

**Summary of Major Findings and Recommendations of  
Two Studies of Legal-Policy and Institutional Issues  
Related to Orphans and Vulnerable Children in Uganda**

**June 2005**

**POLICY Project**

This publication was produced for review by the United States Agency for International Development (USAID). It was prepared by the POLICY Project. The POLICY Project is funded by USAID under Contract No. HRN-C-00-00-00006-00, beginning July 7, 2000. It is implemented by Futures Group in collaboration with The Centre for Development and Population Activities (CEDPA) and Research Triangle Institute (RTI). The views expressed in this report do not necessarily reflect those of USAID or the U.S. government.

## *Preface*

In November 2004, Uganda's cabinet of ministers adopted a policy on orphans and vulnerable children (OVC) following three years of organised and structured data collection, analysis, stakeholder workshops, and other efforts to which the POLICY Project contributed.

The national OVC policy development process was undertaken by the Ministry of Gender, Labour and Social Development (MOGLSD) with support from USAID/Uganda, through the Applied Research in Child Health (ARCH) Project. Financial and technical assistance was provided by a consortium including Boston University, Makerere University, and UNICEF. The first major activity was a *Situation Analysis of Orphans in Uganda* completed in 2002. One of the main recommendations of the report was that a National OVC Policy (NOP) and a National Strategic Program Plan of Interventions (NSPPI) were needed to guide local, national, and international efforts to mitigate the OVC crisis in Uganda. The situation analysis also concluded that Uganda had many child welfare policies and laws in place. While some of those policies and laws address the needs of orphans and other children, there remain many gaps as well as inconsistent implementation of existing laws and policies. Five thematic working groups were established to do further analysis and conduct program evaluations in key areas identified in the situation analysis, the results of which were to be synthesised and integrated into a final national OVC policy. Important areas needing further analysis were law, policy, and institutional arrangements. POLICY offered to assist with this analysis using the project's core funds.

Early in 2003, the POLICY Project, at the request of USAID's Africa Bureau, was preparing to undertake a study of laws and policies affecting OVC in a selected number of countries. In view of the opportunity presented by the ARCH Project and efforts of the MOGLSD, POLICY offered to use its core funds to include Uganda as one of the study countries and to adapt the study methodology so that it would respond to the ministry's need for in-depth analysis of findings in the situation analysis. Specifically, POLICY offered to further examine the adequacy of existing laws and policies for meeting needs of OVC and to identify gaps, assess the degree to which existing laws and policies are implemented, identify weaknesses in enforcement provisions and institutional arrangements, and make recommendations for responding to legal-policy gaps and strengthening enforcement mechanisms. POLICY also offered to tailor the format, content, and timetable of the study to make it as useful as possible to the MOGLSD for developing the National OVC Policy.

The study was conducted by legal consultant Deo Rubumba Nkunzingoma through meetings with the MOGLSD, the five thematic working groups, and other partners; a review of the situation analysis, literature from Uganda and other countries, and various study reports; an in-depth examination of pertinent laws and policies; interviews with more than 50 staff from agencies and organisations serving children or which otherwise affect the lives of OVC; and a review of records related to children's services that have a bearing on OVC services and rights. In addition to conducting the study and submitting a

first draft in August 2003, the legal consultant assisted in facilitating consensus-building workshops with stakeholders. In fall 2003, the MOGLSD asked POLICY to do a further analysis of the statute that created the National Council for Children and make recommendations for its restructuring. Norine Jewell, U.S. based POLICY Advisor, provided technical support, and John Kabera, POLICY/Uganda Country Director, provided overall supervision for this activity.

Part One of this summary describes the first study of legal-policy issues and Part Two describes the analysis and recommendations regarding the National Council for Children. The full reports of the studies can be obtained upon request from the POLICY/Uganda or POLICY/DC office.

## **Part One**

### **Findings and Recommendations from “Legal-Policy Issues Affecting Orphans and Other Vulnerable Children in Uganda”**

The study of legal, policy, and institutional arrangements related to orphans and vulnerable children (OVC) carried out by the POLICY Project was submitted in final draft form to MOGLSD August 2003 and used in subsequent stakeholder meetings and workshops. It provided the basis for key elements of the final OVC policy adopted by the cabinet. This summary report consolidates and re-organises important information under seventeen headings that represent the major issues addressed in the study.

