration are occurring, it is lacking quality standards to guide service delivery. Within the CPIMS there is some data on reunification and reintegration but these services are not adequately being monitored nor is data being used to inform related programming. Awareness raising related to reintegration has occurred in a few areas of the country, but there is need to expand messaging. Lastly, while there is limited government financing for reunification and reintegration, it is not explicitly included in government budgets.

## 4. KINSHIP CARE

### Legal and Policy Framework

In Kenya, both formal and informal kinship care are practiced. Formal kinship placements are ordered by an authorized administrative or judicial body, while informal kinship placements are arranged without involving

authorities. While there is no data estimating the number of children living with kin, it is commonly thought to be widely practiced. Neither formal nor informal kinship care are included in national legislation. While both types of kinship care are included in the AFC Guidelines, the recommendations in the guidelines are not currently provided for in national policies.

It is important to note that any suggestion to include informal kinship care in the legal and policy framework is and should not interfere with the positive aspects of informal care, however it is important to provide for basic services that ensure children’s wellbeing are being protected even in informal placements.<sup>40</sup>



### Service Delivery

Kinship care services are not standardized, monitored or regulated in practice. Officially, the NCCS and DCS are the official state bodies that are responsible for regulating formal kinship care. However, in the absence of service standards, no inspections or monitoring are known to be occurring. Under the Ministry of Labor and Social Protection, the State Department for Social Protection is known to be supporting some families with kinship placements, however this is seen as a concerning practice. Currently there are no standards to ensure quality support for kinship care, nor is there a defined process to reintegrate children back to their families from kinship care, when it is in the best interest of the child.

### Monitoring and Evaluation

There are no standard indicators to routinely monitor kinship care and there is no routine data to summarize kinship care placements and support. Participants mentioned that the Beneficiary Welfare Committees are conducting some monitoring to assess beneficiary satisfaction with kinship care placements, but this is not occurring to the extent that it should.

### Social Norms and Practices

No activities have been recently implemented (e.g. communication and advocacy campaigns, etc.) to help inform and raise awareness of the general public on kinship care as a more appropriate form of care compared to residential care. In general, there are awareness sessions conducted with the Area Advisory Council members that orient some of the county government staff.

### Financing

An estimate of the costs for kinship care services has not been calculated to inform budgeting. Very little funding is available to support kinship care services, with the exception of families that benefit from the national cash transfer program.

### Summary of kinship care findings

Formal kinship care is not really occurring nor regulated in Kenya. While informal kinship care is believed to be widely practiced, it is not monitored and there is very little known support for these informal kinship care placements.

<sup>40</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, pages 45-49.

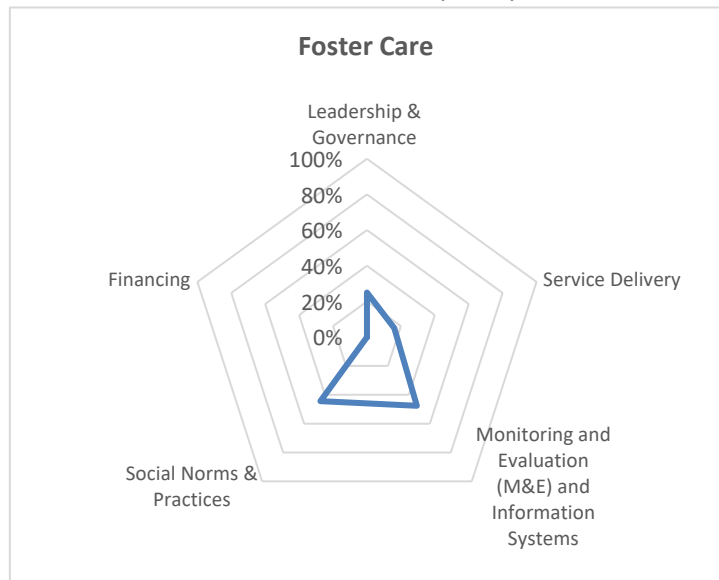


## 5. FOSTER CARE

### Legal and Policy Framework

While there is a legal and policy framework providing for and regulating foster care, participants believe these regulations need to be reviewed because they do not cover all foster care issues adequately.

Formal foster care is included in the AFC Guidelines and the Children’s Act (Part XI and the Fourth Schedule).<sup>41</sup> Per the law, foster care is the “placement of child with a person who is not the child’s parent, relative or guardian and is willing to undertake the care and maintenance of the child.” Informal foster care, however, is not provided for within the Children’s Act. The National AFC Guidelines defines informal foster care as when “community members informally take in children who have been orphaned, abandoned, lost or neglected, without undergoing any formal processes via the sub-county children’s office or Children’s Court” and the Children’s Act defines it as “placement of a child with a person who is not the child’s parent, relative or guardian and who is willing to undertake the care and maintenance of the child”.



The Fourth Schedule lays out Foster Care Placement Rules which outline specific standards for applications and registration of foster parents, as well as procedures and considerations before a child is placed in foster care and rules for authorized inspections of foster care placements. The legal provisions in the Foster Care Placement Rules focus on foster care placements from rehabilitation schools and CCIs. This is likely because most children referred for formal foster care have already been placed, by a court order, in an institution.<sup>42</sup> Under such circumstances, the law mandates the institution holds the responsibility to supervise and monitor the placement until either the care order is discharged, the placement period specified by the institution expires, or the child turns eighteen years old.

Legally, applications to register as a foster parent must be processed by DCS based on an interview with the prospective foster parent, a home visit, at least two personal references of the applicant, a criminal records check from the police and based on inputs from the child being placed. This process includes a standardized assessment of the prospective foster parents. Children are required by law to be consulted as part of this process and the AFC Guidelines provide for involvement of children in all stages of the placement process.<sup>43</sup>

DCS is the ultimate decision-maker to official register and certify prospective foster carers. The assessment and registration process is standardized per the Foster Care Placement Rules, via five standardized Forms provided in Schedule 4. Although the foster care process is regulated within the contents of the law, participants expressed a gap in implementation of pre-placement assessments. In practice, these assessments are not often conducted. Additionally, the AFC Guidelines provides for DCS to develop and provide training and counselling for foster parents before, during and after placement,<sup>44</sup> however this is not mandated or

<sup>41</sup> <http://www.childrencouncil.go.ke/images/documents/Acts/Children-Act.pdf>

<sup>42</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 57.

<sup>43</sup> Ibid., page 58

<sup>44</sup> Ibid., page 58

regulated in the Children's Act.

DCS is the official state body responsible to ensure all providers of foster care comply with national standards, including through conducting inspections. Schedule 4 provides for power of inspection at any time in which the authorized officer has reason to believe there is not compliance with the regulations. If the authorized officer deems appropriate, the child may be removed from the placement and temporarily (until resolution or alternate arrangements are made, not to exceed a period of three months) placed into a place of safety. Under the Children's Law, failure to comply with the foster care rules stipulated in Part XI, is liable on conviction of a fine not exceeding 20,000 shillings, imprisonment not exceeding two years, or both.

During foster placements, maintenance payments are permitted under the law as far as they are agreed between the foster parent and the parent/guardian of the child. Similarly, the AFC Guidelines allow for DCS to provide grants to foster families on a case-by-case basis, determined based on strict criteria.<sup>45</sup> In some instances, foster care placements do transition to adoption, however, in general, foster care is not used as one potential step in the adoption process. The National Adoption Guidelines prohibit pre-selection of adoptive parents, a regulation that participants believe may contribute to foster care not being more closely linked to adoption. Further, related to permanency planning, the National AFC Guidelines provide for children in foster care to return to their families when it is in the best interest of the child, however this is now specifically provided for under the laws that regulate foster care.<sup>46</sup>

Foster care is not adequately covered in national policies, however. While there are standards to assess prospective foster carers, including determining types of support services they may require, several other areas are not covered in existing policies/strategies. These areas that are not covered include: (a) a process to recruit, train and retain prospective foster carers; (b) definition of services to be provided to foster carers and children, before, during and after placement; (c) definition of services to be provided to biological parents whose children are going in to foster care; (d) specialized disability services for children with disabilities in foster care; and (e) provisions for respite services for foster carers. Participants also state that there is no standard to assess children's physical, social, cognitive and emotional development and that there is no legal obligation to plan for a child to return to his/her family from a foster care setting, when it is in the child's best interest.

