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Alternative Family-Based Care Options in Kenya

OVERVIEW BOOKLET
2021



INTRODUCTION

The Constitution of Kenya states that “the family is the natural and fundamental unit of society” It is the mandate of the government of Kenya to ensure this right is protected and every child enjoys this right. The Ministry of Public Service, Gender, Senior Citizenry Affairs and Social Protection aims to enhance and support family strengthening and family and community-based care. This will consequently reduce reliance on Charitable Children Institutions (CCIs) and Statutory Children institutions (SCIs) in Kenya.

This booklet aims to raise awareness amongst the public about the various family and community-based alternative care options for children who are unable to live or be cared for by their primary or biological parents. It provides a quick overview of each of the approaches identified as “family based”.

It is strongly recommended that children should never be separated from their biological parents, and communities. Separation should only happen if the child’s ultimate safety and well-being is at risk. Our responsibility as actors should be to identify and address challenges affecting families to prevent separation. If it’s not possible for a child to live with their biological families, alternative family-based care options should be explored based on the child’s circumstances and their best interest.

The process of developing this booklet was spearheaded by the National Council of Children’s Services (NCCS) and the Directorate of Children Services in conjunction with Association for Alternative Family Care of Children with funding from the Tree of Life–FADV. This booklet is aligned with the Guidelines for the Alternative Family Care of Children in Kenya that identify Kinship Care, Foster Care, Kafalah, Child-Headed Households, Guardianship and Adoption as the Family Based options.



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KINSHIP CARE

Kinship care is the most culturally appropriate and widely understood form of alternative care as it is based on existing community practices. The promotion of kinship care is part of stakeholder's efforts that seek to ensure that there is prevention of separation of children from their families and communities as well as the preferred reintegration strategy for children being cared for in charitable children's institutions.

What is kinship care?

Kinship care refers to when a child is looked after on a temporary or long-term basis by their maternal or paternal relatives such as grandparents, aunts/uncles, and adult-siblings.

Kinship can be privately arranged by the family members (informal) as well as through an administrative or judicial authority (formal).



Eligibility for kinship care

- A child whose parent/s are deceased
- A child whose parent/s are incapacitated (physically or mentally)
- A child whose parent/s are imprisoned
- A child whose parent/s whereabouts are unknown
- A child in conflict with the law and has undergone rehabilitation

Other considerations based on the best interest of the child.



Practice Highlights

- Involve the child in the decision-making process based on their need and capacities
- Involve the family of origin and the receiving family for optimal outcome
- Involve a children's officer for oversight and coordination of support
- Encourage keeping siblings together as much as possible
- Place the child nearest to their habitual place of residence and close to their family members
- Manage the expectation of both the child and the relative/s
- Address the underlying causes of separation and ensure timely reunification of the child with the family of origin where possible



Benefits of kinship care

Kinship care provides great benefits to the child, and majority of the children generally prefer this type of arrangement.

- It allows the child to maintain cultural, religious and linguistic links with his/her family and community and

enables continuity, stability, a sense of identity and belonging. The risk of being disinherited is also minimized

- The child is also likely to experience less distress in cases where their parents have died or after being separated from their parents
- A child cared for within his/her own family environment generally avoids the risks associated with institutional care. In case of family separation, kinship care can be a suitable temporary arrangement until the child is reunited with their family

FOSTER CARE

Foster care is one of the most recommended forms of alternative family-based care options. However, it is not as widely understood or practiced in Kenya. In some instances, it is confused with adoption. Efforts by the Government are underway to increase awareness and increase the availability of foster care for children in need of care and protection and reduce the use of institutional care.

What is foster care?

This is an approach where a child is placed by the children's officer in collaboration with other stakeholders, and 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.



Eligibility for Foster Care

- A child who has lost both parents
- An abandoned or neglected child
- A child separated from biological parents due to imprisonment or emergency

- A child for whom an assessment by an authorized person has found that remaining with their biological parents or extended family would be against his/her best interests
- A child who has been abused physically, sexually or inflicted any other form of violence within their family
- Children living and working on the streets and his/her family cannot be found, or the parent/s are undergoing rehabilitation
- A child whose parents are terminally ill or mentally incapacitated, and the child is unable to live with extended family
- A child in conflict with the law



Practice Highlights

- A child should not be unnecessarily removed or separated from their parent/s or extended family members and placed in foster care
- The child should always be heard and his/ her views and opinions taken into consideration before placement, during placement and after placement
- All placements in foster care have to be approved by a children's officer who collaborates with a social worker or case worker and other concerned individuals or organizations
- A child does not necessarily have to be in a children's home to be placed in foster care. The social worker/ case worker can work with the children's officer to place a child directly with an approved foster parent
- Foster care unlike adoption is not permanent
- Depending on the issues surrounding a child, a child can stay with a foster family for a short or long period