#### **Overview**

The 1995 Constitution of Uganda provides that “*The Law shall accord special protection to orphans and other vulnerable children.*” No law was enacted to address this provision, and there are no legal definitions of what constitutes an “orphan” or a “vulnerable child.” However, Uganda has put in place a number of measures that attempt to address the needs of children in general. For example, following the World Summit for Children in 1990, the Ministry of Planning and Economic Development drew up a National Plan of Action for Children (UNPAC) that was launched in 1993 and proposed strategies for responding to children’s needs. The National Council for Children (NCC) was inaugurated the same year to co-ordinate UNPAC and the council’s creation was subsequently embodied in a 1996 statute. It was envisaged that the UNPAC activities would be carried out within the existing government structures and informal sector mainly through NGOs; thus, the NCC did not receive substantial additional funds.

In 1996, in an action separate from the NCC statute, Uganda enacted the Children Statute (CS) after a wide consultative process aimed at adopting many of the principles of the UN Convention on the Rights of the Child, although not all of them. The CS created a general duty of every local government council from village to district level to safeguard and promote the welfare of children within its area. However, it did not provide guidelines on how this would be implemented other than requiring certain services in

every village such as “... *a centre for providing leisure to children.*” Nor did the CS specify the institutional framework in which children’s rights would be protected and enforced.

Despite these efforts, the situation analysis generally found that OVC suffer from serious abuse and neglect, have inadequate or no access to essential services, have poor parental care and guidance, and are generally left on their own during the most crucial stages of their growth and development. It also found that there is an significant gap between formal policies and laws and their actual implementation

## **1.0 AMENDMENT OF THE CHILDREN’S STATUTE**

In order to fill the existing gaps and in conformity with the Constitution to legislate for the protection of orphans and other vulnerable children, amendments to the CS should provide for the following:

- A definition clause defining “*orphans and other vulnerable children*” and creating the category of vulnerability;
- Categories of certain offences and abuses, for example, child neglect and different punishments for such;
- Specific rights of orphans and other vulnerable children;
- Specific duties of the state/government or local authorities with regard to protection of orphans and other vulnerable children and their enhancement in the enjoyment of the rights of the child;
- Enforcement mechanisms with regard to the laws that concern orphans and other vulnerable children, to ensure compliance;
- Specific categories of persons that shall be granted and considered to shoulder parental responsibility, e.g., the aunt, uncle, friend—in that order;
- Mechanisms to assure that the person who is exercising parental responsibility for an orphan or vulnerable child is duly exercising that authority and is receiving assistance from the community and the government in carrying out his/her role;
- Guarantees that orphans have access to the estate of deceased parents or guardians by way of inheritance;
- Creation of a mandatory or statutory periodic registration of orphans and other vulnerable children by the Secretary for Child Welfare at the local government (LC-1) and a register at the district;

- Creation of a simple offence for intentionally failing to register an orphan after the death of one or both parents; and
- A system of registration of guardians.

## **2.0 EXECUTING AGENCIES AND IMPLEMENTATION MECHANISMS**

There are at least six important agencies dealing with children’s issues, but they are not coordinated and are not accountable to any specific body. The study made the following recommendations:

- There should be put in place a structural mechanism for one agency to coordinate the various agencies dealing with children-related issues. This “lead” agency should supervise activities and ensure accountability by the other agencies.
- The most appropriate agency to perform this function is the National Council for Children (NCC) which was created by statute separate from the Children Statute. The most effective means of transforming the current NCC into the coordinating agency is to merge the Children Statute (CS) and the NCC Statute into one law. The NCC would then become the legal agency under the CS performing the stated functions and would be given more powers and functions to oversee and supervise children’s issues, to receive reports and act on them, and to carry out other related functions.
- In view of the laxity in implementation, the policy should mandate the creation of structures to support this agency in the implementation of OVC-related issues in all sectors. For example:
  - Creation of additional and more punitive administrative mechanisms (e.g., dismissal of a teacher who is involved in a case of child abuse).
  - Introduction of stiffer penalties than currently provided in cases where parents and guardians mistreat children.
- A mechanism should be created that ensures co-ordination, supervision, and accountability by all agencies concerned to ensure that the laws and policies are implemented.
- The NCC should follow up on the provisions of the law that need attention (e.g., lack of a specific enforcement unit or implementation mechanism).