## Service Delivery

The AFC Guidelines provide for three different types of foster care placements:<sup>47</sup>

1. Foster family care: placement with a relative or guardian of the child for a period of up to 12 months, subject to renewal.
2. Emergency foster care: placement with a pre-selected, vetted and qualified emergency foster parent for up to a few months.
3. Community-based foster homes: placement of a group of not more than six children, who are orphaned, in need of specific support or whose parents are untraceable in a rented house within the community, that is looked after by a mother/caretaker that is recruited by an organization supporting foster care.

Participants listed three non-governmental organizations supporting foster care, under the oversight of DCS. This includes SOS Children's Villages, FADV (Fondazione L'Albero Della Vita pilot program) and Stahili Foundation. SOS Children's Villages and Stahili Foundation are viewed by participants as showing promising and emerging practices in the area of foster care. One reason mentioned for DCS not providing direct foster care services is because there is an inadequate number of SCCOs. In addition, aligned with the legal and policy framework, CCI managers are also providing foster care services, however participants believe the practice

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<sup>45</sup> Ibid., page 58

<sup>46</sup> Ibid., page 59

<sup>47</sup> Ibid., page 55

being followed by CCIs is a concerning, potentially poor quality, practice.

As stated earlier, there are standards to assess prospective foster carers, but in practice this is not often followed. In practice, foster care placement determinations are not often prioritizing the capacity of the foster carers to meet the child's needs nor are children's views often being given weight in related administrative and judicial proceedings. Lastly, while it is believed that enhanced support services are sometimes available through non-governmental organizations for both children in foster care and foster carers, the type and scope of such services is not known.

There are several best practices to support foster care that are not occurring in practice (and are also not covered in national policies as mentioned above). This includes that children being considered for a foster placement are not fully assessed (physically, socially, cognitively and emotional development). Additionally, support for foster carers and children going in to foster care is not being provided before, during or after placement. There are no known support services for foster carers of children with disabilities, nor for respite care for foster carers. Lastly, it is not believed that parents/carers nor children are participating in any related administrative or judicial proceedings related to foster care placements.

When it comes to ensuring quality foster care services are being provided, there are no national quality standards of practice in place for government nor non-governmental service providers. That being said, there is a monitoring mechanism for DCS to do inspections provided for within The Children's Act, however regularly monitoring/inspections per the regulations are not often occurring. When children are placed in foster care, the AFC Guidelines provide for a process to reintegrate children from foster care back with their families, however this is also not often occurring in practice. Overall, another weakness is that prospective foster carers are not being made available by DCS.

## Monitoring and Evaluation

Per the legal provisions for foster care, every Sub-county Children's Office is required to maintain a register of foster parents per the standard forms provided for in Schedule 4. The Foster Child Care Record (Form 5) is required by law to be reported within one month after fostering.

There are national, standardized indicators to monitor foster care, including from the foster care registers. These registers can help track retention rates of foster carers as well as disruptions to foster care, however participants note that this is not often occurring. In some cases, the roles and responsibilities for reporting on foster care services are more clearly defined than others. Of the data that exists on foster care, it is available disaggregated by sex and age of the child in foster care, as well as if the child has a disability. Existing data, however, does not often describe the child's length of stay in foster care, and total foster care placements of the child.

Lastly, while there are no surveys/research in place to monitor if the needs of foster families are being met (carers and children), some sub-county officers are attempting to collect information about what foster care programs exist in their area and build the evidence-base for foster care programs.

## Social Norms and Practices

There have been some activities to inform and raise awareness on foster care as a more appropriate form of care compared to residential care, however, more still needs to be done. Participants state that there have been relatively good efforts to inform the general public and frontline staff (i.e. caseworkers) about foster care (and it being a more appropriate form of care compared to residential care). However, fewer government staff – at both the national and country level – have been targeted through these awareness raising activities. Currently there is no advocacy or communication strategy to change social norms around foster care.

## Financing

An estimate of the costs associated with foster care services has not been calculated. Overall, the government

is not budgeting for foster care services, nor allocating any money towards it. Of the non-governmental organizations supporting foster care, their financial contributions are not known or tracked by the government.

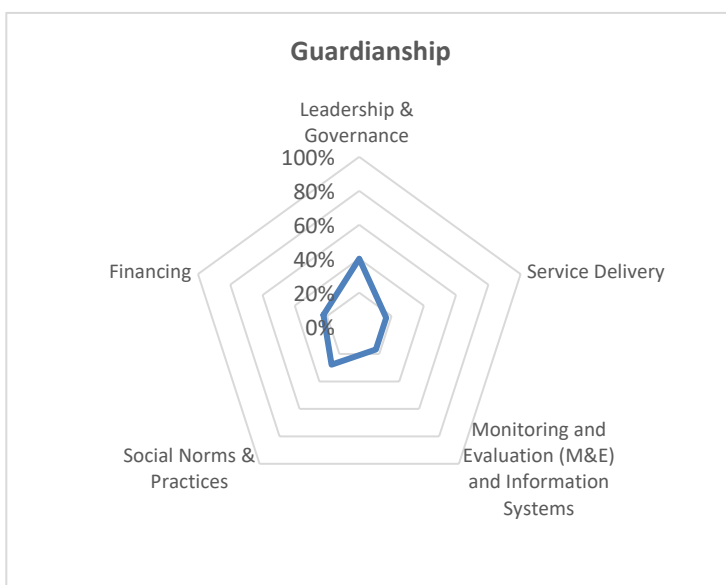
### Summary of foster care findings

Foster care is provided for within national legislation, however it is not supported through national policy instruments. While there is some foster care occurring in Kenya, it is being provided through CSOs and not guided nor monitored by national quality standards. Data collection related to foster care is provided for within the national legislative instrument, however data collection is not always occurring. There is also need for additional awareness raising, particularly among relevant government staff. Foster care is not included in government budgets and costs to provide foster care have not been estimated to inform national budgeting and planning.

## 6. GUARDIANSHIP

### Legal and Policy Framework

The Children’s Act defines “guardian” as a person appointed by will or deed by a parent of the child or by an order of the court to assume parental responsibility for the child, upon the death of the parent of the child. This applies if one or both parents die or if the father of a child born out of wedlock dies (Children’s Act Part VII). Under this same part of the law, the court may also appoint guardians for children whose parents are no longer living, cannot be found or for children who otherwise have no guardian, including for children who have been displaced. Under the Constitution, both the mother and father of the child are provided equal parenting responsibility, regardless of marital status.<sup>48</sup>



Guardianship is provided for with the AFC Guidelines, which outlines roles and responsibilities for DCS and the Judiciary (Children’s Court). Policies to support the Guardianship recommendations in the AFC Guidelines and other best practices do not fully exist. Assessing guardians and children before and during placement is provided for within existing policy, however there are no provisions for ongoing support after placing a child with guardians. There is also no policy provision for services to support guardians, including respite care and specialized services for guardians of children with disabilities.

### Service Delivery

The assessment noted that while legal guardianship as outlined in legislation exists, informal guardianship is also practiced. The legal and policy documents do not provide for informal guardianship by name, however informal care is covered in this report under “Other Forms of Care” and informal kinship care is included in the “Kinship Care” section.

<sup>48</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 75.

