

Child Trafficking to Charitable Children's Institutions: Challenges and opportunities to combat the problem in Kenya

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Introduction

Kenya is making important changes to how it cares for children, in line with its obligations under the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the UN Convention on the Rights of Persons with Disabilities. The Government's ten-year National Care Reform Strategy for Children in Kenya 2022-2032 (National Strategy) seeks to prevent children's unnecessary separation from their families and decrease reliance on institutional care in favour of family and community-based solutions, which decades of research has shown to be detrimental to children's development (Dozier et al., 2012).

Despite Kenya's robust legal and policy framework for family and community-based alternatives to residential care institutions, the proliferation of orphanages, or Charitable Children's Institutions (CCIs) as they are referred to in Kenya, is attributed to a "standard approach to child protection—which consists of addressing the symptoms" that "is inadequate at best and counter-productive at worst" (Chege & Ucembe, 2020: 9). Moreover, Cheney and Ucembe (2019) argue that the establishment of CCIs is primarily driven by donor desire rather than the actual needs of children without parental care—often disrupting more appropriate forms of family-based care.

In 2017, the Kenyan Government placed a moratorium on the registration of new CCIs, citing inappropriate placement of children in institutions rather than family-based care options and concerns about possible child trafficking (Ministry of East African Community, Labour and Social Protection, 2017). The Cabinet Secretary of the Ministry of Labour and Social Protection stated, "It was evident that some of the children's homes were involved in unscrupulous practices which may include child trafficking" (Ministry of East African Community, Labour and Social Protection, 2017: 1).

Prior to the onset of Covid-19, it was estimated that there were approximately 45,000 children in more than 845 registered CCIs across Kenya (Republic of Kenya, 2022: ii). Despite a government directive in March 2020 stating that children should be released from institutions to return to families due to the pandemic, a total of 26,198 still children remained in CCIs (Alliance for Child Protection in Humanitarian Action et al., 2020). The number of children currently in CCIs may be even higher since the reopening of schools in 2021 following a year of closure to contain the pandemic. The actual number of unregistered institutions and children in them is unknown, but we hypothesize that it potentially surpasses the number of those which are registered.

The 2017 moratorium on registering new CCIs is still in effect, but potential violations of the moratorium as well as instances of child trafficking into CCIs continue to be reported. We argue that trafficking into CCIs is indeed happening in Kenya, and that the problem should be urgently addressed to protect vulnerable children and families. In this chapter, we define the parameters of the problem and provide some recommendations for preventing and responding to it.

Orphanages and trafficking in Kenya

Children in CCIs are at a particularly high risk of violence (Ministry of Labour and Social Protection, 2020; National Crime Research Center, 2020), including sexual and gender-based violence and trafficking. In 2020, the National Crime Research Center found a significant increase in violence against children, especially against girls, across a number of care settings following the onset of the coronavirus pandemic (Covid-19). In its report, the NCRC noted that CCI staff were among the main perpetrators of violations of children's rights during Covid-19 (National Crime Research Center, 2020: 59).

Kenya's ten-year National Care Reform Strategy recognises that institutional care currently faces multiple challenges, and similarly acknowledges "the high levels of child rights violations including

neglect, child trafficking and physical and sexual abuse” in both registered and unregistered institutions (Republic of Kenya, 2022: 131). The National Strategy outlines a number of interventions aimed at addressing orphanage trafficking, including: (i) recognising orphanage trafficking as a crime and ensuring it is prosecuted as a matter of justice for victims and as a deterrent; (ii) providing appropriate training to prosecutors, the judiciary, the National Police Service and the Directorate of Children’s Services (DCS) to tackle orphanage trafficking; and (iii) developing a campaign to prevent orphanage donations, tourism and volunteerism, and encourage the redirection of funding towards family and community-based services.

The National Care Reform Strategy defines orphanage trafficking as “the active recruitment of children into orphanages or residential care institutions in developing nations for the purpose of ongoing exploitation, particularly through orphanage tourism” (Republic of Kenya, 2022: 13). While commonly associated with exploitation for profit, there is also evidence of children being recruited, transported, and harboured in CCIs for the purposes of sexual and other forms of exploitation, as will be discussed below. Orphanage trafficking can also occur without the involvement of orphanage volunteers.

