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Sida Review

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THE DIVERSION PROGRAM IN KENYA

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List of Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
ANPPCAN	Africa Network for the Prevention and Protection of Child Abuse and Neglect
CBSSC	Community Based Support Systems for Children
CLAN	Children's Legal Action Network
CPU	Child Protection Unit
CSO	Civil Society Organizations
CWS	Children Welfare Society
DCLC	District Child Labour Committees
DCS	Department of Children Services
DDCT	District Diversion Core Team
DF	Diversion Framework
DP	Diversion program
DPAS	Department of Probation and Aftercare Services
FORUM	
GCN	Girl Child Network
ICC	International Criminal Court
ILO	International Labour Organisation
JICA	Japanese International Development Agency
JJS	Juvenile Justice System
NDCT	national Diversion Core Team
SCS	Safe the Children Sweden
Sida	Swedish International Development Agency
UNCRC	United Nations Convention Rights of the Child

Executive Summary

The Diversion Program in Kenya was established in order to protect children from inappropriate institutionalisation and demonstrate a viable alternative to custodial care. Its main aim is to ensure that children in conflict with the law and other categories of marginalized children are better protected against abuse and rehabilitated and re-integrated back into the community. The project was implemented in phases since January 2001 and expanded to 14 program areas¹. The Diversion Program was supported by funding from Swedish International Development Agency (Sida) and Oak Foundation. Save the Children Sweden provided technical support and programme implementation advice and disbursed funds to the program partners.

The project did not only make a difference in the lives of the diverted children but also made an impact on those working in it. In as far as children were concerned; many were diverted from the Juvenile Justice System (JJS) and have resumed their normal lives. Some were reunited with their parents/guardians, gone back to school and/or acquired some technical skills. There are those who completed their formal schooling while the older children who could not go back to school underwent technical skills training and are now running small scale businesses like hair dressing and carpentry.

Those working in the diversion program also benefited greatly from the Program. A majority have been trained on child rights while others have learned the skills from their colleagues. As a result, a number of champion organisations and individuals have emerged and their mission is to stop at nothing short of upholding the rights of children. Some organizations have allocated resources to support diversion activities.

The diversion program is faced by a number of challenges including legal, financial, structural and low awareness. Legally, diversion is not yet entrenched in the Kenyan constitution a situation that poses several challenges in the implementation of the Program. For example, diversion does not have a float in the government budget meaning there are no funds directly allocated to diversion activities. Therefore, the program has to depend on funding from Save the Children which is also not enough.

Structurally, some of the stakeholders do not compliment each other as much as they should. For example the link between the police, children's department and the Community Based Support System for Children (CBSSC) seem quite weak to an extent that each is operating almost independent of each other. In some cases police officers find themselves stranded with children with no where to take them, prompting them to take children to their homes illegally.

Another challenge is that welfare children find their way into the juvenile justice system (they are now handled in the diversion program) posing other challenges. Firstly, these children are treated as criminals and secondly they consume a higher part of the diversion budget.

A number of lessons have been learned in this Program including:

- Children issues need to be addressed from a holistic approach and all stakeholders (all those working directly/indirectly on children issues) should be involved to support and guide one another as need arises.
- Creating awareness and training is not an assurance that diversion will be embraced by all parties. There is need to target more on attitude change especially on culturally held beliefs against children to be able to influence people to respect children's rights

¹ The project areas are Kilimani, Kamukunji, Buruburu, Kasarani (in Nairobi Province) Naivasha, Nakuru, Bondeni, Kitale, (Rift Valley Province) Kisii, Siaya, Kisumu (Nyanza Province) and Busia, and Kakamega (Western Province) in Kenya.

- The success of the Diversion Program seems to be pegged around champions of the project. These champions go out of their way to make a personal sacrifice to ensure that diversion takes place smoothly. This is why transfers have either seen the diversion project take some steps back or has activated it.

There is need to:

- Lobby for quick entrenchment of diversion into the constitution
- Ensure that Diversion funds are directly accessible to the police department to avoid treasury bureaucracy and unnecessary delays in program implementation.
- Strengthen collaborations between the stakeholders so that they can effectively compliment each other
- Intensify creation of awareness and attitude change on child rights and specifically diversion amongst all stakeholders.

1. Introduction

This is an external end-of-program evaluation of the Diversion Program for Children in Conflict with the Law in Kenya, herein referred to as the Diversion Program. The evaluation gives an overview of the Diversion Program – its framework, structures, stakeholders, objectives of the project and the extent to which the objectives have been achieved, lessons learned and the way forward.

This evaluation addresses four key questions. The first question assesses the extent to which the Diversion Program has achieved its objectives. The program objectives are as follows:

Reduced number of children in conflict with the law from the juvenile justice system in fourteen diversion project areas in Kenya.

Enhanced awareness of child rights and child protection for key stakeholders in the juvenile justice system in Kenya.

Strengthened and empowered Strategic Alliance and National Diversion Core Team to effectively provide a forum for collaborating, coordination and debate on Juvenile Justice Issues and for lobbying for the implementation of children's laws and policies for child protection in Kenya.

Views and opinions of children in conflict with the law and other categories of marginalised groups of children are taken into consideration in issues that affect them at district and national forums.

Preventive and rehabilitative community based strategies developed alongside the Child Protection Units for the care, rehabilitation and retention of children in conflict with the law.

Strengthened data base and information management systems in project districts up to the national level.

The second question concerns the impact of the project. Both positive and negative impacts including expected and non-expected impacts are discussed. Question three is about the relevance of the Diversion Program within the juvenile justice system in Kenya. The evaluation also addresses sustainability of the program-how the program has been entrenched within the existing structures and possibility of its continuity in the absence of the donors. Finally, the evaluation documents lessons learned and propose ways in which the program can be improved.

The evaluation was intended at providing SCS, project donors and other partners with an understanding of the extent of the achievement of the Program's objectives. The findings were also meant to inform Save the Children's decisions on what to include in its new planning period, 2009–2012

This report is structured into eight sections including the executive summary and the introduction. The other sections are:

The Diversion Program: This section describes the main characteristics of the diversion Program including its history, framework, structures, organisation and stakeholders. The section also discusses diversion within the existing policy and legal framework.

Findings and Evaluative Conclusions: This section presents the findings gathered through the evaluation questions. It also presents the extent to which the program has achieved its set objectives.

Lessons Learned: The report further presents the findings that can be generalised beyond the diversion program

Recommendations: Proposed actions that can be undertaken to improve diversion program in future are presented in this section.

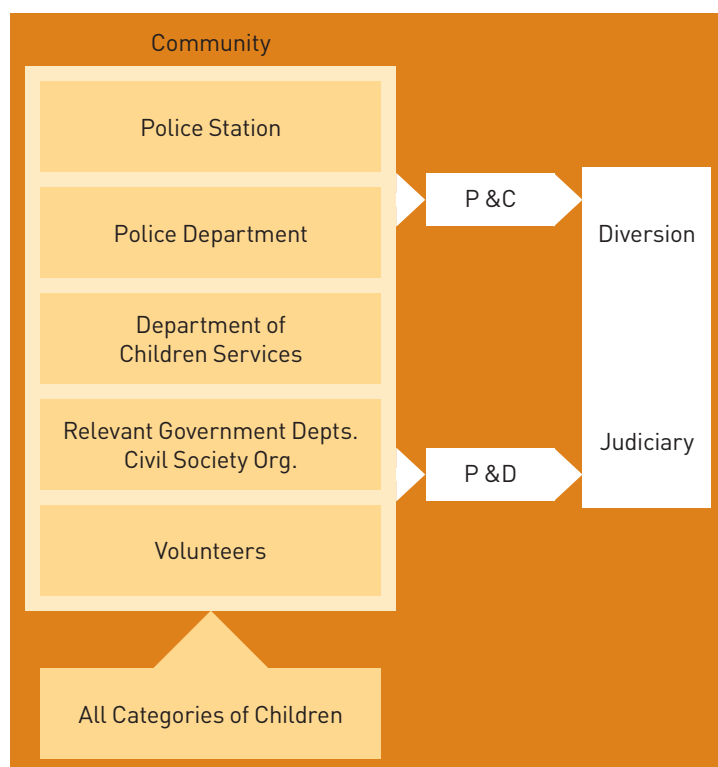
Methodology: This section presents how the evaluation was undertaken, research design, sampling and data collection methods and analytical procedures. Limitations of the evaluation are also discussed here.

2. The Diversion Program

The Diversion Program was started as a pilot in March 2001. The Program aimed at addressing the diverse and emerging issues affecting, particularly children in conflict with the law. This was in response to concerns raised in reviews that were carried out before year 2000². The reviews had raised issues which included lack of separate systems in the country to deal with welfare children cases and children in conflict with the law, lack of standardised guidelines for the protection of children who are in the juvenile justice system, lack of collaboration and networking for organisations who deal with children in the JJS, lack CBSSC to support the protection of children, lack of adequate and standardised data and information on children in the juvenile justice system and the fact that over 80% of the children in the JJS were welfare cases who had not committed any or relatively minor offences that could be sorted outside the JJS.