As mentioned above, support services for guardians are not provided for within the legal and policy framework. The only known support available to guardians is the national cash transfer programs. Per the AFC Guidelines<sup>49</sup> DCS should monitor and assess guardianship orders, in partnership with civil society, Chiefs and community partners. In practice, however, this is not occurring. While Children’s Officers do conduct some home visits, including social inquiry reports/assessments prior to placement, this is not often occurring for guardianship placements. Further, support at the time of and after guardianship placement is rarely occurring, if at all. Further, Children’s Officers are perceived to lack the appropriate professional counseling skills required to properly support guardianship placements.

### Monitoring and Evaluation

The AFC Guidelines propose that DCS, with the Children’s Court, establish and maintain a national database to record guardianship orders. DCS does, in practice, have guardianship registers, however routine data on guardianship orders only slightly exists, suggesting a shortfall in maintaining registers and/or reporting on guardianship. There are no standard indicators to use to monitor guardianship orders and support in the country. Additionally, there are no surveys or assessments to better understand whether guardianships placements are satisfactory and if needs are being met.

### Social Norms and Practices

In the last year, there have been some activities in Kisumu, Nyamira, Kiambu and Kilifi to inform and raise awareness of the general public on guardianship being more appropriate compared to residential care. Overall, these activities, however, are limited and there is need to expand these activities.

### Financing

The government does provide financial support for Children’s Officers who conduct social inquiry reports/assessments of guardianship cases. However, as a whole, guardianship is only slightly budgeted for at the national level.

### Summary of guardianship placements

Although there are recommendations for supporting guardianship placements provided for the AFC Guidelines, these are not yet supported by national policies. There is little known support being provided to guardianship placements. While the national cash transfer program may support some of these households, support is limited. Guardianship placements, overall, are not monitored. While there are court orders for guardianship placements, routine data for decision-making is not captured. As a whole, guardianship is only slightly budgeted for and its associated costs are largely unknown.

## 7. SUPPORTED INDEPENDENT LIVING

Independent living arrangements are when a young person is supported in their own home, a group home, hostel, or other form of accommodation to become independent. Support may include time-keeping, budgeting, cooking, looking for employment, etc. that helps prepare the young person to transition from being outside of family care to independence and adulthood.

### Legal and Policy Framework

While Independent Living is included in the AFC Guidelines, it is not provided for within existing laws and policies. The AFC Guidelines recommend that support for independent living arrangements are the responsibility of DCS, in collaboration with civil society partners and community structures. That being said, there is no regulatory authorizing services for independent living, nor is there an official state body responsible

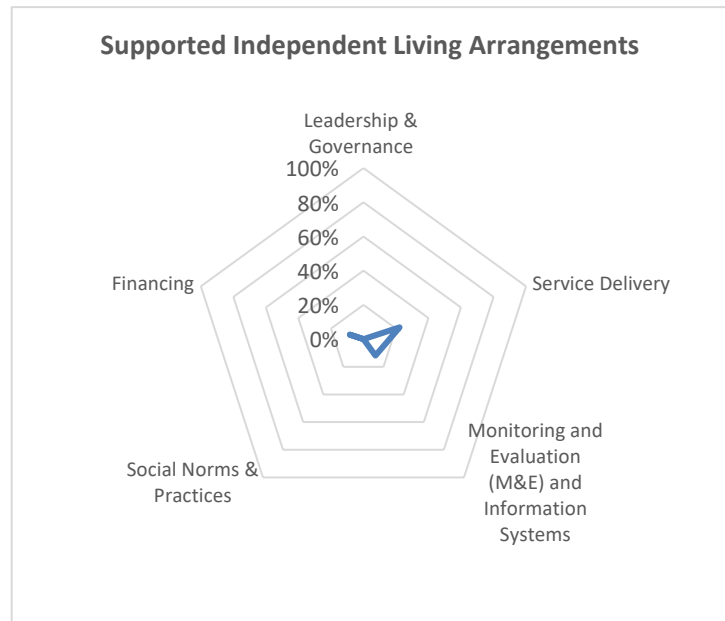
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<sup>49</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 79.

for making sure independent living support meets national standards.

### Service Delivery

Despite the lack of legal and policy provisions for independent living, there are some organizations supporting it. The Probation and Aftercare Services under Ministry of Interior and Coordination is providing some support for independent living, which is seen as a potentially promising practice. A non-governmental organization called Faraja Foundation is also known to be supporting independent living, however it known to be a small program. CCIs are also sometimes supporting independent living, however much of this support is perceived to be potentially concerning due to the lack of information about what is being done.



While some CCIs are known to assess young people in or transitioning to independent living, this is not widely occurring. Similarly, while some CCIs are also known to support young people for a long amount of time into independent living, this is also not known to be occurring very often.

When support for independent living arrangements do not meet minimum standards, the consequences are stated in the After-Care Offenders Bill (2009). However, there is no national monitoring mechanism to ensure good quality services are being provided.

### Monitoring and Evaluation

Although some data on support for independent living exists from NGOs and CCIs, there is no government data on support from the state. There are no standard indicators or defined roles and responsibilities for reporting on support for independent living.

### Social Norms and Practices

There have been no activities aimed at raising awareness on the importance of making support for independent living available.

### Financing

Costs for supporting independent living have been slightly estimated from NGOs. On the government side, the Probation Department budgets, in part, supports independent living arrangements however, overall, participants believe there is no government funding available for this type of support. Of the private/non-governmental support available for independent living arrangement, none of it is tracked by the government.

### Summary of independent living findings

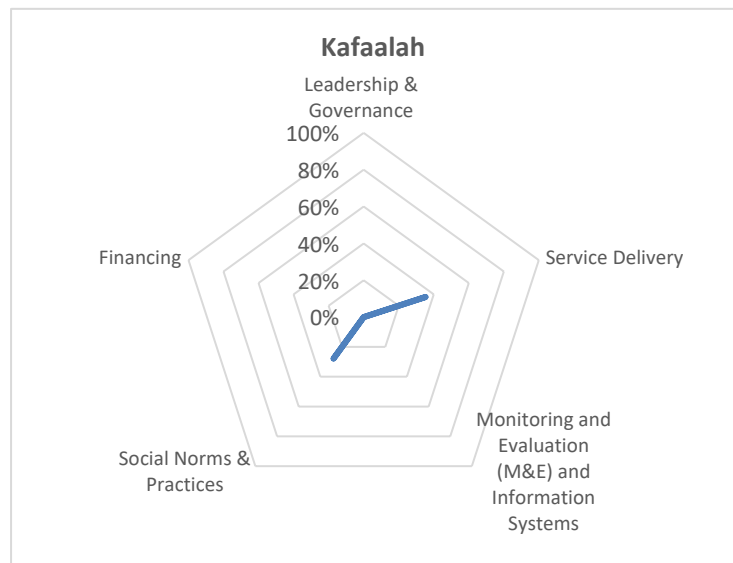
Overall, independent living is not provided for within the national legal and policy framework. Although a few non-governmental organizations are supporting independent living arrangements, there is no monitoring to ensure quality and track their support.

## 8. KAFAALAH

Kafaalah is a form of alternative care practiced within Islamic tradition and guided by the interpretations of Islamic (Sharia) law.<sup>50</sup> This is when a family or person in the community voluntarily commits to sponsor and care for a child who is deprived of other family care. An individual or a couple who commit to taking care of a child are known as Kafil. Kafaalah is recognized by the UNCRC (Article 20) and by the UN Guidelines. By definition,

### Legal and Policy Framework

Kafaalah is recognized as common form of informal care in Kenya. The AFC Guidelines propose a set of procedures to guide Kafaalah, with defined roles and responsibilities for DCS, kadhi courts, Imams, kafils and other Islamic religious leaders and NGOs. Kafaalah, however, is not provided for within national legislation or policy.



In Kafaalah, there are not standards for services nor regulation of support – it is all done informally by the Imam, kafils and/or community. However the unwritten religious societal norms and practices are seen as binding.

### Service Delivery

In general, there is an assumption that since most Kafaalah occurs within the setting of the family of that child, the child enjoys all familial care and support. Kafils are sometimes but not always assessed to determine their need for support services to care for the child. However since the majority of children in Kafaalah care are placed within a family setting, they are perceived to have most of their basic needs met. Further, during Kafaalah care, there are unstructured “community orientations” that may provide some special support to families.