In 2018, the US Department of State devoted a chapter in its Trafficking in Persons report to “Child Institutionalization and Trafficking” (US Department of State, 2018: 22). It states,

...profits made through volunteer paid program fees or donations to orphanages from tourists incentivize nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities. These facilitate child trafficking rings by using false promises to recruit children and exploit them to profit from donations. (US Department of State, 2018: 22)

While the US report did not refer to Kenya in relation to orphanage trafficking, the Government of Kenya has acknowledged evidence of this crime occurring in the country, noting that “there is ample evidence of its existence in Kenya” (Republic of Kenya, 2022: 127). Though Kenya’s Counter-Trafficking in Persons Act (2010) does not expressly identify orphanage trafficking as a distinct form of trafficking and does not enumerate profit motives among its *non-exhaustive* list of what constitutes exploitation (Article 2), it does identify sexual exploitation, child labour, keeping a person in a state of slavery, and subjecting a person to practices similar to slavery as forms of exploitation. It is important to note that the Counter-Trafficking in Persons Act explicitly recognizes the link between trafficking and other forms of alternative care, including adoption, foster care and guardianship. Article 4 of the Act provides:

4. Acts that promote child trafficking

1. A person who for the purpose of trafficking in persons—
 - (a) adopts a child or offers a child for adoption;
 - (b) fosters a child or offers a child for fostering; or
 - (c) offers guardianship to a child or offers a child for guardianship, commits an offence.
2. A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of subsection (1) commits an offence.
3. A person who commits an offence under this section is liable to imprisonment for a term of not less than thirty years or to a fine of not less than twenty million shillings or to both and upon subsequent conviction, to imprisonment for life. (Republic of Kenya, 2010)

It is not known why CCIs were explicitly omitted in the list of other forms of alternative care associated with trafficking. Persons have been convicted in Kenya for trafficking children, including for the purposes of forced begging—often involving children from neighbouring countries—but none of the cases have involved children in CCIs, despite evidence discussed below that children are recruited into orphanages and harboured for the purpose of ongoing exploitation, including for the purpose of soliciting funds from donors and volunteers and also sexual exploitation.

The link between CCIs and adoption should be noted, considering that adoption is among the family-based care options for children in residential care when suitable, necessary, and in the child’s

best interests. Citing concern over trafficking, the Cabinet approved an indefinite moratorium on intercountry and domestic adoption of Kenyan children and revoked all licenses to conduct adoptions in Kenya in 2014. The Government recommenced licensing of adoption agencies, as well as local adoption. However, Kenya's Children Act, 2022, upholds the moratorium for intercountry adoptions: "the terms of the Moratorium on inter-country and resident adoptions issued on 26th November 2014 shall apply to matters relating to inter-country adoption under this Act."

In 2019, the Government of Kenya undertook situational analyses in five counties (Kiambu, Kilifi, Kisumu, Murang'a, and Nyamira) to provide a snapshot of CCIs (registered and unregistered) and the children living in them. In Murang'a County, it was noted that residential care institutions "have been the hub for child trafficking where children are monetized and exploited for money which harms these children and hampers their development. Some of the homes are businesses only for personal gains" (Ministry of Labour and Social Protection et al., 2020b: 20). In a separate study conducted by Disability Rights International, one Chief in Murang'a County was quoted as saying,

Orphanages realized that if they had more children they could get more donations. At first, they only had local donations but they also started getting international donations. As they received more money, they realized they could use it for themselves. It became corrupt. They started misusing the donations. (Rodriguez et al., 2018: 7).

This sentiment was echoed by the Murang'a community, which noted in a focus group discussion that "children are perceived as business for individuals who want to become rich" (Ministry of Labour and Social Protection et al., 2020b: 20).