Benefits of Foster Care

- ▣ A child is supported in a community and in a family environment
- ▣ A child who has psychological and emotional challenges can benefit from the specialized skills and knowledge of a foster parent, helping the child cope or navigate through a difficult period
- ▣ In this family environment, a child enjoys individualized care and support in a family and in a natural community setting

KAFAALAH

Kafaalah has been accepted within the Muslim community as a key tenet of Islam to provide children without parental care with the safety and security that a family environment offers. The government has subsequently embedded and recognized the practice in the Guidelines for the Alternative Family Care of Children (2014).

What is Kafaalah?

This is an alternative family-based care approach practiced by Muslims and guided by interpretations of the Islamic law (Sharia).



Eligibility for Kafaalah

- ▣ The child who has lost one or both of his/her parents
- ▣ The incapacity of the parents to care of the child
- ▣ The child is in an environment that violates his/her rights

- ▣ The child is separated from the parents as a result of natural or man-made disasters

Other considerations based on the best interests of the child.



Practice Highlights

- ▣ Involve the nearest Kadhi court when there is a dispute regarding the child's inheritance
- ▣ Involve the Sub-County Children's Officer and local Imam in decision making process around the child's care
- ▣ The child who qualifies for Kafaalah can be supported from a young age until they are independent or able to take care of themselves
- ▣ Experience in the field has shown that a child can be sponsored to live in an institution or a children's home. The government however does not encourage supporting a child within the institution; every child deserves to grow up in a loving nurturing family and community environment in order to ensure that they thrive and reach their full potential
- ▣ Kafalah placement can be short term, long term or permanent
- ▣ This practice should however not be confused with adoption. In adoption, there is permanent separation from the biological parents. The adoptive parent assumes all the rights and responsibilities. The child enjoys permanency and has all the rights like that of a biological child, and the parent all the rights of a biological parent
- ▣ Within the practice of Kafaalah, although the child enjoys the love and care of a family within a community, they do not lose their identity associated with their biological lineage which includes naming and related identification. The child also does not have inheritance rights but the sponsor can bequeath a third or less of their property to

the child. Additionally, the family or individual can also decide to give a gift to the child while still alive, this includes setting up a trust for the child.



Benefits of Kafaalah

- ▣ Apart from meeting the basic needs of a child, under Kafaalah, caregivers are expected to provide education, health, shelter, parental care and guidance within a family and community setting
- ▣ A child grows up in an environment that supports continuity of upbringing, an environment that takes into consideration a child's ethnicity, religion, culture and language to ensure harmonious growth and development of the child

ADOPTION

Internationally, adoption is not understood as a form of 'alternative care', this is because a child who has been adopted is under permanent care and adoptive parent/s have all the same permanent rights and responsibilities of biological parent/s. The practice has only been included in this booklet because it strengthens the practice of caring for children in a family and community-based care setting.

What is Adoption?

This is the complete severance of relationship between a child and his/her biological parent/s and birth family, and the establishment of a new relationship between the child and his/her adoptive parents. There are three types of adoptions (local or domestic, kinship adoption, and inter-county adoption).



Eligibility

- Abandoned child whose family members have not been traced (abandonment is presumed after 6 months where efforts to trace the parents/relatives have been unsuccessful)
- A lost child whose parents have not been traced (again efforts must be shown that tracing of the relatives have been unsuccessful)
- A child whose both parents have died and the relatives are unable to raise the child
- A child offered by his or her birth parents/s (necessary consents must be given)



Practice Highlights

- Adoption can only be processed by a registered adoption society
- The adopter is legally the new parent and can get a new birth certificate
- The first stage entails application for an adoption. A social Inquiry is done by an adoption society. The purpose of the social inquiry is to get to know the person who wishes to adopt and to prepare them for the adoption of a child. This is done using the right documentation and interviews by the adoption society, application forms, home visits, counselling and presentation to a case committee
- The second stage is where the applicant is approved and placed with the child. It is guided by the adoption society and complemented by the Charitable Children's Institution (CCI). This process entails; approval of the applicant by the case committee of the adoption society, identification of the child, bonding visits at the CCI, medical opinion on

the child. Three monthly mandatory bonding placements with visits by the social worker of the adoption society at home is required to see how the child is adjusting in the new home. It is important to note that the process may differ depending on the type of adoption