Kafaalah is informally monitored through religious community-based systems. Within Islamic law, any placement that severs family relationships (including adoption) is prohibited. As a result, family reunification and reintegration from Kafaalah placements is seen as mandatory.

### Social Norms and Practices

Kafaalah care is discussed and awareness raising on the benefits of Kafala occur through mosques and public sermons as part of a general religious education. In general, it is a practice that is encouraged in Islamic teaching.

### Monitoring and Evaluation/Finance

Due to the informal nature of Kafala care, it is not monitored, there is not official data on Kafaalah “placements” and supporting it is not included in government budgets.

### Summary of Kafaalah findings

Although Kafaalah is known to be a common practice in parts of Kenya, it is not provided for within the national

<sup>50</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, pages 49-52.

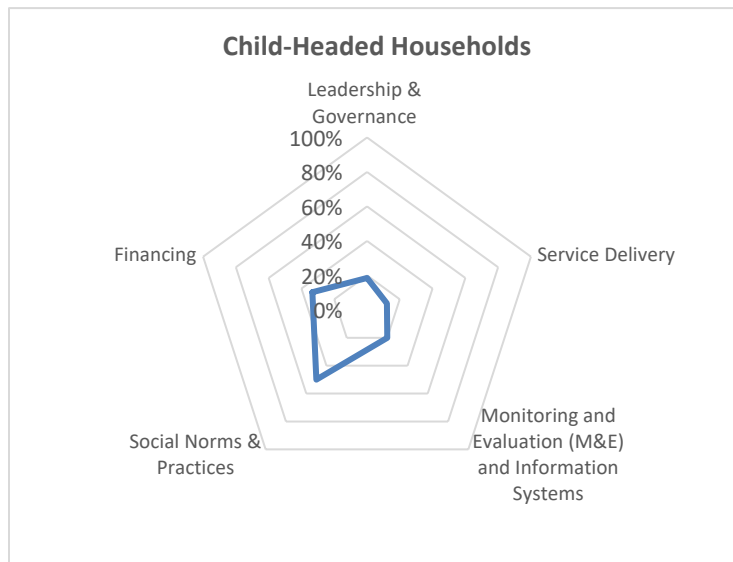


legal and policy framework and the practice is informal, and not regulated, monitored nor supported through government services. However, in many instances it is overseen by an Imam or other Islamic leader and is recognized as a regular and important form of care within Islamic communities in Kenya.

## 9. CHILD-HEADED HOUSEHOLDS

### Legal and Policy Framework

Support for child-headed households is included in one legal instrument and only slightly provided for in national policies. Currently the legislative instrument providing support for child-headed households is the Social Assistance Act (2013) which provides for social assistance for orphans and vulnerable children. Under this law, the definition of child-headed household meets two of the four qualifying criteria: criteria “a” - an orphan with no parents either biological or adoptive and not under the care of a guardian who provides basic needs and criteria “c” – child has been abandoned by the parents or parents of the child and is not under the care of a guardian who provides basic needs.<sup>51</sup>



Support for child-headed households are recommended within the AFC Guidelines for children 14 – 18 years of age (with an option to extend support until up to 21 years of age). Type of support per the Guidelines includes legal protection, education/vocational training, health and nutrition, psychosocial support and economic strengthening. The Guidelines propose that such support is provided through DCS, in partnership with community leaders, chiefs, community structures and civil society. This guidance for supporting child-headed households is not provided for within a national policy framework.

### Service Delivery

The Social Assistance Act does not provide for assessment of the child-headed household to determine the households’ need for support services. Instead, cash transfers of 2,000 shillings monthly are provided for some child-headed households, but more intensive or specialized support services do not exist. However, starting in 2019, with the introduction of mandatory national identity cards for receipt of the national cash transfer program, many child-headed households are now excluded from receiving this support.

### Monitoring and Evaluation

There are no standardized indicators to monitor support for child-headed households at large, although the cash transfer program does collect some data on support provided to orphans and vulnerable children. There are activities to ensure the quality of cash transfer data and, also under the cash transfer program, there is a mechanism to survey, monitor and assess beneficiary satisfaction and whether their needs are being met.

### Social Norms and Practices

There have been some activities aimed at informing and raising awareness on child-headed households and their support needs, for example through Chief Barazas. These activities, however, are not covering all duty bearers.

<sup>51</sup> <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97356/115476/F1496882450/KEN97356.pdf>

## Financing

The cash transfer program for orphans and vulnerable children is costed and included in the national and county government budgets, however other types of support for child-headed households are not included in these budgets.

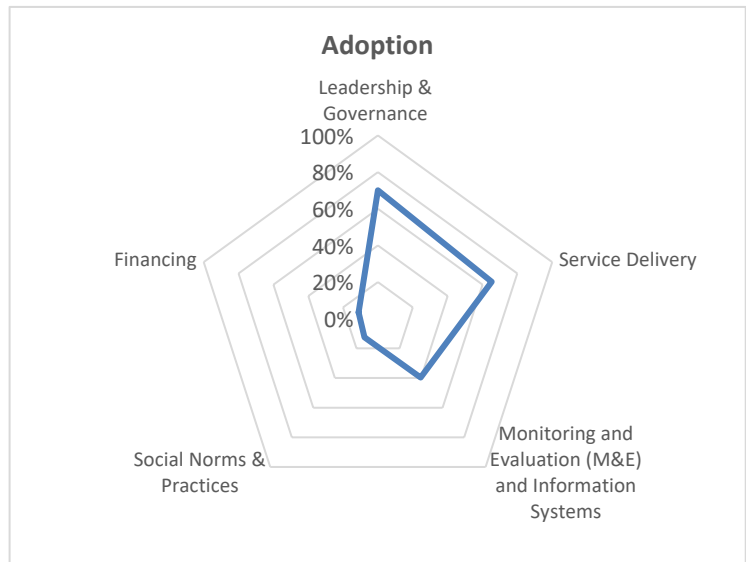
## Summary of child-headed household findings

Although support for child-headed households exists in the AFC Guidelines, participants recommend eliminating this type of care (see recommendations section below) and linking support for child-headed households to other forms of care, like kinship care and guardianship.

# 10. ADOPTION

## Legal and Policy Framework

Kenya acceded the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption in 2007. Adoption is also a legal provision of the Children’s Act 2001 (Part XII), it is included in the National AFC Guidelines and is further directed by the Adoption Regulations and Guidelines (2005). The government established a National Adoption Committee and a Secretariat to oversee adoption placements, as well as a Committee of Experts on Adoption to review and develop a detailed policy and legal framework to regulate and manage child adoptions in Kenya.<sup>52</sup>



On November 26th, 2014, the Cabinet Secretary Ministry of Labour, Social Security and Services enacted a moratorium on all intercountry and resident adoptions. Further, in February 2015, the Cabinet also disband the adoption committee under Legal Notice 1092/2015, an act that the CRC Committee described as “un-procedural...and as disrupting and frustrating efficient adoption processes.”<sup>53</sup> Since the original moratorium, domestic adoptions have been reinstated, and the government has promised to lift the moratorium on intercountry adoptions (the moratorium has also been contested in court), however at the time of this assessment the moratorium is still in effect. More specifically, in 2016, the CRC Committee recommended “harmonization” of national legislation with the Hague Convention and ensuring all safeguards in the convention are met.<sup>54</sup> At the time of this report, the Children’s Bill 2019 is currently waiting to be passed by the Cabinet, which is set to address this issue.

Domestic adoptions are currently guided by the Adoption Regulations and Guidelines (2005) and the Children’s Act 2001, however participants noted that relevant government actors have not been trained on their roles and responsibilities related to implementing the national policies. Overall, many important issues are covered in current policy, however there are several gaps.

<sup>52</sup> Kenya National Commission for Human Rights. Compendium on Submissions to Committee on Child Rights, Volume 1, 2016.