Recruitment of children from families

Material poverty and lack of access to services such as education are among the primary reasons why children get admitted into the care of CCIs (National Crime Research Center, 2020: 59; Ministry of Labour and Social Protection et al., 2020c). Most children in CCIs are *not* orphans: they have at least one living parent, or kin who face challenges due to poverty. CCIs often go out into impoverished communities to recruit children from vulnerable families, promising services that may be out of reach for those families, such as education (CNN, 2017)—despite the fact that institutionalizing children because of poverty contravenes the Guidelines for the Alternative Care of Children in Kenya (Republic of Kenya, 2014), modelled after UN Guidelines for the Alternative Care of Children (United Nations General Assembly, 2010: 4).¹ In a CNN story about child trafficking to an orphanage, a relative of a girl who was 'recruited' into an orphanage stated, "I wanted Teresia to stay with me like a daughter, but I didn't have enough money. When I was approached by someone who could take her into an orphanage, I didn't have a choice" (CNN, 2017). When CCIs recruit from vulnerable communities, it can be a sign of intention to exploit children for financial gain, such as soliciting donations from supporters or entertaining visitors. After being recruited into CCIs, children are often instructed to claim they are orphans and required to sing and dance for visitors and volunteers—a form of forced begging (Cheney and Ucembe, 2019: 44). Children in the CCI that Teresia was recruited into often missed school to entertain visitors and were punished if they shared with volunteers that they were not in fact 'orphans' without families (CNN, 2017). In some cases, children are purposely kept in deplorable conditions to increase donations. Meanwhile, children's images and stories are frequently used unethically by CCIs to garner online donations or attract fee-paying volunteers (Oliel, 2021).

In January 2021, a class action lawsuit was filed in the United States under the Racketeer Influenced and Corrupt Organizations (RICO) Act on behalf of donors and volunteers against Illinois-based non-profit, First Love International Ministries, which runs a CCI in Nairobi County. The lawsuit alleges that "First Love preys on American donors for money to build CCIs that are unnecessary and in contravention of international norms" and "...does so by building a rich but deceptive tapestry of children in need" (Calavan v. First Love International Ministries et al, 2021a: 95-96). Recruiters promised families "that their children would receive an education or medical care (which they did not) if their children came to live at First Love" (Calavan v. First Love International Ministries et al, 2021a: 156). It is alleged that many children in the CCI did not have court committal orders, and

¹ The guidelines state, "Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family."

that many were missing birth certificates and hailed from villages “hundreds of miles away from First Love”.

At least one child was specifically alleged to have been recruited and harboured at First Love under false pretences. One sponsor stated:

...Purity contacted us to ask us to please forgive her mother. She said her mother was deceived by a woman who was recruiting children to come to First Love. Her mother was told that First Love was a boarding school and the woman collected the boarding school fees from her mother. Not until Purity was separated from her mother, was she told to lie and say she didn't have a mother. Purity felt trapped & scared & stuck and felt like she had no choice but to go along with it. Purity does not know the amount her mother paid the woman and she has never seen her ever again. She said she felt horrible lying all those years but her & her mother were afraid to speak up and didn't know how to handle the situation. (Calavan v. First Love International Ministries et al, 2021a: 160)

According to the lawsuit, “despite learning over time that many of these children had living family members, there was no record of the required home visits or attempts to reunite the children with their families” (Calavan v. First Love International Ministries et al, 2021a: 151). While the Court is yet to rule on the Complaint as at the time of writing, witnesses in the First Love case are alleged to have been intimidated. The US Federal Court of Illinois, in June 2021, “granted the Plaintiff’s *ex parte* motion for temporary restraining order, motion for leave to file under seal, and motion for protective order to prevent First Love’s Witness Intimidation” (Calavan v. First Love International Ministries et al, 2021b: 1). The restraining order was ultimately lifted and the case was dismissed by the court, which found that it was an improper attempt to apply US racketeering laws to foreign actions and that the alleged facts did not meet the elements to state a claim for racketeering. As such, the facts of the case were never adjudicated. The case was not appealed by the Plaintiff.