As a principle outcome to this work, Save the Children proposed a series of practical recommendations including the need to divert children from the justice system as a priority. In January 2001, during a stakeholders workshop for organisations involved in juvenile justice, there was a general consensus on the need to divert children in conflict with the law, from selected police stations. A Diversion Framework (DF) was developed and this marked the beginning of the Diversion Program (DP) for Children in Conflict with the Law in Kenya. The framework is presented in Figure 1 below.

Figure 1: Diversion framework



Source: adapted from SC (UK)

² The literature review was carried out by Human Rights Watch, ANPPCAN – Kenya Chapter, Children’s Legal Action Network and Save the Children (UK) among others.

The Diversion framework is cognisant of the important roles played by various stakeholders in the juvenile justice system. It is grounded in the restorative justice which holds that crime is a violation of people and relationships and creates obligations to make things right. It is in line with some two basic principles in the Convention on the Rights of the Child namely: the best interests of the child and detention or imprisonment.....as a measure of last resort and for the shortest appropriate period of time.

The model advocates for partnerships between different stakeholders in the criminal justice system to ensure smooth rehabilitation and reintegration of children into the community. It recognizes that all children belong to the community and therefore the community holds the primary responsibility to care and protect all children. As such, the model supports reintegration of welfare children and those who have been in conflict with the law back into the community. The problems of a child are seen as emanating from the community and therefore the community is an important stakeholder responsible for working with child offenders on understanding the consequences of their actions, discouraging them from re-offending and providing them with an atmosphere of reconciliation and social acceptance as they reintegrate into the community.

The Diversion Program in Kenya has been implemented in fourteen program areas presented in table 1 below:

Table 1: Diversion Program areas

Program areas	Year of implementation
Kilimani	2001–2003
Kamukunji	2001–2003
Nakuru	2001–2003
Kisumu	2001–2003
Buruburu	2004–2005
Naivasha	2004–2005
Gucha	2004–2005
Kakamega	2004–2005
Siaya	2004–2005
Kasarani	2006–2007
Bondeni	2006–2007
Kitale	2006–2007
Kisii	2006–2007
Busia	2006–2007

2.1 Structures within the Diversion Program

The DP was composed of a number of structures anchored within existing structures including Government departments, NGOs, Community Based organisations, religious institutions amongst others. This model has its strengths and weaknesses. The main strength is that it avoids duplication and reinforces the existing structures. For example the same staff on other children issues work on DP. Also, funds meant for diversion have come in handy specifically in dealing with welfare cases. On the other hand, the model has introduced another dimension of work for staff of program partners (especially government) and to some extent this has raised the need to intensify awareness and advocacy on the diversion concept although some stakeholders have questioned the legality of the program in the Kenyan law (this is discussed later in the report). The key structures of DP are discussed below:

National Diversion Core Team (NDCT)

This is the administrative arm of the Diversion Program at the national level. It is made up of heads of key Government and juvenile justice departments (such as Police Department, Department of Children Services, Department of Probation and Aftercare Services and Judiciary), national child focused NGOs and one representative from each of the project districts. The NDCT oversees the implementation of activities of the Diversion Program in all the project areas. NDCT also provides technical support to the project as a whole, in addition to monitoring and evaluating the project activities. NDCT draws its membership from the following organisations.

Department of Children's Services
Department of Probation and Aftercare Services
Police Department
Judiciary
Children's Legal Action Network (CLAN)
Child Welfare Society of Kenya
ANPPCAN – Kenya
Undugu Society of Kenya
Girl Child Network
A representative from each of the District Diversion Core Teams
Provincial Children's Officers in the Program areas
Save the Children Sweden
Japanese International development Agency (JICA)

On the other hand the NDCT benefits from technical support from SCS. SCS is an international non-governmental organisation which provides technical support and monitoring of the Diversion program through funds provided by Swedish International Development Agency (Sida) and Oak foundation.

One of the major strengths of NDCT is that it provides a national forum through which children issues are discussed. The membership of NDCT draws from senior representatives of organizations working on children issues. This means urgent decisions on child issues can be reached at this forum.

However, NDCT is faced by one major challenge; some members do not attend meetings while others send junior staff who may not be in a position to make decisions on behalf of their organizations.

This is a big challenge that needs to be addressed through ensuring proper communication of meeting dates to all members. Members should also be committed to these meetings.

District Diversion core Team (DDCT)

Below the NDCT, is the District Diversion Core Team (DDCT). It coordinates Diversion activities at the project district, including identification of district specific implementation strategies. It is expected to play the role of a think tank at the district level in order to ensure efficient and successful implementation of Diversion Program. The DDCT draws its membership from representatives of key juvenile justice system organisations who include both the Government and civil society organisations (SCOs). The DDCT membership is as follows:

Department of Children Services

Police Department

Probation and Aftercare Services

Ministry of Education

Ministry of Health

Provincial Administration

District Child Labour Committees

Local Government

Local Organisations (CBOs and NGOs)

GCN and FORUM (Ex-officials): GCN and FORUM are ex-officials who provide technical support to the DDCT and also monitor the implementation of Diversion activities.

DDCT is supposed to meet regularly to take stock and deliberate on issues arising out of the Diversion process. Other roles include: implementing the Diversion framework; identifying specific roles/tasks for the DDCT members; identifying, expanding and defining partnerships and roles of the partners at the district level; supporting Child Protection Units at the selected police stations; initiating and managing Community Based Support Systems (CBSS) for Children in their specific project areas; rehabilitation of children in conflict with the law; managing data on diverted children; monitoring project activities and carrying out sensitisation trainings for key stakeholders.

Like the NDCT, the DDCT is also faced with the challenge of some members missing meetings. In some DDCT's, continuity is difficult because members seem to miss meetings in turns such that those who were present in the previous meeting may not attend the next meeting and so on. Discussions with DDCT members revealed two reasons:

- Lack of ownership of the diversion program by some members who feel that they should be provided with some allowance to attend meetings. No allowance is provided for members to attend meetings. The organizations who are members of the DDCT have Diversion as part of their organization's work plan and they cannot therefore be paid for the work they are supposed to be doing: the Department of Children Services has diversion as one of the areas on which their staff are appraised while the police has diversion within its police work. Key civil society program partners have diversion as one of their program work. So any officer who demands for payments to attend diversion programme meetings is not a relevant key partner or does it out of ignorance.
- A feeling that since others did not attend the previous meeting there is no need to attend. This like the explanation above is born out of not understanding the role of the organization in the diversion program.
- Failure by the coordinating party to inform others members about the meeting

In order for members to be able to attend the meetings, there is need for the coordinating party to ensure that all the parties are informed of the meeting dates in advance. Members should also commit themselves to attend these meetings without failure.

The Child Protection Units (CPU): Although they may look quite independent, they are part of the diversion strategies that the DDCT should oversee. Similarly, the CBSSC are initiated and managed by the DDCT.

The overall coordination and backstopping roles fall on the Department of Children's services in the Ministry of Gender, Children and Social Development. The Department is charged with the responsibility to safeguard the rights and welfare of all children in Kenya through implementation of relevant policies, coordination, supervision and delivery of services. The department draws its mandate from the Children's Act cap 586, which states that; *'the Director of children's services, to be appointed by the Minister will help to set up, promote, coordinate and supervise services and facilities that deal with children'*.

This underscores the important role played by Department of Children's Services not only in the Diversion Program but in issues dealing with children in general. Therefore activities of the DDCT, CBSSC and the CPU are overseen by the department. Local and international NGOs only provide funding, advice and technical support to the program.

2.2 Legal and Policy Framework for Diversion

Pro-child policies and clear legal and policy frameworks are inevitable prerequisites for the protection and enjoyment of child rights. Without them, it is unlikely that the rights of children will be safeguarded and/or the community and its embedded institutions will make decisions that are in the best interest of the child. This section gives a summary of the various legal provisions available in Kenya which in one way or another impact on child protection. It attempts to place diversion within the legal framework.

According to a situation analysis report on Child Rights in Kenya released in 2007, there are several international laws and instruments that impact on children. These include United Nations Convention Rights of the Child (UNCRC), the various Optional protocols to the UNCRC, the African Charter on the Rights and Welfare of the Child (ACRWC) and the International Labour organisation (ILO) Convention and the Statute of the International Criminal Court (ICC) (SC, 2007).

The UNCRC calls on states to protect its children against all forms of harm including child abuse, sexual exploitation, sale, trafficking and abduction, child labour torture and deprivation of liberty. The Kenya Government ratified this convention on 30th of July 1990. In addition, the government ratified the Optional Protocol to the UNCRC on involvement of children in armed conflict as well as the Optional Protocol on sale of children, child prostitution and child pornography.

Regionally, the Kenya government is party to the ACRWC which it ratified in 2000. This Charter complements the UNCRC by offering protection to children against harmful social and cultural practices, protection against apartheid and further provides the protection of children of imprisoned mothers. The Government has also ratified a couple of other laws geared towards protecting children against child labour. They include the ILO Convention No 138 on the Minimum age of Employment, ILO Convention No 182 on the elimination of worst forms of child labour and recently in 2005, the statute of the ICC, which outlaws sexual exploitation of children.