<sup>53</sup> Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Kenya, March 2016.

<sup>54</sup> Better Care Network. Country Care Review, Kenya.

<https://bettercarenetwork.org/sites/default/files/Kenya%20Country%20Care%20Review.pdf>

Issues that are adequately provided for within the national policy framework includes, among others: (a) assessment of children and PAPs prior to placement; (b) special support for adoptive parents and children before, during and after placement; (c) provision of parental leave for adoptive parents; (d) an open and transparent matching process; and (e) clear parameters to define children’s adoptability. Additionally, within the legal and policy framework, there is criteria for accrediting/authorizing agencies involved in adoption placements, a regulatory framework to authorize/register prospective adoptive parents, and requirements to obtain voluntary and appropriate consent from birth parents for adoption to occur.

In addition to the recommendations provided by the CRC Committee, participants noted several emerging issues that are not covered within the policy framework, such as “kinship adoption,” and adoption rights of Kenyans who are dual citizens but no longer reside in Kenya, etc. Participants also noted that although the National Adoption Committee is not currently in effect, the membership will need to be reviewed to include other key stakeholders, such as adoptive parents and adoptee children. It should also be noted that, under Islam, any severing of family relationships, including through adoption, is prohibited and child-family reunification is mandatory.

Further, the following areas are not fully covered in national policy documents:

- A standardized training for prospective adoptive parents
- A standardized training/preparation for adoptee children
- Procedures to prohibit adoption in emergencies
- A system to document authorized/registered prospective adoptive parents
- A standard framework to ensure a clear and documented process for determining a child is eligible for adoption
- Specialized support services for PAPs of children with disabilities
- A mechanism to track and address adoption disruptions

## Service Delivery

As of 2014, the AFC Guidelines stated that “the numbers of adoption in Kenya are low and adoption is under-utilized due to the process being perceived as long, complex and expensive.<sup>55</sup>” These Guidelines provide for four different types of adoption:

1. Domestic: adoptive parents are Kenyan and the child is a resident of Kenya.
2. Foreign resident: adoptive parents who are not Kenyan nationals but who have lived in Kenya for over three years and the child is a resident of Kenya.
3. Intercountry: adoption of a Kenya child by adoptive parents who are not Kenyan and do not live in Kenya
4. Kinship: adoptive parents who are kin or relatives within the extended family of the child

It is also believed that “informal adoptions” at the community level is a common practice – this is part of “Other Forms of Care” covered in this report.

Adoption Societies vet adoptive parents, vet and declare a child free for adoption, issue declaration certificates for court process to begin, match PAP with a child as per the suitability, and monitor pre-adoption fostering and write a reports to court. However most of them are based in Nairobi with the exception of Child Welfare Society of Kenya and Ripples International Adoption Society (whose license has expired). Therefore access to services is difficult for those based outside of Nairobi. DCS is facilitating the adoption processes, through the National Adoption Committee, including working with the judiciary to provide court reports. Participants noted that there are occasional delays with the production of court reports and that procedures for domestic adoption are not being uniformly followed in all counties. CCIs are housing prospective adoptee children, during the course of the adoption process. The Judiciary is the final decision-maker and after the three-month pre-fostering is over, the judiciary takes over to make the final ruling and issue the domestic adoption order

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<sup>55</sup> Government of Kenya and UNICEF (2014). *Guidelines for Alternative Family Care of Children in Kenya*, page 81.

and close the case. However the length of time it takes to complete the court processes varies across the country. The Registrar General provides international adoption certificates, however these services are not reaching across the country with the main Registrar's office located in Nairobi and few other satellite office locations.

The Adoption Regulation and Guidelines provides national standards to promote quality adoption placements, guidelines which are used by government and non-governmental organizations. Overall, participants stated that recent adoption placements (in the last 12 months) are authorized and registered and that PAPs are assessed for their ability to meet children's needs and any support they may require. Further, participants reported that parents and carers are participating in administrative and judicial proceedings for adoption placements and that children's views are given due weight in accordance with their age and maturity for the same.

That being said, there are a few areas of adoption services that are mostly occurring, but require some improvements, including the following:

- Assessment of every child for their physical, social, cognitive and emotional developmental strengths and needs and their family history
- Adoption placements are being made in the best interest of the child
- Use of the legal parameters to define a child's adoptability
- An open and transparent adoption matching process
- Special preparation, support and/or counseling services for PAPs before, during and after placement
- Provision of parental leave for adoptive parents
- Special preparation, support and/or counseling services for children before, during and after adoption placement
- Family tracing and reunifying prior to adoption placements

Additionally, specialized services for PAPs of children with disabilities are not known to be provided in Kenya. There is also no post-adoption mechanism for the domestic adoptions that are occurring. Similarly, there are no mechanisms in place to track and address any disruptions to adoption placements.

## Monitoring and Evaluation

Under the Children's Act, is it mandated for each adoption court report to contain a direction to the Registrar General, who maintains the National Adoption Register. In 2016, the CRC Committee recommended the establishment of a database to track prospective adoptive parents.<sup>56</sup> However, it is currently unclear if there is a central registry of all adoption placements being maintained and if it is compliant with the new national Data Protection Act of 2019.

There are no standardized national indicators to routinely monitor adoption in Kenya and the responsibilities to report on adoption both within DCS and between DCS and NGOs is not clearly documented. Despite this, there is some data that exists on the number children placed in adoption and these data are available by sex, age, and geographic placement location. There are also data available on the number of prospective adoptive parents and number of children eligible for adoption, who are waiting for an adoption placement. Overall, data is not known to be available to describe the type of disabilities eligible children may have, nor the ethnicity of children.

## Social Norms and Practices

Within the last year, there have been no activities to promote positive norms on adoption as a permanent solution, however there are some activities on advocacy that target frontline staff involved in caring for

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<sup>56</sup> <http://www.knchr.org/Portals/0/InternationalObligationsReports/CRC%20Book%20%20A4%20.pdf?ver=2016-08-18-115854-767>

children. In 2016 the CRC Committee made a recommendation to enhance information dissemination on adoption through public campaigns.<sup>57</sup>

### Financing

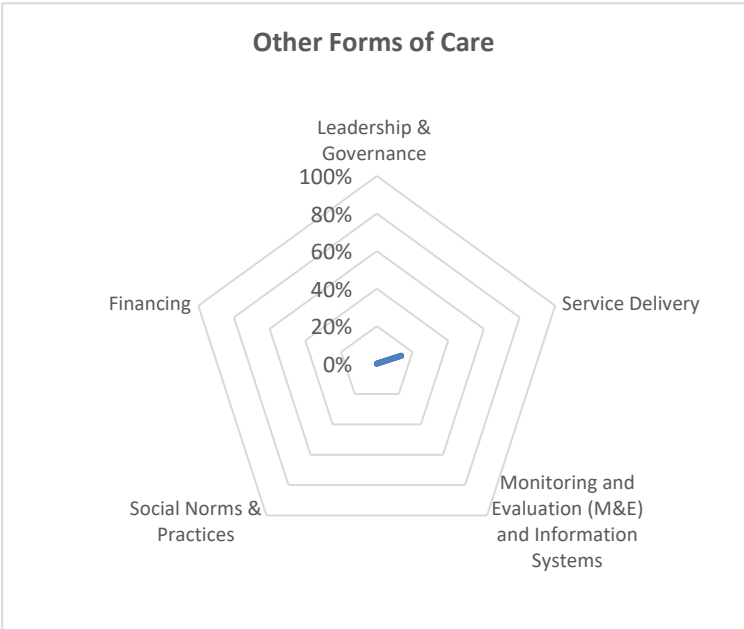
The cost for supporting adoption placements is slightly estimated and tracked. In some cases, adoption is included as budget line item in national government budgets, however funding to support adoption is general not allocated nor released. County government budgets are not known to include any costs related to supporting adoption in their budgets. The government tracks some funding from development partners’ support for adoption placements, but it is minimal.