Profit-making intention

Though not directly addressing the issue of orphanage trafficking, a number of civil disputes before Kenyan courts raise relevant issues. Property disputes involving CCIs and their management signal red flags, considering that CCIs are meant to be places of care and protection and, according to the National Standards for Best Practices in CCIs, “...must not be established for fundraising, individual gain or personal enrichment. Rather, the best interests of the child should always prevail” (Republic of Kenya, 2013: 20). The number of such publicly reported disputes may be revealing of a larger pattern of for-profit orphanages in the country.

The civil case concerning Robin Nest Orphanage brought a number of relevant issues before the High Court of Kenya, including concerns in relation to unregistered orphanages, foreign volunteers, and the CCI’s management’s intentional use of the institution for financial gain (The High Court of Kenya, 2012). The Plaintiffs filed a civil suit against the Defendants in the Chief Magistrates Court seeking vacant possession of a premises where the Defendants had established Robin Nest Orphanage. While the case initially commenced as a property dispute among quarrelling orphanage operators, the Court aptly asked important questions about the status of the institution as well as the well-being and best interests of the children. In considering the matter, the lower Court noted that “parties are just preoccupied with issues that concern them without really acting in the best interest of the children in the Orphanage” (The High Court of Kenya, 2012: 4) and ordered the Children’s Officer to file a status report on the CCI and close the CCI should it not be registered with NCCS.

The Children’s Officer reported that the CCI was unregistered, operating illegally, and run by two administrators from New Zealand. The Court also considered that the “intentions” of all parties to the dispute were “to control and manage the resources channelled to the home by the so-called sponsors” (The High Court of Kenya, 2012: para. 24). The Court further considered:

The home has only remained a cash cow for the combatants in this dispute for 11 years now. It is on record by the Children’s Officer that it is the management wrangles that has [sic] made it difficult to have the institution registered. It is also on record that the dispute between the parties is about whether resources should be channelled through the

Respondents as the founders of the home or directly to the Appellants as the managers of the home. It is all about control and use of resources and not about the wellbeing of the inhabitants thereof, the children (The High Court of Kenya, 2012: 11, emphasis added).

In this case, the Court ordered the removal of the children and closure of the unregistered orphanage (The High Court of Kenya, 2012: para. 26).

A recent case before the Environment and Land Court also concerned a property dispute at a primary school and CCI in Kiambu County (Environment and Land Court of Kenya, 2021). Media reports suggest that this may involve the same institution and operator which was “raided” by authorities in 2016 following the death of one pupil and allegations of sexual violence. Local media reported that the children were living in deplorable conditions and that the Nigerian-born director “had been using the facility [to] solicit for foreign donations in the guise of assisting and providing shelter to orphans and vulnerable children ...he started running a boarding primary and secondary school where parents paid school fees for their kids” (Thika Town Today, 2016).

Other property disputes have also raised allegations of the misappropriation of donor funds by CCIs (The High Court of Kenya, 2020). These and other management and property ownership disputes brought before Kenyan courts,² though not specifically addressing the issue of child trafficking, raise red flags that some CCIs may be exploiting the children in their care for financial gain—and may thereby be considered to be trafficking children (van Doore, 2016).

As Kenya seeks to decrease its reliance on institutional care, the profit-making intentions of some operators is apparent: once facing closure, some operators transform their operations into boarding schools, in contravention of the Children’s Act and without approval of NCCS (Children Act, 2022 : Article 68). For example, a former CCI operator whose institution was closed in 2013 following serious allegations of orphanage trafficking and other forms of violence against children subsequently opened and operated a boarding school. The fact that “the facility appealed online for foreign volunteers to visit and donors to contribute to the ‘orphanage’ and volunteers reported online having visited the same ‘orphanage’” (Ministry of Labour and Social Protection et al., 2020b: 46) reveals the nefarious nature of this shift. This operator is not alone. Since the Government’s intentions to deinstitutionalize became clear, a number of CCIs purporting to operate in Kenya are actively fundraising online to transform into or build a boarding school as a means of circumventing the legal framework. This is because boarding schools operate under different regulations than CCIs, and do not have the same oversight over children in need of care and protection. Such conversions “underscore the importance of taking a cross-sectoral and cross-departmental approach to care reforms” (Ministry of Labour and Social Protection et al., 2020b: 47).