Besides the international conventions, Kenya has in place various laws that relate to children. These include the Environmental Act that deals with issues of sustainable development, the Criminal Law Amendment Act that mainly deals with issues of sexual violence and most recently, the Sexual Offences Act that consolidates laws dealing with sexual offences and also introduces new offences under the law on sexual offences such as gang rape and child sex tourism. There are other forthcoming laws that deal with children's issues such as the Domestic Violence (Family Protection) Bill, HIV/AIDS Prevention and Control Bill, Trafficking in Persons Bill) amongst others.

Currently though, the primary law dealing with children is the Children's Act that came into force on 1st March 2001. The Children Act incorporates the provisions of the United Nations Convention on Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child.

The enactment of the Children's Act primarily domesticated the two important legal instruments. The Act covers the UNCRC fundamental principle of the best interests of the child in all matters that affect the child. It guarantees among others, a child's right to health care, education, parental guidance, food, shelter, name, nationality, privacy, leisure and recreation. Penalties are meted for violations of these rights.

The enactment of the Children Act has been seen as the primary indicator of the government's willingness to safeguard the rights of children in Kenya. It has been lauded as a pioneering human rights law in Kenya's legislative history and is currently the only legal instrument in Kenya that provides social, economic and cultural rights along with some protection of civil liberties.

Besides the legislative instruments, the Kenya government has also developed some policy documents to address different issues relating to children. These include:

National Policy on Orphans and Vulnerable Children: The National Steering Committee on Orphans and Vulnerable Children formulated the National Policy on Orphans and Vulnerable Children. One of the primary aims of the policy is to develop interventions targeting children made vulnerable as a consequence of HIV & AIDS.

Draft Child Labour Policy: The government developed the draft Child Labour Policy which seeks to provide interventions towards curbing the problem. However the policy remains a draft and has never been finalized for adoption and implementation by the government since it was drafted in the year 2000.

Adolescent Reproductive Health and Development Policy: The government recently (2006) launched the Adolescent Reproductive Health and Development Policy to cater for the needs of adolescents. This is very vital as many adolescents die of reproductive health-related issues yet there are no adequate services to address their plight.

Under the existing laws, diversion can be said to have only been envisaged rather than expressly provided for. Although the current constitution is silent on the rights of the child, the Draft Constitution of Kenya in Section 40(4) states that 'a child's best interests are of paramount importance in every matter concerning the child'. The Children Act on the other hand states in Section 4(2), that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. It further stresses the point by requiring that in all decisions about a child undertaken by a Children's Court, the child's best interest should be paramount.

Diversion in Kenya has among other issues relied on goodwill derived from the two sections mentioned above. According to the Kenya Second Periodic CRC Report (2005) Kenya has undertaken a number of initiatives so as to secure the best interests of children. These initiatives include development and introduction of a curriculum at Kiganjo Police Training College to train police officers on child rights and child protection. Implementation of this program started in 2001 with the support of civil society organizations and the Government. Graduates of this college are expected to be more sensitive to matters relating to children and protect their best interests.

The periodic report further notes that, in every police station there are officers handling cases relating to women and children. The police department has collaborated with civil society partners to establish child protection units (CPU) in fourteen police stations in the country. In addition under the Governance, Justice, Law and Order Sector program, the Children's Department plans to establish seven more children's courts in the country and five children friendly holding facilities in police stations. The Chief Justice had at the time the progress report was written appointed 119 children magistrates to deal with children's issues all through the country, and set rules and regulations on matters relating to the children's courts.

All these efforts have been geared towards making the justice system friendlier to children. As mentioned earlier, these efforts have been possible courtesy of provisions under the Draft constitution Section (40)4 and the Children's Act Section 4(2).

Perhaps the biggest step towards entrenching diversion into law has been the incorporation of diversion provisions into the Children's ACT. This has been made possible through the Children's Law (Amendment Bill) 2007, which is yet to be passed into law. It is highly expected that the bill will easily sail through parliament given that its provisions are not contentious (undated document on inclusion of diversion into law).

Until then, diversion remains elusive in the Kenyan law and most of what is going on through goodwill arrangements between those involved in the justice system. This has its own setbacks as will be discussed in findings section.

3. Findings and Evaluative Conclusions

The overall objective of this evaluation was to assess the extent to which the Project objectives have been achieved. Guided by the specific objectives of the evaluation, this section presents the findings of the evaluation. The findings are presented by looking at what has been achieved, the challenges and a concluding remark on the achievement of the project objective.

3.1 Reduction of Number of Children in Conflict with the Law

At the inception of the diversion project, there were many children in conflict with the law who found their way into the juvenile justice system. Welfare cases also found their way into the juvenile justice system. Most of these children were locked up with adult criminals in police cells and some even found their way into prisons. This was in contravention of the rights of the child and caused a lot of suffering to the children. It is within this context that deliberate efforts were made to reduce children in conflict with the law from the juvenile justice system. This objective has two components namely; rehabilitative and preventive.

The rehabilitative component was the immediate response to the ever growing number of children in the juvenile justice system. The aim was to divert these children back into the community. On the other hand, the preventive component has been a focus on ensuring that children do not get into conflict with the law. Both those who have been in conflict with the law and those who have not are a target of the preventive measure. Seemingly, the Diversion Program has focused more on the rehabilitative component with some little effort on the prevention including improving child environment in the juvenile justice system and also the environment in the community. The bulk of the efforts have been vested on removing children from the juvenile justice system as early as possible. Below are some of the gains both in the juvenile justice system and the community levels:

Reduction of congestion of children in the juvenile justice system: Generally speaking, there has been reduced number of children in the juvenile justice system. This has been facilitated by the fact that some cases are now being resolved outside the juvenile justice system and also because diversion process takes places at the earliest opportunity. Therefore, children are being diverted soonest possible and this has reduced the number of children in police stations. To some extent also, the number of children finding their way in the juvenile justice system has reduced in the project areas. This can be attributed to the impact of the program.

Separation of children from adult criminals: Prior to the diversion programme, children were locked up in the same cells with adults. In the Diversion Program areas this is no longer the case even where the CPUs are not in use. Children are locked in separate rooms (sometimes offices) while others are kept behind the reporting desk. Separation of children from adult criminals is a great achievement not only because children are not abused by adults but also because they do not stand a chance to learn criminal behaviour from the adult criminals. Regrettably though, children in areas where the project has not been implemented are still locked up with adult criminals.

Restoration of dignity and respect for child rights: Arguably, children are not being treated as criminals but rather as a group in need of care and protection. In some police stations children are provided with a slightly deferent diet and have access to bathing facilities. There has also been a change of heart amongst police officers dealing with children in that they no longer see these children as criminals. Some officers are quite polite to the children and spend sometime listening to their plight.

Counselling: In most project sites, children are being counselled and helped to realize their mistakes. The police and the CBSSC are utilizing this skill to rehabilitate the children.

Access to education: When children are detained in the juvenile justice system, they are denied an opportunity to pursue their education. This has a negative impact on their future life. The Diversion Programme has made it possible for some children to continue with formal education while others have gained technical skills. There are a number of cases of children who have completed their formal primary education and joined secondary or technical institutes. Some children have completed technical studies and found informal employment. Besides children also have access to other needs like food, health etc

Resettlement: This can be categorised into two:

- Child repatriation and reunification with family parents/guardians
- Child placement in children homes

Notably the Kenyan, juvenile justice system does not provide for a clear separation in handling children in need of care and protection (welfare cases) and those that are in conflict with the law. Children from both of these categories end up in police stations. This brings out the big question on when will the two be separated and who consequently should deal with the welfare cases?

A majority of children passing through the juvenile justice system happen to be welfare children. Most of these children fall under lost, abused or those who have been denied basic needs and in the past they have been treated as criminals instead of children in need of help. The Diversion Program, has made it possible for these children to be repatriated and reunified with their families, or be placed at children homes.

Despite the achievements so far, a number of challenges continue to be experienced in the reduction of the number of children in conflict with the law from the juvenile justice system. These include:

The issue of welfare cases passing through the Diversion Program: As mentioned earlier the majority of children passing through the Diversion Program are welfare cases. These children consume most of the diversion budget despite the fact that they are not the main target of the project. Kenya has to develop a separate structure for handling children in conflict with the law from welfare children cases.

Availability of diverting officers at the point of diversion: For a child to be diverted, the diverting agencies must be present. These include child protection officers, police and a guardian. Availability of these parties at the required time has not been forthcoming. As a result, diversion is delayed.

Child holding facilities: Prior to the Diversion program, children were kept in the same cells as adults. There are only fourteen CPUs in the country and therefore a majority of police stations have no separate holding facilities for children and the children are still kept in deplorable conditions. Busia and Naivasha are also not complete and were also not in use during the field work. Some of the complete CPUs require furniture.