### Summary of adoption findings

While domestic adoption is sometimes occurring, international adoptions are still prohibited by a government moratorium, pending parliamentary passing of the revised Children’s Bill 2019. Several key provisions to support quality adoption placements do not yet exist in national policy documents, such as a standard assessment process and training for prospective adoptive parents and adoptee children, among others. There is lack of understanding of how data related to adoption placements is being stored, and while some data does exist, there are no standard indicators to harmonize reporting on adoption placements and support. There have been no recent activities to raise awareness about adoption placements. While there is a small amount of government budget to support adoption placements, this funding is not believed to be allocated/released per the budget.

## 11. OTHER FORMS OF CARE

Several different types of other care arrangements are being practiced in Kenya. These ‘in formal’ care placements are when a child is looked after on an ongoing or indefinite basis by a family through a private arrangement that does not involve administrative or judicial authorities. For example, if a mother dies at childbirth and a woman in the clan breastfeeds and takes care of the child until the child is old enough to resume living with their biological family. Another example is when a man marries a single woman who already has children, the man automatically assumes responsibility of the children. These are a few examples among many different types of other forms of care that are currently being practiced across the country.



Informal care arrangements are provided for within the U.N. Guidelines on Alternative Care as well as the Kenyan AFC Guidelines. It is important to highlight that the intention of the AFC Guidelines is not to formalize all existing forms of informal care. These informal care arrangements are seen as important, widespread forms of care in Kenya with multiple positive aspects. Instead, the AFC Guidelines and this assessment encourage basic support and monitoring be provided to informal placements in order to prevent any maltreatment of children in informal care.

<sup>57</sup> Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Kenya, March 2016.

At large, supporting these “other types” of care are not provided for within Kenya’s legal framework. Note that assessment results say this is also not covered in national policy but informal care is broadly provided for within the AFC Guidelines. What is not explicitly provided for within national policy, however, are specific aspects of the process to monitor and support all informal care arrangements, such as if/when assessments of the child and family should be done, and what types of support should be provided.

When it comes to monitoring informal placements, some communities have their own systems. While this generally aligns with the AFC Guidelines which also place monitoring responsibility with the community, it is generally unknown if/how this is being done across the country. Permanency planning for children in informal arrangements is seldom occurring. Participants noted that permanency planning in some communities is affected by matters pertaining to land inheritance and difficult economic situations. In some instances, children in informal care are reintegrated with their biological families, however this is not believed to be widely supervised to maintain the wellbeing of the child throughout the reintegration process. In some communities, clannism is supervising the reintegration process but participants noted that most communities have moved away from this practice.

With informal arrangements being largely unsupervised and supported across the country, there is not data nor standard indicators to track support for informal placements, nor is government funding to support such arrangements included in the national nor county budgets.

### Summary of findings for other forms of care

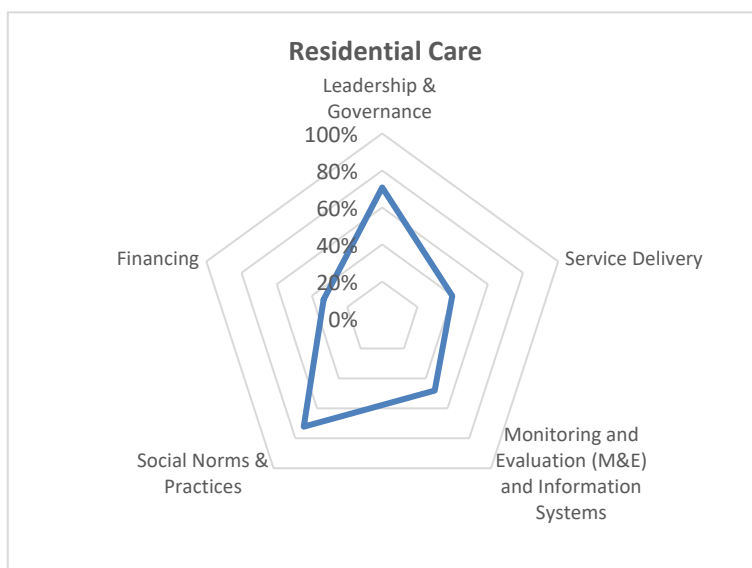
Several informal care placements are occurring in Kenya. Monitoring and supporting these informal placements is not provided for within the national legal and policy framework, there is little supervision or support for informal placements and there is no data to understand the extent of these placements nor to track support provided to these families.

## 12. RESIDENTIAL CARE

### Legal and Policy Framework

There is a strong legal and policy framework for residential care. This includes the Children’s Act (2 001), the National AFC Guidelines (2014), CCI Regulations (2005), CCI Best Practices and Standards (2015) and the CCI Training Manual (2015). Under the legal framework, there is an obligation for children in residential care settings to return to their family, when it is in the child’s best interest.

These policy documents mostly include quality standards for residential care and provisions for statutory and private residential care facilities. That being said, a gatekeeping mechanism is currently being developed because there have not been sufficient processes for determining where or not a child should be placed in residential care. Further, policy currently states that children of all ages can be placed in residential care (as a measure of last resort), which is not meeting the UN Guidelines to prohibit the placement of 0-3 years old in residential care (unless exceptional circumstances apply).



Very few relevant government and non-governmental actors involved in residential care have been trained on their roles and responsibilities related to implementing these national policies, mainly focusing on the pilot counties.

There is a regulatory framework to ensure authorization/registration of residential care facilities. Together, NCCS, DCS, Probation and Aftercare Services and the Prisons Department are all official state bodies that are responsible to ensure residential care facilities comply with national standards, including through inspections. This being said, in 2016, the CRC Committee noted that “the majority of childcare institutions, such as CCIs, are not yet registered, the inspection and monitoring of the care provided at CCIs are weak and there are no complaint mechanisms through which children can denounce violence in care institutions.”<sup>58</sup>

## Service Delivery

There are several types of residential care settings described in the legal and policy framework, including: temporary placement centers, emergency transit centers, residential special schools, specialized care facilities, rehabilitation services, specialized support for children with disabilities, residential family centers, children’s homes, secure children’s homes and informal residential care. The most common form of residential care are the charitable children’s homes, mostly owned by individuals or religious organizations. There are no known residential family centers and the other forms of residential care listed above are only slightly available. For example, there are a few rehabilitation institutions overseen by DCS, Probation and Prisons Departments, and there are a few known rescue centers that provide temporary and emergency care. None of these forms of residential care are perceived as being sufficient.

The national standards for residential care and the Children’s Act are mostly used to execute services in both SCIs and CCIs. These standards are perceived to mostly provide standards for determining necessity and suitability of residential care, standards to access healthcare and standards to emphasize proper care planning. However these standards are perceived to only slightly cover standards to include the children’s feelings and wishes, standards to include education and learning and standards to support children forming long-term attachments/relationships. Further, the service standards are not seen to properly stress the purpose of residential care as a measure of “last resort”, and as a temporary, short-term measure. The standards are also not seen to properly set expectations for management and leadership of residential care.

During the CCI registration process, criteria for minimum standards are set and the consequences of not meeting these standards are clearly stated. However quality assurance monitoring of residential care facilities is not often conducted. Several other gaps exist. Prior to placing children into residential care settings, the children are only slightly assessed for their developmental needs, family and other factors that inform which residential care setting the child is placed in to. Recruitment of children into residential care facilities is still sometimes occurring. Permanency planning through other potential placement options when family reintegration is not possible is only slightly occurring. Further, in practice, there is limited supervision for the reintegration of children to families from residential care. Lastly, services provided in residential care facilities only slightly address the needs of children with disabilities.