Trafficking’s link with orphanage voluntourism

Orphanage tourism includes volunteering at, or visiting, orphanages and is demonstrated to have harmful effects on children (Zeanah et al., 2019). Typically, volunteers from wealthy countries visit CCIs in less developed countries such as Kenya. Orphanage volunteering has become quite popular in the last two decades, and the industry that has emerged to support it has contributed to a consumer demand for institutions and children that Cheney et al have labelled ‘the orphan industrial complex’ (Cheney and Rotabi, 2017, Cheney and Ucembe, 2019). For instance, half of the 42 CCIs in Kilifi County reported that they relied on volunteers, with 25 percent relying on international volunteers (Ministry of Labour and Social Protection et al., 2020a: 22).

Orphanage voluntourism is considered a pull factor, contributing to the recruitment of children into orphanages for profit. While the presence of foreign volunteers in CCIs has been documented (Ministry of Labour and Social Protection et al., 2020c), the number of orphanage volunteers and the magnitude of the problem is unknown. Evidence suggests a number of hotspots, including in Kenya’s capital and coastal regions, which also happen to be popular tourist destinations. According to the 2020 Situational Analysis of coastal Kilifi County, “[i]t is possible that the presence of tourists (and potential sponsorship and donations that come with tourists) in Kilifi may have inadvertently

² See e.g. Care Mission Kenya & 4 others v Benta Akinyi Otieno & another t/a Deity ECD Primary School Busia (K) and Emmanuel Children Home Busia (K) [2019] eKLR; See Ng’ambwa Heartbeat Community Children’s Home & Rescue Center v Heartbeat Limited [2017] eKLR.; Republic v Director Of Children’s Services & 3 Others Ex-Parte Chairman, Secretary & Treasurer Of Good Hope Orphanage Home [2014] eKLR; Francis K. Baya & 2 others v Sammy Mutile & another [2015] eKLR; Hamm Helmut Vs Farida Riziki (2011) e KLR See also Catherine Nyaga & 8 others v County Government of Kiambu [2021] eKLR.

created a pull factor for children into institutions” (Ministry of Labour and Social Protection et al., 2020a: 15).

Foreign volunteers engage in voluntourism by spending short periods of time volunteering at CCIs around Kenya, including unregistered institutions which have been set up specifically to attract foreign volunteers and donors. These CCIs can therefore be sites of trafficking or other forms of exploitation (van Doore, 2016). The perfect clients are fee-paying voluntourists, often well-intentioned individuals who travel to Kenya to ‘help’ ‘orphans’ (Oliel, 2021). Some volunteers pay fees to international travel agencies for the experience or to orphanage operators in Kenya who promote fee-paying volunteer stays using various means. Others coordinate trips as part of religious missions or school groups (Cheney and Ucembe, 2019). Preying on these good intentions, orphanages claim to provide care for ‘orphans’, but in reality, some CCIs are sources of profit for unscrupulous operators who recruit children to orphanages in order to exploit them for financial gain (Oliel, 2021). In other cases, orphanage volunteers themselves pose a serious risk to children. There have been a number of well documented cases of abuse by volunteers engaged with children in CCIs, including a case involving a British Airways pilot who was alleged to have sexually abused children during visits to Nyumbani Children’s Home (BBC, 2016). He committed suicide before appearing in a UK Court.

Kenya’s Citizenship and Immigration Act (Republic of Kenya, 2011) is clear that the “the holder of a visitor’s pass shall not accept or engage in any form of employment, whether paid or *unpaid*... without the permission of an immigration officer in writing” (Article 31(5), emphasis added). The Act is clear that someone who engages in unpaid work “shall not be issued with a visitor’s pass and shall apply for a special pass...” and that a person who engages in voluntary employment commits an offense (Article 31(6-7)). Foreign nationals volunteering in CCIs are therefore not legally permitted to enter Kenya on a tourist visa. There are also separate visas applicable for missionaries under Kenyan law.