Staff: Generally speaking, there has been a very high turnover of government personnel involved in the diversion project which has left few trained police and child officers working on diversion and other child related issues. In some CPU's police officers working under the Diversion Program are also allocated other duties. This means that there are times when there is no trained police officer to attend to children issues.

Transfers: Both at the police and Department of Children transfers are the order of the day. In most cases transfers have slowed it down especially where those who are transferred are champions of the program in the site. On a positive note, some officers have transferred and jumpstarted Diversion Program in their new work stations. However, the main handicap in transfers seem to target those who were trained and in some cases they end up being deployed in areas where they are not dealing with children issues at all.

Lack of informative cases on diverted children: There is up-hazard information about cases of diverted children. The need for not only the number but specific details about these children cannot be overemphasised. Although this evaluation established that children were being diverted, the number of children recorded could be lower than the actual number of children supported by the project. There is also need to collate information on diverted children at the police, children's department and CBSS so that follow-ups can be done easily.

Inadequacy of funds: Diversion is both a time and money consuming activity. Starting from the point where a child gets into conflict with the law or needs welfare assistance, human resource and money become a necessity. Processing the case, travelling (in the case of environment assessment and repatriation), providing basic needs like food costs both time and money. The challenge here has been that there is little or no money available when it is needed, meaning diversion is delayed or children have to be held in un-conducive facilities for long.

A number of impacts have been realised through this objective including:

Support of the Program by key partners. These are dedicated organizations in whom success or failures of diversion seem to be centred around. These organizations stop at nothing short of ensuring that children are protected and that diversion has been successful.

Success stories of children who have been reformed to an extent of undertaking technical skills and establishing their own businesses. There have been success stories of children who have gone through the Diversion Program and managed to go back to school and find jobs and are now self reliant. These children serve as role models to others in the Diversion Program. An example is one who is now an adult and is an instructor in Mwangaza CBSSC. Others who could not be reached have started tailoring businesses in their homes areas or in towns. One girl, a member of group of girls currently under the Diversion program had this to say:

‘We used to hand around the streets with many other girls, but we later saw the risk that we were exposed to and that was why we decided to join this program. At least here we hope to learn something that can help us in the future. We have also come together to form a group which we can use to try different income generating activities. Many of us here have children and we are not working. We also need food for our children and for us. The biggest challenge that we face is for the society to accept us back after what we were doing, and even in our own families. But we don't fully blame them for we must also agree to change and show by actions that we have changed’

Change of attitude towards children: To a large extent, organizations and officers dealing with children under diversion have come to appreciate them and no longer treat them as criminals.

3.2 Enhanced Awareness of Child Rights and Child Protection for Key Stakeholders

Prior to the Diversion Program, awareness on child rights especially by those involved in the juvenile justice system was low. Treatment of children passing through the juvenile justice system was in contravention of their rights. It is within this background that the Diversion Program sought to raise child rights awareness and enhance their protection amongst all those dealing with children, especially in the juvenile justice system. The key strategy adopted was to train the key stakeholders. A number of trainings targeting different stakeholders were offered. The police, magistrates, children officers, diversion core team members and members of CBSSC confirmed that they had undergone 3–4 trainings. All those who had benefited from the trainings revealed that trainings had influenced them to treat children better. Below are discussions with each of the stakeholders

The police

Most of the police officers interviewed were aware of child rights and child protection. They reckoned that the trainings they had received through the Diversion Program, had made them appreciate the importance of children and more so how to treat them.

A police officer had this to say:

“I must admit that before this project we in the police treated children as criminals. We saw them as criminals and handled them as criminals. Now we understand they are children and should be treated as children. We have also come to appreciate that children are delicate and should be handled delicately”..... “In most cases the community is to blame for the offences that children commit. Therefore, instead of causing them more pain, we should care and protect them”

Another police officer added:

“I don’t understand how it is possible that sane adults can rape a child. Tell me how parents/guardians are able to commit unbelievable acts on children? Can you imagine a parent who dips the hand of her child in boiling cooking oil because he stole a shilling and bought a sweet? Surely this is inhuman. I really pity children and I believe it is our responsibility to protect them.” It is simple, let respect their rights and other things will fall in place”.

These sentiments were also reinforced by another police officer who added:

“For me, children have to be protected. The training I have received through this Diversion Program has not only made me realize how unjust we have been to our children but also that it is my responsibility to care and protect them at all costs. As I hold this baby, I feel proud I have the opportunity to protect her. I would do anything to ensure that her rights are respected. That is why I have her father in custody and will do everything in my power to see to it that he provides for this child”

This officer had bought some milk for the child using her own money and said she would do it again and again for a child. The officer also revealed that on several occasions she had found herself taking children to her home because she felt it was unsafe to leave them at the police station. She said this was against the law but did it for children.

Another police officer observed that:

“No matter what a child is accused of, I always see them as innocent and victims of disintegration of our community. It is on the basis of this that I will always protect them”

Police officers working in the CPU's were well informed about children's rights and some were going beyond their means to uphold them. However, they felt their colleagues had been left out in this issue a situation they saw as unfortunate. One officer said:

"The sad thing about this Program is that not all police officers have benefited from the trainings. When I hear them talking to children, I feel offended. I feel like they offend the children. These officers need training as quickly as possible. They need to understand children's rights so that they can treat them better".

Clearly, there has been some considerable degree of awareness of child rights amongst police officers especially those involved in child related issues in the CPUs. The trainings have not only raised child rights awareness amongst these officers but also to other officers who have interacted with the trained officers.

Despite these achievements, some of the police officers designated to work in the CPU's felt that they were not up to date with children issues. Some of areas mentioned included: child rights, policies and professional skills to handle children. They would also like reference materials and if possible training manuals they can refer to in their course of duty.

An interesting gender related finding is that most of the police officers involved in the diversion project were female. An investigation revealed that gender had played a big role especially bearing in mind that the role of caring for children is seen as a female role. Therefore, female police officers were seen as the 'best' in working at the CPUs. Discussions are on-going by members of the NDCT and the Police to change this trend. A male police officer had the following to say in regard to this observation:

"Let us be frank, women are better care takers of children. Imagine if a small child who needs special attention like changing her diapers, washing, etc? How can I handle this? I think women are good at this. It is stressing to ask men to take care of children. Men might not be able to go straight home because they have one or two things to catch-up with in the evening and therefore if they were to take a child home, they would not have time to take care of him/her. Think of a situation where CPU's are up and running, there will be children who need to shower, wash clothes etc, I think female police officers are best placed to handle this."

There was also the issue of attitude of working with children compared to other mainstream police wings e.g. traffic, patrol, crime etc. Some police officers were of the opinion that working in the CPUs was not as highly rated as some of the other police units. It also emerged that those working for children were looked down and sometimes teased by their colleagues. Again this can be understood from the point of view of the training police officers receive. They are trained to be tough yet when handling children they are expected to soften and be very understanding. Some of the police officers said this was a challenge to them. An officer gave an example of when he has to be rough with adult criminals and then wear another face for children. He was of the opinion that those dealing with children should only deal with children and not be called to other duties.

The main outcomes of this objective on the police can be summarised as follows:

Trained police officers on child rights
Emergence of police champions in the Diversion Program
Increased awareness of child rights especially for officers working within the Diversion Program
Increased efforts in executing children cases
Attempts to separate children from adults
Interest in learning more about child rights
Improved relationship between police involved in diversion and those dealing with child issues
Influence of other police officers who have not undergone training on child rights by their colleagues.

A number of challenges have been experienced in trying to achieve this objective:

Trained police officers are transferred and allocated different roles where they do not use the skills they have gained through the Program. For example a trained police officer who is transferred to traffic has no time to handle children issues.
Limited (not as comprehensive) training meaning the officers do not have a deeper understanding of the issues
Lack of professional skills e.g. counselling, child psychology which inhibits their operations
Involvement with other police duties which hinders full commitment into child work
Lack of refresher trainings and availability of reference materials
Deployments to other police duties leaving children cases unattended

Diversion core teams

The diversion core teams especially the DDCTs have been targets for trainings offered in the diversion project to create awareness on child rights. Those interviewed revealed that these trainings have been quite helpful making them understand and appreciate child rights.

A member of the DDCT summarised experiences of other members as follows:

“You cannot begin to imagine how far some of us have come from. We like other community members believed children should be harshly punished for the offences they commit. That is why some of us have participated in mob justice acts against children who have committed petty offences. That is why some of us did not take action when children were abused in our communities including by their own parents. A child who was in conflict with the law was labelled criminal and treated as a criminal. Let me say this, through this Program most of us have come to appreciate and become crusaders of child rights”

Other members of the DDCT said that they had now taken upon themselves to inform community members and those around them the importance of upholding child rights. Some of the outcomes towards this objective include:

Increased awareness of child rights amongst those heading diversion at the district level

Advocacy for child rights at the district level

A forum to discuss child rights at district level

The main challenges have been:

Transfers: Like their police counterparts, some of the DDCT members get transfers which disorient its operations especially if these members played a significant role in the team.