## Monitoring and Evaluation

There are standardized indicators to monitor residential care services across the country, however participants believe there is not a thorough monitoring framework for residential care in place. Some roles and responsibilities exist for collecting and reporting on these indicators across government actors and between government and civil society actors, however this is seen as insufficient. Data on residential care is not collected from all CCI/SCIs regularly. While CCIs and SCIs are supposed to input monthly caseload data in to the CPIMS, not all institutions are doing so. Of that data that exists, it is disaggregated by sex of child and locality of the facility. Most of the data is also disaggregated by type of care facility and age of the children in

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<sup>58</sup> BCN



the facility. Limited data is disaggregated by reasons for the child being placed in residential care, length of stay in the facility, disability type, ethnicity and religion of the child.

The total number of children currently living in residential care in Kenya is unknown. In the four pilot counties, a situation analysis found over 7,300 children in residential care. The national estimate is over 50,000 children.<sup>59</sup> Participants estimated that up to 60% of residential care facilities in Kenya would be defined as “large scale” (more than 30 children).

### Social Norms and Practices

There have been small efforts to change the negative social norms around residential care being an appropriate form of protection for children without parental care. Recent activities to-date have focused on the pilot counties and targeted the general public, national and county government staff and frontline staff. There is currently no national strategy in place to advocate and communicate about appropriate use of residential care (i.e. as a measure of last resort). However, at the time of writing this report, a national care reform strategy was being developed.

### Financing

Costs for residential care are only slightly estimated and included in government budgets (at the national and county level). The national level budgets include a small amount of funding for SCIs and some counties budget for both SCIs and CCIs. Funding to support residential care was only slightly allocated and released per the budgets. Some but not all of the financial contributions from private sector and non-governmental actors involved in residential care is tracked by the government.

### Summary of residential care findings

Residential care is included in national legal and policy documents, except gatekeeping mechanisms which are currently under development. Although there is a regulatory framework to register and monitor residential care facilities, there are known to be many CCIs that are not in fact registered and inspections of these facilities is weak. While there is some data from SCIs and CCIs being collected, it is not routine nor sufficient for decisions-making. There are also National Standards for Best Practice in Charitable Children’s Institutions to promote quality care of children. However, the implementation of these standards is not regularly monitored by the oversight body.<sup>60</sup> Awareness raising on the harms of residential care has occurred in limited geographic areas of the country and there is need to expand. While there is limited funding from the government for SCIs, this funding is insufficient and not fully allocated or released per the budget.

## 13. TRANSITIONING INSTITUTIONS

### Legal and Policy Framework

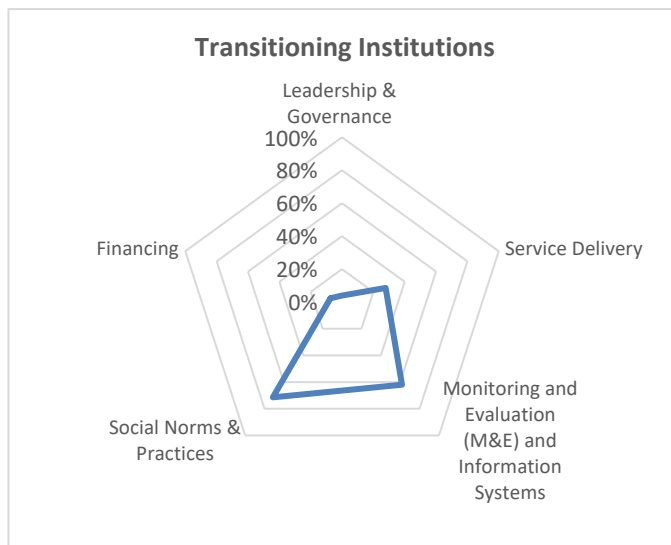
There is currently a moratorium on registration of new CCIs which provides some legal backing to prevent new, large-scale institutions from being set up and scaling up deinstitutionalization in favor of progressively removing children from institutions and promoting family-based care. There is currently no strategy for transitioning residential care into more family-based support, however NCCS is currently in the process of developing a national care reform strategy with support from UNICEF.

<sup>59</sup> Data from the NCCS at the time of the assessment.

<sup>60</sup> Government of Kenya and UNICEF (2014). National Standards of Best Practice in Charitable Children’s Institutions. <https://bettercarenetwork.org/sites/default/files/National%20Standards%20for%20Best%20Practices%20in%20Charitable%20Children%27s%20Institutions.pdf>

### Service Delivery

Under current policy, NCCS is the lead agency responsible for the transitioning of institutions, but there are no national guidelines on how to appropriately transition care facilities to more family-based care service models. Assessing and preparing children who are leaving residential care is only done in the demonstration counties if case management and reintegration package is anything to go by. Same with assessing and preparing families receiving children, a process which has recently started.



### Monitoring and Evaluation

There are no indicators to measure progress on transitioning institutions and only a small amount of data is collected to monitor the transitioning process in the four demonstration counties.

### Social Norms and Practices

Within the last year there have been activities aimed at changing negative social norms related to children’s institutions in the demonstration counties. There is currently no advocacy and communication strategy related to positive norms of family-based alternative care.

### Financing

There is no estimate of the costs required to transition to a system that prioritizes family-based care. Government budgets do not currently include costs to support such a transition. As transitioning to family-based care occurs and savings is realized, there is currently no plan on how to redirect this savings to community-based support services.

### Summary of findings for transitioning institutions

Overall there is a moratorium on opening new CCIs, however there has not been a strategy to transition SCIs/CCIs into providing family-based support. A national care reform strategy to support this is being developed at the time of writing this report. The NCCs has the mandate and authority to oversee the transition of institutions, but there are no guidelines to support such transitioning when they occur. There are no standard indicators to monitor a transition process nor is there an advocacy and communication strategy to support the transition. Costs to transition facilities to family-based support have not yet been estimated and the government budgets do not currently include support to transition away from residential care to more family-based support.

## SUMMARY OF FINDINGS

Overall, Kenya has a fairly strong legal framework to support many areas of care. The country has also made progress in particular areas of alternative care, such as domestic adoption and prohibiting new CCIs from opening. Additionally the AFC Guidelines provide rights-based guidance informed by good practice for a full range of care for children specific to the Kenyan context. That being said, much of the legal framework that exists and the recommendations set forth in the AFC Guidelines are not properly supported by national policy instruments nor regulatory mechanisms and are therefore not being implemented. As a whole, there are some alternative care services, even beyond adoption and residential care, but these types of services exist on a small scale, if they exist at all. While the country has also made important and notable strides with establishing and rolling out the CPIMS, this system does not adequately cover alternative care services. Awareness raising to promote positive social norms around prioritizing family-based care has also occurred, however in most cases it has only been at a small scale. There are also small amounts of discrete government funding committed to prevention and care, however the majority of the care system is not being financed. Cost estimates of what financial resources are required to implement/expand aspects of the care system have not been calculated, adding strain to the budgeting process.

The below table provides a color representation of the assessment results, highlighting that all areas of care and all system components need considerable attention and investments. While some progress has been made on domestic adoption, residential care and transitioning institutions to family-based support, there is still work to be done in each of these areas. Other areas, like family reunification, kinship care, foster care and support for guardianship and informal care are not seen to be well regulated nor supported, if they exist at all.

	Legal & policy framework	Service Delivery	M&E systems	Social norms & practices	Financing
Prevention	Yellow	Red	Red	Yellow	Red
Family reunification	Red	Yellow	Yellow	Red	Red
Kinship care	Red	Red	Red	Red	Red
Foster care	Yellow	Red	Yellow	Yellow	Red
Other forms of care	Red	Red	Red	Red	Red
Kafaalah	Red	Yellow	Red	Red	Red
Guardianship	Yellow	Red	Red	Red	Red
Child-headed Households	Red	Red	Red	Yellow	Yellow
Supported Independent Living	Red	Red	Red	Red	Red
Adoption	Green	Green	Yellow	Red	Red
Residential Care	Green	Yellow	Yellow	Green	Yellow
Transitioning Institutions	Red	Red	Green	Green	Red

### COLOR KEY

**Completely satisfied, no room for improvement**

**Mostly satisfied, small room for improvement**

**Slightly satisfied, moderate room for improvement**

**Not satisfied, significant room for improvement**

## KEY RECOMMENDATIONS

Given the status of the care system in Kenya, it is important to carefully prioritize recommendations and next steps so that human and financial resources are effectively and efficiently used. Below is a list of preliminary, high-level recommendations to consider for future investments, programs and policy work. This list was collated from assessment participants and is not intended to be comprehensive, detailed nor exhaustive. Any national strategies or action planning should take these recommendations as preliminary suggestions to guide future interventions.