In the Robin Nest case, the Court raised the important point that foreign volunteers are not properly obtaining the appropriate authorization to enter into Kenya and undertake voluntary work in an institution (The High Court of Kenya, 2012). There is also evidence that foreign nationals are coached to lie to Kenyan authorities by CCI operators. In the First Love case, the complainant, an American donor and volunteer, alleges she was not asked to undergo a background check and provides an email as evidence that she was given “very specific instructions to lie to the Kenyan authorities about the reason for her trip” (Calavan v. First Love International Ministries et al, 2021a: 108). The email states: “Please also see the revised instructions for applying for the Kenya visa which I have attached to this email message. It tells you to put ‘tourist’ for reason for travel and ‘to visit friends’...or ‘tourist’ for the reason of your trip” (Calavan v. First Love International Ministries et al, 2021a: 109).

Additional requirements to volunteer in a CCI are set out in the National Standards for Best Practices in Charitable Children’s Institutions, including criminal background checks from one’s country of residence and proof of legal entry into Kenya (Republic of Kenya, 2013). While in theory “volunteer workers are appointed by the CCI recruitment panel *upon recommendation from a recognised authority, organization or persons of good public standing*” (Republic of Kenya, 2013: 40, emphasis added), this does not happen in practice. The Directorate of Children’s Services, the recognised authority for children in CCIs, is rarely consulted or even informed of the arrival of foreign volunteers or visitors.

Other court cases serve to highlight additional problems with short-term orphanage volunteering. The civil case concerning Robin Nest Orphanage also addressed the issue of foreign volunteers, emphasizing the dangers of having foreign volunteers who do not undergo appropriate screening and fail to obtain appropriate work permits:

We cannot have foreigners who have not been properly investigated and/or screened as to their suitability to work in our children’s home to come and be with our children as the administrators of a home at such short period and leave. Nobody knows their qualifications, their intentions and suitability to work in children’s homes. Maybe they are only visitors or tourists, that is why they remain for only three (3) months, the period a

tourist visa lasts and do not bother to apply for work permits. (The High Court of Kenya, 2012: para. 23)

The Court further raised a number of important considerations relevant to the discussion of the role of short-term foreign volunteers, which as noted above can have the effect of pulling children into CCIs. It considered that short term trips (in this case three months) were too short “to undertake any meaningful work” (The High Court of Kenya, 2012: 8). Second, the Court recognised that “administrators come from different countries and lack the grasp of the issues affecting the institution” (The High Court of Kenya, 2012: 8). In other words, foreign staff and volunteers do not have the local knowledge needed to understand the issues affecting children in institutions in Kenya, making their interaction and engagement dubious. Moreover, the very rotation of volunteers through CCIs adversely affects a child’s ability to form healthy relationships in the future (Richter and Norman, 2010). It also places them at heightened risk of trafficking by creating a demand for children, leading to their recruitment and harbouring in residential care in the first place.

Volunteers, despite the role they play in these harms, have also played a role in shining the light on some of the indignities and violations children in CCIs face (CNN, 2017). Among the examples found online is a piece entitled the “Art of Whistleblowing”, in which a former orphanage volunteer published a letter jointly written by the former director of a Nakuru-based CCI, two volunteers, sponsors, and directors (Bilginan, 2011). The letter warns “Current/Prospective Sponsors, Volunteers and Staff” of a number of serious concerns over the CCI, including that it fundraises for children no longer in its care and for projects which do not exist. Common to these cases, the letter warns that children have families, “exit strategies do not exist”, and children and young people are kept in care until they are kicked out at the age of 18 (Bilginan, 2011).

Whistle blowers sometimes face resistance, intimidation and harassment, however, including threats of retaliation when they seek redress. In the First Love case, for example, it is alleged that the defendants “used intimidation and threats and caused others to use intimidation and threats to hinder, delay, or prevent the communication of the facts alleged herein” (Calavan v. First Love International Ministries et al, 2021a: 248). Evidence presented in the complaint includes a letter to the Defendant, a former volunteer and donor, from “an Illinois attorney acting on behalf of First Love. First Love’s attorney threatened her for taking her concerns to government officials and agencies in Kenya” (Calavan v. First Love International Ministries et al, 2021a: 192).