- Implementation should be targeted to the various entities involved including local governments, parents and guardians, central government, NGOs, charitable organisations, and other groups.

POLICY's more detailed study of the NCC led to additional, very specific recommendations for strengthening its role; these are described in Part Two of this Summary Report.

### **3.0 AMENDMENT OF LAWS DEALING WITH REGISTRATION OF BIRTHS AND DEATHS**

Birth registration is an essential tool for monitoring every child and ensuring that his or her needs are met. The laws regulating birth registration should be reconciled. This requires amendment to the 1973 regulations on the registration of births and death and the CS to include detailed requirements for birth registration.

- The Local Government Statute, the CS, and the 1973 Registration Rules should be amended to ensure birth registration through a systematically managed process down through decentralised levels of government.
- Certain policies on registration should be decentralised to enable and require local governments at the sub-county level to maintain the registers of births and deaths. This information will be periodically captured at the national level to maintain data and records.
- Hospitals and health centres should be maintained as birth registration centres.

### **4.0 AMENDMENT OF THE PENAL CODE**

There are offences spelt out in the Penal Code that criminalise actions with a negative impact on children, but these are inadequate for protecting them. Amendments to the Penal Code should include:

- Stiffer punishments in order to deter the ever-increasing numbers of reports of offences against children;
- A broader range of punishments for child-related offences that are limited not only to imprisonment but also deterrence measures such as a requirement for community service, which would also have a beneficial impact;
- Provision for remedies to restore the child's loss of a right, his or her dignity, or an opportunity resulting from an offence against the child;
- Creation through the Local Councils of a system of tracking down such abuses and allowing the Local Village Council to prescribe community punishments or orders that are fast and easy to administer. This can only be done by

amending the CS, the LC Statute, and the Local Government Act to give them more elaborate powers.

## **5.0 PROTECTION AND WELFARE**

Section 11(I) of the CS, which empowers Local Councils to protect children, has not been operationalised. Therefore:

- The new policy should provide guidance as to what local governments can do to safeguard and promote child welfare in order to enforce the CS; and
- Regulations should be developed under the CS to elaborate on this responsibility in greater detail.

## **6.0 AMENDMENT OF PROPERTY AND INHERITANCE LAWS**

Uganda's inheritance laws lack teeth and one of the greatest problems affecting orphaned children is their inability to access property of their deceased parents or guardians. There is an urgent need to amend the whole set of inheritance laws to particularly ensure that

- Widows are not displaced by any person;
- Children are guaranteed the right to the property of their deceased parents or guardian;
- The Administrator General's office is decentralised to districts;
- The jurisdiction of Chief Magistrates is increased in estate cases;
- A legal procedure is created that is easily accessible and fast.

## **7.0 CHILD ABUSE COMPLAINTS MANAGEMENT SYSTEM**

The procedure for receiving children's complaints should be reviewed and rules should be created to give special attention to these complaints. These rules should:

- Expedite the gathering of evidence and subsequent prosecution of offenders;
- Ensure that the law of evidence and the regulations applicable to victims of sexual abuses (e.g., defilement) are interpreted to enable child victims to testify without stress;
- Require all institutions dealing with reports of child abuse and other violations against children to have a clear procedure in place for dealing with offenders.

## **8.0 FOSTERING/GUARDIANSHIP**

The CS places emphasis on foster care and adoption. However, fostering is perceived under the CS as a process toward adoption while guardianship is

assumed by good will. Thus, there are no specific regulations or guidelines for guardians.

- Fostering and guardianship should be given specific legal recognition in a comprehensive legal framework that guarantees them special assistance in support of the child’s welfare including education, health, leisure, and food.
- There should be regulations requiring registration as guardians.