Some members of the DDCT are not trained and therefore not as conversant with child rights issues as much as they should.

The community

Generally speaking, there is increased awareness of child rights amongst community members. This is not only as a result of the Diversion Program but also other initiatives on issues to do with children. The Diversion Program, through DDCTs and partners like GCN and FORUM have created awareness of child right in the communities in the target program areas. But the communities cover huge areas and most of the community members need to be sensitised. The concern for the need to raise community awareness on child rights and child protection was mentioned by almost all other stakeholders interviewed. They blamed the community for all the problems the children were facing and cited lack of awareness of child rights as one of the main contributor to child abuse.

The police and children officers noted that there was need to create awareness of child rights and child protection in the community observing that where community members were aware of child rights two key positive outcomes had been realized:

- Increased reporting of child related cases by community members: The police reckoned that community members informed them of any cases of child abuse and some offered to provide evidence whenever it was required.
- Volunteerism on child issues by community members: Some community members volunteered their time to follow-up on child issues. Acceptance of diverted children into the community: Some community members accepted to take back children who had been diverted.

Despite these achievements, there is a feeling from those involved in the diversion process that the community has neglected its basic role of caring and protecting children. A respondent observed the following:

“Children are innocent and if cared for and protected, they could never get into contact with the law. The truth is that the society has failed and as a result children are suffering. All I can say is that the community needs to be reminded of its principle role which is to care and protect the children because they will be leaders of tomorrow. Their rights should be upheld at all times irregardless of the prevailing circumstances. I think the community needs to be reminded of child rights and how to protect these rights”

Another respondent added;

“I think the society needs to not only let go of some cultural barriers and embrace children, but it also needs to understand and appreciate why this is important. Can you imagine a family that kicks out a child born of incest or a couple that conspires to kill step children or chase them so that they can reduce their parental burden? To me, they just have no idea that these are human beings with rights and no one has a right to take their life or even make it difficult. Since the society we are living in seems to have forgotten its basic responsibility (that of caring and protecting children) there is need to urgently remind it before another generation is wasted”

Another respondent had this to say:

“I think the society no longer respects child rights or is not even aware of them. They have even forgotten their responsibilities. What do you make of parents or guardians who come to my office and ask me to deal with their children however I please? Some even tell me to send their children to prison. Do you know some parents/community members will not even accept their children back into the society? Imagine of a child who steals a banana because he/she is hungry and receives a thorough beating through mob justice. I think the society needs to be reached out to”

On Diversion Program, examples were given that some community members do not fully understand diversion. A respondent said that there were instances where decisions to divert were reached and some community members expressed dissatisfaction. These community members (especially the offended) challenged diversion decision seeking for a harsher punishment for the child. These were seen as not understanding child rights and the diversion concept and therefore needing enlightenment of the issue. Some of the challenges experienced from the community included:

Severe punishment meted on children
Child neglect and child rejection especially when they are repatriated through diversion
Refusal by the aggrieved party to forgive a child for what she/he may have done.
Failure to report child abuse
Lack of volunteers/ambassadors of child right issues in the community
Cultural beliefs that encourage denial of child rights

Children's Department

The Children's Department is the government custodian of all children. It is charged with the responsibility to safeguard the rights and welfare of all children in Kenya through implementation of relevant policies, coordination, supervision and delivery of services.

The children's department conducts several trainings for its officers. Each of the training builds on the previous one. Officers joining the Department are trained on child related issues including diversion. Interviewed officers were quite conversant with child rights but felt there was need to update them on new developments through refresher courses.

The main challenge in the Department is that there is a high turnover of children's officers. This means that there are new people every other time who have missed out on other trainings. An officer was quoted saying:

“Although we conduct trainings, I believe they are not sufficient. This is because we have new officers every now and then and there is no time to keep training one what had been trained on previously. What happens is that basic questions are asked at the end of training an indication that officers did not understand the content of training. The other challenge is that within a short time like two days, so much is covered including diversion. That means there is no adequate time to learn and become conversant with child rights and other issues. Our partners have been helpful in organising trainings especially those on diversion but I still feel more is needed”

The same officer added:

“However, I have a concern that the trainings need to be standardised so that there is a common understanding across the board. Sometimes I feel like partners have different meaning/understanding of dif-

ferent child issues meaning they train differently. As a result, those who receive trainings from these partners get confused. Therefore there is need to have a standard training guide so that we can all have a common understanding”

The court

Only one court was visited. Officers interviewed in this court were well informed about child rights. Some were saddened by the fact that children had to pass through the juvenile justice system. They felt this was a breach of their rights and should not be the case.

One of officer said:

“I would like to see a situation where everyone has internalised and endeavour to uphold child rights. She added that; all of us have a big learning from Obama, who has beaten all odds to become the president of the most powerful country in the world. This shows what can be achieved if child rights are upheld. This is a learning experience for fathers out there to take up their responsibilities and make life better for their children. Who knows whether they are shaping the destiny of the world by caring and protecting another Obama.”

The officer was saddened by the fact that the community has neglected their children to an extent that a parent can go to court and say they do not want their children back in their homes and that the police and the courts can decide on what to do with them. This officer said that her greatest moment is when a parent has been ordered to provide for their children and abides.

The court officers interviewed reiterated the need to train those handling children on regular basis. They said that all officers need to be given standard trainings and refresher trainings as frequently as possible. They also saw the need for building community capacities to embrace child rights in totality.

Community Based Support Systems (CBSSC)

At the CBSSC there was raised awareness of child rights by the staff. They reiterated the need to care and support children and to prevent them from pain and suffering. One staff summarised their feelings as follows:

“I think it is very important that people understand and appreciate that children are angels who need to be taken care of at all times. Seeing children being rejected by their own parents/guardians tells me that something is very wrong with our society”

This staff reckoned that CBSSC are good because they not only offer refuge and solace but are the closest to the community and therefore best placed to help the community embrace and defend child rights.

Children interviewed at the CBSSC said they felt comfortable at the CBSSC citing the following reasons:

- They had found a place where they felt loved
- They had friends and space to play
- They got food
- The teachers were understanding and advised them whenever they needed advice.
- They got education

Clearly what the children were saying is that their rights were being respected and that they felt protected. They were very appreciative of what they got from the CBSSC.

Summary of the objective

The main achievements through this objective are:

Internalization of child rights: Diversion has enhanced internalization of children's rights amongst the various stakeholders. Those who were seen as abusers of these rights are now in the forefront ensuring children are cared for and protected at all costs. For example, police officers interviewed saw locking of children together with adults as unfortunate and an abuse of their rights.

Change of attitude and behaviour towards children: Generally speaking, there has been a change of attitude towards children in conflict with the law. A police officer summarised the feelings of others as follows:

“When I think back, I feel it is one of the worst injustices committed to children. I have no idea how we could not have thought about it earlier. Personally I would do anything in my power to ensure that “children are treated as children”. That is why on several occasions I have found myself taking children home knowing it is against the law but I have put the interest of a child first.

Another police officers said that through the Diversion Program he had come to realize how delicate children are and that they needed to be protected at all times. He said that it breaks his heart to see them suffering yet they are innocent. He hoped that the Diversion Program would roll-out to all police stations. He was positive that more and more police officers would change and see children not as criminals but as a vulnerable group in need of care and protection.

A feeling of care and protection by children at the CBSS: children at CBSS felt cared for and protected at the CBSS. However, Diversion Program should also focus on creating child right awareness amongst community members even as it continues with other stakeholders.

3.3 Strengthening Collaboration, Coordination and Lobbying in the Diversion Program

As mentioned earlier, Diversion Program was implemented through a partnership model using the existing structures in the Government Departments, NGOs, Religious institutions and Community Based Organizations dealing with children issues. This approach ensured that all stakeholders handling children issues were brought on board. In essence, this arrangement opened avenues for collaborations, lobbying and coordination of children issues. Through Diversion Program, forums to discuss children issues at national, district and community levels were formed. This made it possible for partners to consult one another whenever need arose.

Stakeholders disclosed that whenever they held events they invited other partners in the Diversion Program to participate in their events that may not necessarily be related to diversion. Others said they had found themselves consulting with other members freely a thing that did not happen before the Diversion Program. Other benefits attached to the Diversion Program include:

- **Coordination of diversion related meetings:** In the Diversion program, Children Department was charged with the responsibility of coordinating all stakeholders in the Diversion Program at all levels. At the NDCT, the Department invites other stakeholders into quarterly meetings to discuss children issues.

One officer said that:

‘My greatest moment was the birth of the Diversion Program. It renewed my strength in child issues because we have these meetings (NDCT) where different stakeholders are discussing on how to improve children's life. Our strategy of sharing responsibilities with the different stakeholders makes our work lighter at the Department. We are happy to know that our partners are fully committed to address child

issues. My greatest moment in the Diversion Program is when I called the first meeting and there were all these partners ready to discuss child issues. I felt self satisfaction and knew our children could see better days in future. Being in my position and seeing children suffer every day you feel like you are loosing you strength. Then, there is this team of people who are willing and always ready to discuss on how to improve the life of children. The thought that I have people to turn to makes me see a better future for children.