Missed opportunities to prosecute orphanage trafficking in Kenya?

Despite the evidence of child trafficking to orphanages, no person has been charged with this crime in Kenya—even in situations where the facts present the recruitment of children for the purposes of exploitation.

In February 2021, Gregory Dow, a US national was convicted and sentenced for 15 years imprisonment for sexually abusing girls in an orphanage he founded and operated with his wife (Department of Justice, 2021). While he pled guilty to charges of engaging in illicit sexual conduct in a foreign place (Department of Justice, 2020), the facts revealed that trafficking may have been a more appropriate charge, reflecting the totality of the crime which went beyond simply engaging in illicit sexual conduct with four minors. Gregory Dow and his wife moved to Kenya in 2008 to start the Dow Family Children’s home, which “remained in operation for nearly a decade with financial support from donors in the United States, including churches and other faith-based organizations” (Department of Justice, 2021). According to the Department of Justice (2021):

[Dow’s] wife even transported the victims to a medical clinic to have birth control devices implanted into their arms, which allowed Dow to perpetrate his crimes without fear of impregnating his victims. The defendant purported to be a Christian missionary who cared for these children and asked them to call him “Dad.” But instead of being a father figure, he preyed on their youth and vulnerability.

The Dows recruited, transported, and harboured children in their CCI for the purpose of sexual exploitation. When the institution was closed in 2017, some of the 87 children in the Dow’s care were immediately reunified with family (Kuria, 2021). Children also died in the care of the Dows, and the victims’ families parent(s) still do not have answers as to “how and why the remains were buried” (Kimutai, 2021).

The Dows are not alone: a Dutch national was reported to have recruited girls from their mothers to his orphanage in a rural area and exploited them for sexual purposes. He was also reported to have “...duped the children’s mothers that he would sponsor their education in his ‘school’” (Kiage, 2019). He was, however, charged with the crime of defilement and not trafficking despite Kenya’s legislation which includes sexual exploitation as an enumerated ground. Interestingly, the publicly reported facts could lend support to the assertion that the Dutch national possessed the requisite intent (Oliel & Otiende, 2019): he was also previously convicted and served a sentence in the Netherlands for sexual crimes and was charged with the “defilement” of three girls at Donholm Estate in Nairobi in 2002. He is also alleged to have posted “amateur videos of minors dancing and posing suggestively, including in a bedroom” (Kiage, 2019) on his YouTube channel.

In both cases, it appears that the children may have been recruited, transported, and harboured for the purpose of sexual exploitation, though the perpetrators were not charged with child trafficking.

Conclusions and recommendations

We commend the Kenyan government for the progress it has made over the last decade to prevent and respond to human trafficking whilst laying the foundation for a multisectoral and coordinated care reform effort for children. Kenyan authorities, including the Anti-Human Trafficking Child Protection Unit within the Directorate of Criminal Investigations, as well as courts have been at the forefront of addressing violations committed against children in CCIs, and in relation to sexual and gender-based violence in particular. However, no person has been prosecuted in Kenya for orphanage trafficking to date, despite reports of this crime taking place.

The National Care Reform Strategy is a catalyst for wider strengthening of the child protection system, and thus anti-trafficking efforts. It recognizes the need to address child trafficking to orphanages, as well as the link between child trafficking and institutionalization, as an important part of the care reform process. While welcoming the moratorium imposed by the Government on the registration of new CCIs in 2017, reform efforts would be strengthened by *suspending* the registration of new CCIs.

Anti-trafficking actors also need to be part of such efforts. According to an unpublished survey undertaken by Stop the Traffik, Changing the Way We Care (Maestral International and Catholic Relief Services), and Stahili Foundation, 80 percent of civil society organizations supporting child victims of trafficking place children in CCIs as a protection response. The continued use of CCIs by the anti-trafficking sector provides strong incentives for the institutions that are more resistant to reform efforts—which are critically needed considering the harms of institutionalization on a child’s development and well-being, even where orphanage trafficking is not at issue. The National Strategy recognises the importance of “preventing the use of institutional care as a means to ‘protect’ children from “trafficking...as well as being used to ‘rehabilitate’ children following trauma” (Republic of Kenya, 2022: 42). Developing family-based alternatives such as emergency foster care will be important to ensure that child survivors of human trafficking are provided with care and protection that meets their individual needs and is in their best interest.