- ▣ The third and final stage is the court process. This entails, nomination of a lawyer, first court appearance for appointment of Guardian ad Litem (person appointed by the court to represent the best interest of the children in the court proceedings) and request for reports from the director of children's services. There is also a second court appointment to receive reports from the director, the adoption society and guardian ad litem and a third court appointment to pronounce the adoption and registration of new family details. The number of hearings however depend on the circumstances of each matter
- ▣ Adoption is done at the High Court of Kenya
- ▣ Adoption is final



Benefits of Adoption

- ▣ A child is able to grow in an environment where they feel loved, supported by a family and allowing a child to thrive holistically
- ▣ A child has strong sense of belonging and identity through the long term and stable social relationships within the family and community. They learn traditions, culture and faith
- ▣ The child is able to access education, health, shelter and the financial security they need to reach their full potential
- ▣ The child has a right to inherit

GUARDIANSHIP

Guardianship allows continuity of care with person/s familiar to the child, it also allows a child to continue enjoying family care.

What is guardianship?

The Children’s Act 2001 defines a guardian, as, “a person appointed by the will or deed by a parent of the child or by an order of the court to assume parental responsibility for a child upon the death of the child’s parent, either alone or in conjunction with the surviving parent of the child or the father of a child born out of wedlock who has acquired parental responsibility of the child in accordance with the provisions of this act”.



Eligibility

- Any child with surviving parent/s
- A child whose parents are deceased and the appointment is made by the court



Practice Highlights

- Guardianship is granted by Children’s Courts and lasts until the child attains 18 years of age; on a case-by-case basis this can be extended through the court, until 21 years of age
- The Department of children Services should be involved to ensure that the will or deed is honored and that the child is protected from abuse, violence and exploitation
- The biological parents are free to seek legal guidance in this process

- ▣ The wishes of the parent/s are paramount and should be respected by all the concerned parties and the views of the child should be taken into consideration in every decision
- ▣ A guardian can be appointed to take care of the child or over the child's inheritance or both
- ▣ A child retains his/her name and does not become a legal member of the guardian's family
- ▣ Guardianship is reversible
- ▣ If parents have not appointed a person to take on legal guardianship of their child/ren upon their death, guardianship is most commonly settled by agreement of the courts



Benefits of guardianship

- ▣ The child continues to enjoy continuity of care, within a family setting and in the community
- ▣ The child's inheritance if any is protected by the court or the guardian until they reach the age where they are able to manage it and is handed over

CHILD-HEADED HOUSEHOLD

This form of care is not ideal because, it is not well regulated, and to thrive and to ensure adequate care and protection, children need close, constant and consistent care from adult/s. Before considering this model for any child, family-based options should have been explored and exhausted by a professional case worker/ social worker.

What is Child-Headed Household?

This is a community-based form of alternative care where a child/ young person lives alone or children live together without the supervision of an adult. The children need not be related to each other. In some instances, children could be living with an ailing adult caregiver/s, but a child has assumed caregiver responsibilities due to the incapacitation of the caregiver/s.



Eligibility

- Any child above the age of 14 years who has been left alone due to parent/s death
- A child above the age of 14 who has been abandoned or parent/s whereabouts are unknown



Practice Highlights

- It is recommended that a child heading a household should not be less than 14 years old, a child less than 14 years old should be assessed for a suitable care option with adult care and supervision
- The local area Children's Officer in collaboration with the local administration and civil society organizations will work to ensure access to services i.e. education, nutrition, counseling, health etc. and strengthen community capacity to protect and support these children
- The views and opinions of the child should be taken into consideration in decision making
- A relative, legal guardian, community-based volunteer, or other adult mentor should be identified to ensure continued guidance and supervision of the household until the child/ children are able to live independently

- ▣ Actors should ensure that the child or children are involved in decision making processes and their concerns taken into consideration always
- ▣ Children’s officer and other actors will ensure that the child’s/ children’s inheritance; land and any other property is protected and they have access to legal services



Benefits of Child-Headed Households

- ▣ Children are able to stay in a familiar environment within their community of origin and with people familiar to them
- ▣ The child’s/ children’s inheritance if any is protected as they continue to live in their local community
- ▣ Sibling and familial ties are maintained in the process and with the support of community members and the area children’s officer



Alternative Family-Based Care Regulatory Frameworks in Kenya (Guidelines, Laws and Policies)

- ▣ The Constitution of Kenya, 2010
- ▣ Children’s Act, 2001
- ▣ The National Care Reform Strategy
- ▣ Guidelines for the Alternative Care of Children in Kenya (2014)
- ▣ Case Management for the Reintegration of Children into Family or Community Based Care
- ▣ Standard Operating Procedures for the Alternative Family-Based Care of Children in Kenya
- ▣ Gate Keeping Guidelines for Children in Kenya



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County and Sub-County Children's Offices

Contact the Children's Officer at the County or at the Sub-County Children's Office at your locality

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