- **Access to professional skills including legal and security services:** It was revealed that diversion members rely on one another for specialised skills. For example during the entrenchment of diversion in the child bill, Clan played a leading role using its legal background. On several occasions the police have also provided security services especially during rescue of children in the communities. Their authority has also been used to effect some of the decisions reached for example summoning parents/guardians/complainants of a child.
- **Opening up communication channels between partners who were said to be unapproachable/unfriendly before the Diversion Program:** Some members of the Diversion Program said that it has now become easy to implement their other programs because they ride on what the other partners have done in the past
- **Access to funds that have made diversion activities run smoothly:** Most of the stakeholders were full of praise of Save the Children Sweden for its financial support. They reckoned that what has been achieved could not have been possible without financial assistance from Save the Children Sweden. Other partners were also grateful to some partners like GCN citing that they had helped them acquire some materials including computers, reading materials and child related items like dolls.
- **Lightening the burden of some partners e.g. Children's Department and the police who have always handed welfare children and those in conflict with the law:** The police noted that they have handled child cases even before Diversion Program. The same sentiments were also raised by the Children's Department. These two felt that in a way their burden was being lighter when other stakeholders collaborated in resolving children cases.
- **Working on diversion on goodwill without a legal backing:** As mentioned earlier, the law is either silent on some pertinent issues or is lenient leaving an opportunity for abuse. The evaluation established that many are times when children cases have been thrown out of courts or have not been prosecuted at all due to lack of a legal backing. In some instances, the issues are so scattered across different Acts making it difficult for those practicing to have an informed conclusive judgement. Those interviewed said that they have been in situations where they lost a case not because it was not strong enough, but because they were not sure of the relevant support laws. However, they observed that through consultations with other stakeholders in the Diversion program they have received legal assistance and appealed the cases.

Police officers observed that although diversion is a noble idea it is not provided for in the law. This means they have been operating contrary to the law whenever they enforced diversion. They said they encountered challenges including funding because a budget for diversion cannot be provided for if it is not in law. There is also the feeling that some police officers lacked understanding/ownership of diversion and saw diversion as extra work.

One police officer said:

“This diversion is quite a challenge to us. Imagine you have a child and no budget for them. The child has to eat and drink. Sometimes you are expected to repatriate them to their homes. We are forced to get money from other floats, which in a way an inconvenience to other Programs. We also take children to our homes because we have no where to leave them over night, this is a

great risk. The most annoying thing is that all these problems are as a result of lack of diversion in our law. If we had a law supporting diversion, it would mean that we would have a budget for it and then all other things would fall into place”

Another officer added;

“We take children to court knowing we are not supposed to because we have no otherwise. You see I have no mandate to take a child to a children’s home unless I have a court order. For me to get this I have to book the child and take them to court. This means I take them through the juvenile justice system which I should protect the child from. Then the nightmare comes when children’s cases are heard late (often the case) and the magistrate orders you to take the child to a remand home. You have no transport, the child is hungry and most certainly no home can attend to you that late. I just find myself at crossroads. We have found ourselves locking children in cells or taking them to our homes knowing it is wrong.”

Court officers also highlighted the same concerns. They wondered why police officers and the children’s department could not be given the power to resolve such cases instead of taking them to courts. They saw this as a torture to the children and also a waste of court’s time.

Towards this end, the NDCT which is the administrative arm of the Diversion Program has been working hard to establish collaborations to push child’s agenda. Each stakeholder at the NDCT is tasked with an activity to ensure that child issues are addressed. Below are examples members of how members have participated.

- **Entrenchment of diversion in the Child Act bill:** CLAN handles all child legal issues in the Diversion Program. They are tasked with ensuring that policies and laws are protective of children. Clan has been in the forefront in the amendment of the Child Act which is awaiting debate in parliament. CLAN’s initial thought was to draft a Diversion bill but realised it was going to take a very long time before it becomes law. It is then they decided to take advantage of the on going amendment of Child Act where they introduced Diversion which was totally absent in the Act. Since then CLAN has introduced Diversion in the Child Act meaning Diversion will become law once the bill is passed in parliament. CLAN are pleased that they have been able to lobby for the support of Child Act from some MPs. They were positive that the Act will sail through parliament and become law introducing Diversion into the Kenyan law. CLAN reckoned that they had received a lot of support from other stakeholders.

There are two main concerns related to this objective:

- Lack of a coordinating member to organize and invite all members for meetings on time
- Failure by some members to attend meetings as expected

3.4 Consideration of Views and Opinion of Children

Child related initiatives have in the past failed to take into consideration views and opinions of children in the juvenile justice system. It is within this context that Diversion Program set out to ensure that children in conflict with the law and other marginalised children are empowered to air their views and opinions and that they have a forum to do so.

A number of significant steps have been undertaken towards this end. They include:

Establishment of children desks in every police station: This was the initial step towards separating children from other visitors to a police station. Typically, the normal report desks in all police stations are not friendly to children (heights of the reporting desk, lack of privacy, children being handled

together with adults and exposing children to abuse and trauma etc). Through the Diversion Program, child friendly desks have been established.

Establishment of child protection units (CPUs): The designing of the CPU was done in consultation with children. The CPUs totally separate children from the rest of the prisoners. They provide privacy and provide a more child friendly environment. In some stations officers manning the CPU dress in civilian clothes. The idea behind this arrangement is to make a child feel as comfortable as possible, open up to the officers so that decisions can be made in the best interest of the child. This is likely not to happen if a child is among other adults or ‘authoritative looking’ police officers.

Training on children issues at the CBSS: The Diversion program has supported a number of trainings at the Community Based Support Systems, where children are taught on their rights and other issues affecting them. This has assisted children in understanding and appreciating their rights and redress channels available to them. Besides, those that are able to read have benefited from different publications that partners in the Diversion Program publish and/or share with them. Children at the CBSSC are always consulted on the children’s activities that are carried out at the CBSSC.

National Children’s Congress: Children from all the provinces in the country have been facilitated to attend the children’s congress where they air their views and opinions on issues that affect them. The congress is a forum that brings together children, policy makers and actors in matters relating to children. This is a big step towards ensuring that views of children are not only heard, but they are listened to by the right ears.

Continuous dialogue on children issues: The Diversion program has played a great role in bringing children’s views in the limelight. The program has provided an opportunity for discussion of issues on children, including those in conflict with the law. The plight of children has been on constant discussions with the aim of bettering their lives. One of the key stakeholders reckoned that what she liked most about this Program is that most of the partners are dealing with children. As a result, when meetings are held, discussions are centred around all children although it narrows down to diversion. She observed the following:

“I feel so grateful for the opportunity the Diversion Program has accorded us who are handling children issues. When we meet at the NDCT and we are discussing how we can improve the lives of children in conflict with the law, I feel we are on the right track. We borrow a leaf from one another and also the thought that there are others working for the same course gives us the strength to move on unlike when one is struggling alone”.

Most respondents were quick to point out that children’s views were addressed in the Diversion forums

The implementation of this objective has however faced a number of challenges. Firstly, children desks, (which have been set up in police stations to handle children cases as the CPUs are being established) are not fully operational. Some children’s desks have actually been transformed into police station filing areas as seen in Bondeni children’s desk. This was largely attributed to shortage of office space as well as officers to man the desks. Only a few officers are trained on children issues. The trained officers are also subject to re-assignment depending on the urgent needs in the station. In addition, in most police stations, children desks also double up as desks where gender cases are reported. This may in essence not give children the privacy they need in the station.

Secondly, the CPUs except Busia and Naivasha have completed structures but are yet to be fully equipped with essentials. Beds are required to fully separate children from other inmates. Officers manning the CPUs are few, a number are not trained on children issues and all are subject to transfers to other assignment not related to children e.g. traffic department.

Thirdly, time and financial resources have not been sufficient to ensure that many children attend the children congress. The congress is held only once nationally and it is costly to transport children from across the country.

3.5 Preventive and Rehabilitative CBSSC alongside CPUs

Problems facing children emanate from the community. Within the restorative justice framework, under which diversion is anchored, the community is an important stakeholder responsible for working with offenders on understanding the consequences of their actions, discouraging them from re-offending, and providing them with an atmosphere of reconciliation and social acceptance as they reintegrate into the community.