As recognised in the National Care Reform Strategy, there is a need to strengthen the legal and policy framework by explicitly recognizing and criminalizing orphanage trafficking as a distinct form of trafficking; and to build the capacity of relevant authorities to prevent, identify, prosecute, and respond to orphanage trafficking. Prompt, effective, and well-coordinated investigations conducted by those trained in trauma-informed and child-sensitive approaches are critical to securing evidence of orphanage and all forms of VAC committed in CCIs, reducing harm, safeguarding well-being, and improving outcomes for survivors, including for those who may have left care. Ineffective, unsafe, and otherwise unethical investigation processes cause and exacerbate harm, including by re-traumatizing survivors, limiting chances for justice, and infringing on other children’s rights.

The National Strategy also recognizes that “halting of foreign voluntourism and volunteering could provide an opportunity to reset the narrative and approach taken towards orphanage trafficking and orphanage tourism and volunteerism” (Republic of Kenya, 2022: 32). We endorse this.

It is also essential that the monitoring and reporting of violations be closely linked to appropriate responses and support, including referral to services. The capacity of actors to coordinate

response provision is crucial. There is a need to develop an emergency response mechanism that is adequately funded and well-structured so as to enable a multisectoral response to orphanage trafficking—including those cases which may require removal from institutional care. This may include, for example, a multidisciplinary team, including government children’s officers, social workers, and counsellors *who are specifically trained* and deployable to CCIs and who can be seconded on demand to ensure that the wellbeing and rights of children are safeguarded. Government should increase funding to support children and families throughout and undertake individualized case management with the ultimate goal of reintegration. Support should also be provided for placement in alternative family-based care, where necessary, suitable, and in the child’s best interest. Decisions must be based on the individual needs of each child to ensure that the care placement promotes stability and permanency (Republic of Kenya, 2019).

As we conclude, we would like to highlight the following five additional practical recommendations:

1. **Meaningful inclusion and participation of children in CCIs** is critical to addressing violations which affect their rights and well-being. Raising awareness among children in CCIs of their rights, and where and to whom to report where they feel their rights are violated, is crucial, including through the provision of child-sensitive training and materials.
2. The Ministry of Labour and Social Protection should **publish the list of registered CCIs and information on where and how to report violations against children in CCIs online, especially** ing for foreign donors and volunteers who may not easily be able to reach a sub-county children’s office.
3. In light of the misinformation being provided to would-be volunteers, the Government should **issue a directive clarifying its position on orphanage volunteering as per the National Strategy**, and reiterating the safeguards already provided in the legal and policy framework.
4. Address the issue of orphanage voluntourism by **sensitizing consular staff in embassies located in volunteer sending countries and strengthening the safeguards in the Republic of Kenya Electronic Visa registration system**. This could include requiring that individuals applying for a tourist visa declare that they are *not* entering Kenya for the purposes of unpaid voluntary work and will not be interacting with children in alternative care settings. In cases of violations, the Directorate of Children’s Services and the Directorate of Immigration Services should work in a coordinated fashion to enforce regulations.
5. **Disseminate information to would-be tourists**. This may include disseminating Information on orphanage volunteering and orphanage trafficking on relevant Government websites (e.g., DCS, NCCS), including on the E-Visa Portal as well as Kenyan embassy websites in volunteer sending countries. The Government should consider leveraging existing mechanisms such as the Kenya Tourism Board to increase awareness of orphanage volunteering and orphanage trafficking to would-be tourists, such as by providing information official information on Kenya Airways flights and other airlines from hotspot volunteer sending countries (e.g. KLM/Air France and British Airways), as well as those airlines operating flights to Kenya from major international transit hubs (e.g. Turkish Airlines).

We feel that these recommendations, if followed, will go a long way toward helping the Government of Kenya effectively address and prevent orphanage trafficking.

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