## **9.0 ACCESS TO EDUCATION**

There remains a need to ensure that guardians or persons who have custody of children are legally obligated to send them to school. In view of this:

- Legislation should make primary education compulsory and make it an offence for a parent, guardian or anybody with custody of a child to fail or neglect to send—or otherwise ignore sending—a child to school.
- The policy on OVC should create a system of registration for OVC to access universal primary education.
- The OVC policy should create a framework for disadvantaged children in school that specifies how the child will be helped with regard to daily needs such as uniforms, food, and other requirements.

## **10.0 ACCESS TO HEALTH**

There is no mechanism to ensure that children have access to health services. Therefore, access to health services for OVC greatly depends on who is caring for the child and in whose custody the child is. The report recommended the following:

- A legal framework and a health rights bill should ensure that provision is made for health care of all children and particularly the most vulnerable.
- Regulations should specify that guardians must provide for the health care of orphans under their care.
- Regulations could also target institutions that do not provide for health care of children.
- Regulations could provide for random visits to guardians and institutions to determine whether they are properly fulfilling their duties of caring for the health of children.

## **11.0 HOMES/CARE CENTRES**

There is no guidance or adequate financial provision for local governments to provide for “remand” homes. It is recommended that:

- The CS or Local Government Act develop regulations instructing local government councils to create a framework for dealing with orphans and remand homes at their levels.
- The legal procedure for licensing or approving homes be reviewed to ensure that the home to be approved has the capacity to act in the best interests of the children.
- Local governments provide more frequent periodic and routine supervision of the homes.
- Homes be required to submit monthly reports to the local government regarding their operations, including sources of funds and their use.

## **12.0 CHILD LABOUR**

Child labour is a serious problem in Uganda. In order to protect children from hazardous labour, the following recommendations are made:

- Employment and labour laws should be amended to provide clear guidelines as to what constitutes “hazardous” work and what may be considered acceptable “domestic” work, and the circumstances under which domestic work is permissible and at what point it violates the child’s right.
- Supervision by an adult should be required in cases of domestic work to protect the children from any harmful situations.
- Clear and stiff penalties should be imposed on persons who employ and exploit children.

## **13.0 STREET CHILDREN**

Orphans make up the majority of street children. Poverty, hunger, civil strife and broken homes are among the factors that are contributing to an increase in numbers of street children. Management of the problem will require:

- Regulations dealing with street children should make provisions to protect children and govern all activities related to their management, control, removal, counselling, and investigation.
- Specific provisions should be made for requiring parents to take back their child, where the parents of a street child are known.
- Measures should be adopted to absorb street children either by returning them to the family or placing them under a care order.

- The OVC policy should develop sufficient safeguards within the environment of children that will prevent children from going out on the street.

#### **14.0 CHILDREN IN CONFLICT WITH THE LAW**

There are many legal provisions dealing with children in conflict with the law, but it was found that children are not receiving justice. The report recommended:

- Improvement in the process of bringing cases and complaints to court, including identification of specific OVC-related cases and providing for fairness in treating the case at each step of the way;
- Greater support for the operation of district family and children's courts to prevent difficult and prolonged access to and delivery of justice; and
- Establishment and operation of appropriate remand homes specifically designed for children.

#### **15.0 CREATION OF THE JUVENILE JUSTICE SYSTEM: UGANDA POLICE CHILD AND FAMILY PROTECTION UNITS**

The report observed that the Uganda Police Child and Family Protection units are not provided for in law. The report recommended the following:

- In order to improve the criminal procedure system, the CS should make legal provision for this unit. It should be given adequate support and have a presence in all police stations throughout the country.
- The Child and Family Protection Unit of the Uganda Police should be strengthened to expeditiously and professionally handle child-related cases.

#### **16.0 RECORDS MAINTENANCE SYSTEM**

Adequate data through systematic collection and recordkeeping systems are essential to a sound OVC policy. The report recommended that the policy introduce a system of records for children that is uniform, using client forms or cards that record as much information as possible to ensure that all child-related issues can be addressed.

#### **17.0 REFUGEE ORPHANS AND OTHER VULNERABLE CHILDREN IN CAMPS**

There are no special regulations to protect the refugee children and children in camps. The report recommended introduction of guidelines on their entitlements

with specific provision as to how their education, health, and food needs should be met.