This was echoed by one senior judge, among other stakeholders. The judge noted that:

‘Things are not working as they are supposed to at the family level, in schools and in the larger community’. The judge asserted that the solution to the problem of children getting into conflict with the law lay within the community. This line of thought is what was envisioned in the Diversion Program, and the reason for the establishment of the preventive and rehabilitative community based strategy. Towards this end, a number of activities have been undertaken so far:

Establishment of the Child Protection Unit (CPU) and children desks: A child Protection Unit is a formalised structure at the police station for the protection and care of children in a police station. These units are supposed to serve as child holding facilities for the shortest time possible as their cases are being processed. At the time of the evaluation, CPUs completion can be categorised into four:

- Completed constructed and operational: CPU’s falling under this category had been completely constructed and had some furniture like beds, mattresses, tables, and chairs. Children were also being received in these CPUs. Police officers had shifted their operational base to these CPUs. Seven of the visited CPUs fell under this category. These were Kilimani, Kamukunji, Buruburu, Kitale, Nakuru, Gucha and Siaya. The CPUs still require more furniture and children play materials.
- CPU’s with complete structures are partially operational but police officers have moved their operations to the CPU. The CPUs lack beds, water and sewerage systems These CPUs are in use as a gender and children crisis and reception desk only and are yet to be fully furnished. These are Kasarani, Kakamega and Kisii. They also lack children play materials.
- Kisumu and Bondeni are on a different level as they have only one small room for children, they have fulltime police officers for children but also use the room as a registry. There was never any intension of having a separate CPU in these two police stations. In Kisumu, once the main police station construction is complete, the section being used currently will be turned into a children’s wing. The police have promised to furnish this wing and turn it into a model CPU in 2009.
- CPUs not complete and not operational are Naivasha and Busia.

Notable also is that in some of these CPUs police officers were working in civilian clothes while in others they were dressed in their police uniform. Those who wore civilian clothes reckoned that children became more relaxed, friendly and interacted easily as compared to when they were in uniform. Those who wore their uniforms had the same sentiments but felt since they were called to attend on other duties it would inconvenience them to change every other time they have to go out of the station and change to civilian when attending to children. They felt it was a tedious exercise and preferred to remain in their uniform. Children who had visited police stations said they would be more comfortable dealing with people in civilian clothes compared to those in police uniform.

It was also observed that majority of the CPUs still retained the police colours. No clear explanations were given as to why this was the case although some of the police officers interviewed said they were considering replacing police colours with child friendly colours.

In some stations where CPU construction was not yet complete, there were deliberate efforts to handle children in more child friendly ways. In Bondeni Police Station for example, children were received on the main report desk and consequently referred to the children protection officers who sit in an inner office within the station.

The offices had a few play materials, though there was no space to play. On the walls, the officers have hanged materials on diversion, as reference material or for anyone else who may be interested. When children have to be detained in the station they are locked in a separate room from adults. However, the room is within the main police station. Most of these rooms are small and in a pathetic state and certainly not a good environment for children. However, it shows a significant effort to separate children from adults.

Some organizations have shown interest in furnishing CPUs. An example is the Governance Justice Law and Order Sector (GJLOS) which had already started furnishing some CPUs such as Kakamega.

The Police was aware that most of the CPUs were complete but were not fully furnished. They noted that this was due to lack of funds. Other concerns were that there was need for proper budgets to run the CPUs including money for food, access to health facilities and the general day to day running of the CPU.

A senior police officer was quoted saying:

“We hope the government will provide funding to complete the remaining unfinished work. I believe we can also call upon our well-wishers to contribute towards furnishing of the CPUs. My greatest worry though is how these CPUs will be maintained including having special diets for children, washing their laundry, cleaning them up.....you know is like running a small home although for a short time. I feel there is need for a proper plan in all this and a big budget must be set a side”.

The police officer was hopeful that the CPUs would be completed in due course. He promised to ensure that all CPUs are furnished following the normal government procurement procedures and said he had requested the OCPDs to submit their requests. He was however noncommittal on when all the CPUs would be up and running. He hoped that all the construction work would be completed by end of December, 2008.

Role of CPU in the Diversion Program

The CPU is a key component of the Diversion Program given that in most cases it is the first point of contact between the child and the diversion process. Ideally, the child protection officers receive children who either have directly gone to the CPU or have been referred from the main report desk at the police station. Children are not expected to report their cases or narrate them at the main report desk. This however cannot be ruled out given that many officers are yet to be trained on children issues.

Once at the CPU, the child is listened to and counselled as necessary. This marks the beginning of the diversion process. If the case is not complicated and all the involved parties are available and willing to settle the matter, police officers arbitrate and facilitate settlement at this stage. Otherwise the officers either engage the department of children service through a district children officer and or take the case to court. Before this is done children should be held in CPU or in separate cells (before the CPU), a move which in its-self is diversionary.

Notably, the police seem to refer cases of serious disputes or abandoned children to court. This is expected given the lack of a legal backing. In the absence of a clear law on diversion, many children

may still end up in the courts because the police would rather the court issues a ruling which they will implement, than officers making decisions which may later be challenged in the court. One officer noted:

“You know when there is no law it becomes very difficult; you have to be very careful how you deal with them. You may decide to divert a very deserving case today and after sometime you see the matter has gone to court”.

It was therefore, not surprising to learn from the judicial officers that there are many children who are still brought before them. When this happens, the department of children services closely liaises with magistrates who consider children for diversion. This underscores the important role that magistrates play in the diversion process. Inevitably, Diversion program has forged strong collaboration with judicial officers in all the pilot sites. Notably, magistrates working in the pilot areas are members of the District Diversion core teams.

A number of challenges have been experienced in relation to the smooth running of the CPU. These include:

The government procurement and funds disbursement process: This was widely blamed for the delay in completing the CPUs. Funds going to police stations go through the Treasury, a process that takes months, though viewed by stakeholders as accountable. To illustrate this we were informed that money received by other program partners in February 2008, had not been received by police stations by the time this evaluation was taking place in November 2008.

Personnel and financial challenges: These were repeatedly mentioned across all stations visited. According to officers interviewed, many of their colleagues were not adequately trained on children issues and may therefore not effectively attend to children in the CPU. This problem is compounded when the trained officers are assigned other duties in the station, or when they were transferred to other stations, leaving a CPU with no officer thoroughly conversant with children issues.

On financial resources, there seemed not to be a clear strategy of financing activities at the CPU. The main activities in all the CPU include feeding the children, washing them and their clothes, and transportation of children from the CPU to courts, children homes or repatriation to their homes. While it is expected that the cost of running the CPU should be part of the budget of running a police station, it was noted that station commanders and individual police officers handling diversion cases are forced to dig into other budget lines to finance CPU activities.

Lack of a legal backing has slowed the process of fully integrating Diversion program into normal operations of the government. It can be argued that diversion processes in Kenya work largely on the goodwill of stakeholders. Legal provisions for Diversion will make negotiation for an increase in budgetary allocation to the police department easier and more importantly fully integrate diversion principal in the normal operations of relevant government institutions.

Community Based Support Systems for children

The role of CBSSC cannot be undermined in the Diversion program. As discussed earlier, children belong to the community and therefore all efforts should be geared towards reintegrating them back into the community. It is within this background that the Diversion Program considers CBSSC as a very important component not only in the rehabilitation but also in the prevention of child contact with the juvenile justice.

Activities at the CBSS

The Diversion program supported identification, renovation and equipping of community halls. The program also supported psychosocial and skills development programs at the CBSSC. The idea behind this support was two fold. Firstly, the renovated and equipped halls were to be used for different

social activities within the community as well as resource and learning centres. They were equipped with television and video equipments which children use to learn on issues on child rights and other matters relating to children as well as other issues on interest to them. On the other hand, the CBSSC facilities were also equipped with equipments that are currently being used by the diverted children and those from within the community to train on skills such as art and craft, carpentry, hairdressing and tailoring.

Besides the vocational training, young children who can still (and or want to) go back to school go through remedial teaching to bridge the gap they may have lost when outside school. They are consequently placed in formal schools where they go on with their education. The evaluation team came across a number of children who were diverted, placed under remedial teaching, went back to formal schools and have since sat for their Kenya Certificate of Primary Education.

There was at least one operational CBSSC in each of the visited sites. Most of these CBSSC were run privately by either religious institutions or other institutions or by individuals. The CBSSC provided the much required lease of life to the diverted children. Children interviewed described them as the only place where they were able to experience what they would like to have at home. They praised CBSS saying these were the only places where they:

There was a piece of mind in the CBSS and a sense of self satisfaction: some children said that in the CBSS staff were kind to them and treated them with dignity without seeing them as criminals. They felt comfortable especially those who had gone through brutal conditions before being diverted. They were appreciative of the counselling and guidance they received at the CBSS

Family: Some children said they liked being at the CBSS because they considered it as their “family”. A young child of about 10 years said:

“When I come here I feel loved, I feel protected, no child can offend me without being reprimanded. We play and I have friends and space to play in. At home there was always beating and no play. Sometimes I was locked in our small house alone. Here I am happy to have friends, education and almost all I need. I would like to have my own balls, books and if possible watch cartoons”

They were assured of a meal: Most children who were under diversion were welfare cases. Mostly all they needed was food and accommodation. They were grateful that they were provided with food and said they had now stopped engaging in unlawful acts like stealing for survival.

They received education: Most of the children interviewed cherished their moments in the CBSS noting that they received education. Most of them were hopeful they would one day become great men and women of this country. In most of the CBSS visited children were offered remedial classes and where possible they were linked with formal schools. Most of the children said they would like to join formal schools to continue with their formal learning. Others children were receiving technical skills and hoped to be self reliant once they had completed their courses

CBSS have played a big role in the rehabilitation of children into the community. Most of the CBSS provide basic needs to the children during the day and in the evening the children go back to their parents/guardians. The greatest challenge in this arrangement is that some children have no families to go to. However, the CBSS management has tried to fit these children in some families for accommodation.