### CROSS-CUTTING

1. Fast track the development of the national care reform strategy and Include a detailed implementation and capacity building plan to familiarize all key actors with content, roles and responsibilities
2. Develop a policy that describes the linkages on care reform and existing government interventions/programs (across sectors)
3. Once the national strategy is complete and approved, build capacity of all relevant stakeholders in the national care reform policy and linkages across existing government interventions/programs.
4. Develop National Standards of Respite Care
5. Develop a national monitoring and evaluation strategy for all forms of care that aligns with the forthcoming national care reform strategy
6. Advocate and plan for increased government financial commitment for care reform and alternative care, including by costing the implementation of the national care reform strategy
7. Improve the current CPMIS system to capture additional data on children in alternative care
8. Improve planning and provision of funding to support the workforce at all levels
9. Develop and implement a National Communication Strategy for Alternative Family Care

### PREVENTION OF UNNECESSARY CHILD-FAMILY SEPARATION

10. Complete and operationalize the bills, policies and guidelines to help in streamlining issues of family strengthening and prevention of unnecessary separation
11. Advocate for more engagement of policy implementers at both national and county levels for prevention efforts
12. Develop National Standards on Prevention of Separation and Family Strengthening
13. Build capacity of implementers at both national and county government in issues of family prevention and strengthening

### FAMILY REINTEGRATION

14. Ensure existing Family Reunification and Reintegration Guidelines are translated into appropriate national policies
15. Cascade training for the new case management for reintegration guidelines
16. Develop a National Policy and Strategy on Family Tracing and Reunification
17. Further improve the child protection information management system (CPIMS) to capture the Family and Reunification data
18. Establish a system to monitor and track finances on reunification and reintegration from CSOs

### KINSHIP CARE

19. Develop a policy framework to support kinship care including linking kinship carers to social protection schemes such as the national cash transfer program
20. Develop kinship care guidelines and support their implementation to ensure children are retained in families and where biological parents are not there, kinship is the first priority; including monitoring and evaluation within the kinship care guidelines
21. Sensitize the public on kinship care

## FOSTER CARE

22. Develop a national policy for foster care
23. Establish foster care agencies that are regulated by the NCCS
24. Develop national standards of practice for foster care services (informed by existing guidelines where they exist)
25. Advocate and plan for increased financial commitments from government, private sector and development actors to support foster care

## OTHER FORMS OF CARE

26. Update existing legal framework to provide for other forms of care (i.e. “informal care” support)
27. Explore, identify and document best practices in other forms of care and sensitize communities
28. Advocate and plan for increased government financial commitments to support other forms of care
29. Further improve the CPIMS to capture support to other forms of care

## GUARDIANSHIP

30. Include a strategy for guardianship in the national care reform strategy
31. Advocate and plan for increased government financial commitments to provide support services to guardianship placements

## SUPPORTED INDEPENDENT LIVING

32. Include Supported Independent Living in the national care reform strategy
33. Engage care leavers in developing guidance and support services aimed at supported independent living
34. Register/track children who exit institutions for supported independent care arrangements

## KAFALAH

35. Provide for Kafaalah in the existing legal framework
36. Raise awareness of Kafaalah processes amongst relevant populations
37. Advocate and plan for increased government financial commitments to provide support services to Kafala
38. Document Kafaalah care and the process (for learning and advocacy)
39. Collect data on Kafaalah to inform policy and planning

## CHILD-HEADED HOUSEHOLDS

40. Eliminate “child-headed households” as a form of care in the national framework and link child-headed households up to guardianship and kinship care

## ADOPTION

41. Build capacity of the workforce dealing with adoption processes to accommodate the increasing demand for domestic adoptions
42. Advocate and plan for increased government financial commitments for adoption placement and regulation for post-adoption placements
43. Raise awareness on adoption to change the mindset to help people embrace local adoption and address existing stigma
44. Establish a monitoring and evaluation committee for adoption to manage a process to develop tools and provide guidance on monitoring and evaluating adoption placements
45. Establish an Adoption Board instead of an Adoption Committee and include all key stakeholders
46. Develop a national standard training for adoptive parents and adoptee children

## RESIDENTIAL CARE

47. Fast-track development of the national gatekeeping guidelines
48. Build capacity of existing social welfare workforce based on real needs of children living in residential care
49. Fast-track development of an advocacy and communication strategy aimed at redirecting resources from institutional care to family/community care
50. Promote and support the roll out of case management tools in CCIs/SCIs

## TRANSITIONING INSTITUTIONAL CARE

51. Identify stakeholders to lead the transitioning of institutional care to family-based service providers
52. Conduct a national residential care situation analysis that includes: residential care processes; reasons for admission; length of stay; and outcomes for children, this could help identify those who are inappropriately admitted and who can be reunited.
53. Establish a process and/or policy to regulate unregistered residential care facilities
54. Advocate and plan for government financial commitments to support the transitioning process
55. Establish and implement a database for CCI monitoring
56. Develop and disseminate communication, attitude and cultural change strategy on care reform towards child protection

## ANNEX

### LIST OF PARTICIPANTS

	<b>NAME</b>	<b>ORG.</b>
1	ABDINOOR MOHAMED	NCCS
2	MARY THIONGO	NCCS
3	PETER IRUNGU	NCCS
4	ALEX WAMAKOBE	NCCS
5	KENNEDY OWINO	NCCS
6	JUDY WACHIRA	NCCS
7	SAMUEL ATANDI	NCCS
8	JANET MWEMA	NCCS
9	HUDSON IMBAYI	DCS
10	LILIAN K OSERO	DCS
11	HUDSON K. IMBAYI	DCS
12	KABUAGI PETER	DCS
13	NAOMI KYULE	DCS
14	ESTHER MUGURE	DCS
15	ALFRED MURIGI	DCS
16	MARY KAMAU	CWSK
17	JENNIFER WANGAI	SD-SP
18	OLIPA N OGETO	MOE
19	ZAKIA ABUBAKAR	HR
20	STEPHEN MWANGI	MOH
21	SARA AYIECHO	NCPWD
22	JACINTA MWENDE	DSD
23	MARY OTINDO	JUDICIARY
24	PETER NDWIGA	SAU
25	FLORENCE MUENI	PROBATION
26	GRACE MWANGI	LUMOS-CTWWC
27	GRACE EKAMBI	AFAK
28	JOANA WAKIA	MAESTRAL
29	MIRIAM MUSYOKA	SOS VILLAGE
30	JOSEPH KIMANI	STAHILI FOUNDATION
31	MITCHELE OLIEL	STAHILI FOUNDATION
32	CATHERINE KIMOTHO	UNICEF
33	FREDRICK MUTINDA	CRS-CTWWC
34	MARTIN KIANDIKO	CRS-CTWWC
35	CORNEL OGUTU	CRS-CTWWC
36	MERCY NDIRANGU	CRS-CTWWC
37	SAMORA ASERE	KESCA



38	GRACE NJERI	KESCA
39	PROTUS LUMITI	ACCIK
40	PETER MUTHUI	ASSOCIATION FOR ALTERNATIVE FAMILY CARE
41	STEPHEN UCEMBE	HOPE AND HOMES FOR CHILDREN
42	VINCENT OTIENO	CHILD FUND KENYA
43	ESTHER SADALA	AFAK

To learn more about care reform in Kenya, contact [alternativefcare@labour.go.ke](mailto:alternativefcare@labour.go.ke)

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