## **Part Two**

### **Findings and Recommendations from “Legal - Policy Review of the National Council For Children (NCC)”**

Among the recommendations of the legal-policy issues study was that the national OVC policy create a mechanism that ensures co-ordination, supervision and accountability by all agencies dealing with children. Specifically, the study recommended that the NCC Statute and the CS be amended to create one legal agency charged with such coordination and accountability and that the NCC be reformed to take up this mandate.

In fall 2003, the MOGLSD asked POLICY to do a further analysis of the statute that created the National Council for Children and make recommendations for its restructuring. The specific purpose of the study was to briefly analyse the current NCC Statute with a view to providing the council with a new mandate to effectively take up the challenges of children’s issues in Uganda. The legal consultant completed and submitted his analysis in December 2003. This summary highlights the study’s major findings and recommendations.

#### **Overview**

The study pointed out that any agency with a mandate to oversee children’s issues must transcend sectoral boundaries and engage with civil society organisations, district and local government, and communities. The agency would have to be an independent body positioned at a high level of authority with its own budget line item.

The study found that the NCC is not linked by law to the CS, and it therefore lacks authority to enforce the provisions of the statute. In any case, the NCC structure is too weak to carry out a mandate that straddles multiple sectors. For example, the current goal and mission are not well defined; there are no operational objectives; the current statute specifies that the council will “coordinate and provide direction to all *persons* dealing with children” but does not make similar provisions for *institutions*; it does not explicitly provide for the function of supervising institutions dealing with children; and there are no provisions compelling all institutions to comply with guidelines on children’s rights provided by the NCC or to cooperate on sharing or getting information on issues affecting children. The appointment of the council’s chairman and key secretariat staff is done by the line minister, making it in effect a line ministry organ. The remuneration and conditions of employment at the NCC cannot attract and retain suitably experienced and qualified professionals to serve in it. The NCC also competes with the line ministry for budgetary allocations, as it falls under the overall ceiling of that ministry and in most cases, other ministry needs take priority over the NCC.

Based on these findings, the study put forth a series of recommendations.

## **1.0 THE STRUCTURE OF THE NATIONAL COUNCIL FOR CHILDREN**

It was recommended that the NCC have a Board that will operate as the policy organ of the council and that it be composed of a specified number of members, for example seven or nine, with a clear mandate and responsibilities.

## **2.0 FUNCTIONS**

It is recommended that the functions of the NCC be retained and expanded to include coordination and supervision of various responsibilities spelled out in the CS. This will include the co-ordination of the activities of the Secretaries of Children in District Local Councils, Probation Officers, and others to ensure a smooth flow of their activities. Other specific functions will include:

- review and advise on policies and strategies for child welfare and rights;
- integrate children's welfare measures into national development;
- liaise with other agencies to ensure that child-based programs, plans, and laws are implemented;
- monitor and evaluate policies for appropriateness and impact on children;
- carry out research and studies about the changing needs of children;
- identify resource inadequacies and mobilise more resources;
- help create capacity for child welfare at household, community, district, and national levels;
- develop and operate an information system linking institutions and agencies dealing with children;
- coordinate all institutions and agencies involved in child-related activities;

## **9.0 SECRETARIAT**

It is recommended that the day-to-day management of the NCC be handled by a Secretariat, headed by an Executive Director appointed by the minister on the advice of the Board, with a technical team of not more than four departments or divisions (e.g., Education, Health, General Welfare, and Compliance/ Enforcement/ Protection).

## **10.0 OTHER STRUCTURAL MECHANISMS**

In order to capture and integrate all children's issues in all sectors, the new policy should create special enforcement mechanisms. For example,

- (i) A Consultative Forum, which would bring together all interest groups to review and advise on pertinent developments and issues affecting children; and

- (ii) A child protection information management system that would ensure bottom-up reporting, supervision, and accountability. This would capture important elements of education, health, and general welfare for orphans and vulnerable children.

## **11.0 MOGLSD**

The NCC would operate under the general supervision of and be accountable to the Minister of Gender, Labour, and Social Development, but would be largely autonomous. The NCC would be required to produce an annual report on the “*State of the Children*,” which the Minister would be required to table before Parliament for discussion.