Challenges faced in the CBSS include:

Lack of adequate funds to run the CBSSC: As mentioned these CBSS are privately owned and community members seem to embrace them as their own institution. This means the management has to struggle to ensure all is well. With increasing number of welfare and diverted children these institutions find themselves overwhelmed and stretched to the limit. The CBSSC were on several occasions unable to

enrol trainees for the trade tests which are nationally recognised and which would give the boys and girls the accreditation they require to compete with graduates from other vocational training centres. While this is expected to be an input from the community, experience in the few years has shown that it has been a challenge for the community. Many children have not sat the tests even after they were extensively trained in the CBSSC. The management of these CBSSC also felt that community members need to be enlightened on the concept of CBSSC so that they can embrace it and start playing their part. Some CBSSC were grateful for the financial support they received through the Diversion Program partners

Lack of qualified personnel: Children placed in the CBSSC have different special needs like health and counselling. It emerged that most of the CBSSC do not have qualified staff to offer these services. They appealed for community members to volunteer to offer these services noting that they would not afford to pay for them. They were upbeat that if community members were enlightened about the importance of CBSSC they would participate in the CBSSC activities.

CBSSC managements would also like the services of teachers. May be with sensitization, retired teachers and others would be willing to volunteer their services.

Limited space: Some CBSSC felt that they had limited space to undertake their normal activities. Children lacked playing grounds and other facilities were like classes were missing. Children were squeezed especially in classes due to high turnovers in some CBSSC.

Almost all the CBSSC visited were proud to be associated with the success of some of the diverted children. At Mwangaza for example, some children had completed their courses and were giving a hand in the remedial classes. Examples were also given of some children who had completed their technical courses and are not running their own businesses.

Lack of recognition of the trained children and access to employment: Some adults who had gone through the Diversion Program in the CBSSC were disappointed that the government did not recognize their certificates. They were also disappointed that they could not get employment despite the fact that they had successfully completed their courses. These children and the CBSSC management appealed to the government to recognize their certificates to assist them get recognized in the job markets.

A number of challenges are facing the community based support system. These are:

Diversion is a new concept: This is very new idea to community members who may not easily see the link between children being in conflict with the law and the failure of community structures and systems. As a result a child in conflict with the law is seen as deserving punishment. In light of this, ownership of the CBSSC by community members is still very minimal. It is therefore not surprising that the CBSSC that seem more active are those that were existing and that may have been involved in other activities. New CBSSC evidently need further support.

Volunteerism: The CBSSC is based on the understanding that vocational instructors will either be volunteers or hired by the community. This is happening in a number of CBSSC but with challenges. Volunteers are likely to commit very little of their time in the CBSSC or they are likely to be people with little capacity. This issue is likely remain problematic until a time when CBSSC will be able to pay the instructors. Otherwise, instructors train only when they do not have other commitments. This therefore means that there are days when children don't have instructors. It was noted that lack of consistency could easily lead to dropping out by the children.

Shortage of food and nutritional support: It was noted that many of the children in conflict with the law may have been pushed out of their homes and communities by the lack of food and basic necessities. A number of children interviewed in the CBSSC reported that they decided to go to the streets in order to reduce the burden the parent(s) or guardian had in feeding them. Many would only have a meal or

none at all in a day. It is therefore unlikely that the same community would be able to support the children in the CBSSC. A number of children also reported that one thing they liked about the CBSSC was that they were provided with food, which to them was not a guarantee back home.

Additionally, there were cases of children who had been placed in the Diversion Program whose siblings were unfortunately suffering in the villages. These mainly were orphans. Such children had difficulties fitting into the CBSSC system. They found it difficult going back home to siblings that may have had nothing to eat. Some have been forced to drop out of the Program on such strengths.

Given this situation, Community Based Support Systems for Children need to be supported and encouraged to become self reliant, coupled with extensive community sensitisation on their role and responsibilities. Fortunately such efforts have already taken shape with some of the CBSS such as Mwangaza, which reported that they have ventured into income generating activities to raise revenue part of which will support the Diversion Program.

Therefore, there is need to sensitize the community on the importance of CBSSC and enhance its embracement of the concept. The government and other well-wishers should also assist in the running of the CBSSC until a time when community members are in a position to take up full management of the CBSSC.

Summary of findings under this objective

Under this objective the program aimed to establish at least 14 community based support system facilities in the 14 project areas and 14 children protection units in 14 police stations located in the 14 pilot areas. In total 14 CBSSCs and 14 CPUs were established and supported. However the level of operations within the CBSSCs and the CPUs is different with some having picked up earlier than the others. Among the visited CBSSCs for instance Mwangaza in Nakuru, Manyatta in Kisumu and Tabaka in Gucha were evidently more active compared to Kipsongo in Kitale and Awake in Kakamega.

Similarly the child protection units were also at different stages. For instance in Kilimani, Kamukunji, Buruburu, Gucha, Nakuru Central Police Station, Siaya and Kitale Police stations CPUs were fully equipped with furniture and beddings meaning that children could even sleep in them. All the others were incomplete but all had a children desk which could be used to receive the children. None of the CPUs had an operating kitchen. Delays in completion of the CPU were attributed to the slow pace in which disbursements from the government take to reach the stations.

Key risks facing the CBSSCs and CPUs were ownership and community perception respectively. The CBSSCs are supposed to be community initiatives, but this had not quite been the case. In all the CBSSCs, community members managed the running of the facilities. Besides the community volunteers, stakeholders mentioned that some community members were not ready to accept back children who have been diverted. This was blamed on popular belief that children who are problematic should be taken to a place where they get disciplined such as police station and children remand homes. Unless there is a change in this attitude, the progress of CBSSC may be slow.

Concerning the CPUs, it is feared that many children may find comfort in the in it, while parents may see it as an alternative remand home. When equipped with a television, play ground and children are assured of meals; the CPU may provide a better environment than many homes can afford. To this respect they may be attractive to many children and a relief to parents or guardians.

3.6 Entrenching Diversion within the Mainstream Government Departments like the Children's Department and the Police

As mentioned earlier, diversion is not entrenched in the Kenyan law. As such, one of the key activities in the Diversion program has been to ensure that it is entrenched in the law and more so within the government departments. Towards this end, a number of achievements have been made including:

Partnering with Key Government departments: Although diversion is not yet entrenched in the Kenyan law, the Department of Children has spearheaded diversion and is the coordinator of all diversion meetings both at the national and district levels. The Department back stops in as far as diversion and other children issues are concerned. The department has already incorporated diversion in their work plans, in addition to lobbying for the law on diversion. Similarly, the police and the prisons departments are also partners in the Diversion Program and play a major role in the diversion of children. The police have to a large extent entrenched diversion in their activities. The most significant of this has been the introduction of a course on children issues in their initial training syllabus. In addition police department has taken responsibility to construct the child protection units.

Creating a sense of ownership amongst key stakeholders: The diversion program has had to operative through other existing programs either in the government (treasury, police, children's department, etc) and NGOs (GCN, Forum CLAN etc). This has enabled the participating organizations to internalize diversion and view it as part of their responsibilities. This is very important in ensuring sustainability.

Involvement of government agencies in this program can be seen as success in two ways. Firstly, the government is the custodian of the Kenyan children and secondly, this is a sign of government commitment to diversion although it is not in the law.

3.7 Strengthened Data Base and Information Management System

A good data and information management system is essential for the success of Program. It is the only way for instance that progress in children that have been diverted can be monitored. The Diversion program supported the establishment of elaborate data and information management system that was meant to facilitate both data storage and information sharing among the Program stakeholders. This was to be done through introduction of the child protection registers and purchase of computers

Child Protection Unit Registers

At the CPU, information on a child is recorded in a CPU register. The register has different columns meant to capture very specific and summarised data on the child and progress in the child's case. In some stations the registers were fully in use and recorded all the required information while in other stations, the registers still looked new. In some of them key information was missing making it difficult for anyone to comprehensively understand the case by looking at the register.

Computers

The five key civil society programme partners were each provided with a computer. Similarly the police department was also provided with 15 computes, 1 was for the headquarters and 14 for all the 14 CPUs. The machines were meant to assist them in maintaining a database and information on children being diverted. Most computers donated to the CPUs were not in use and this may be attributed to lack of computer literate officers in some police stations. Besides, lack of a clear and common system of capturing information on children may result in very different versions of documentation. This has however been avoided to an extent, by the use of the CPU register. But there is no system in place to enable the police, and other stakeholders key in data on children.

Information gathered was that CLAN was given the task of developing computer software on data and information management in the diversion programme, which has been done but is yet to be introduced to the police department and key project partners. There is need for urgency in computerised data and information management for the programme. Currently data recording within the programme is carried out manually through the distribution of data materials such as files, stationary, file cabinets to hold information on children at the police stations children department offices and at the CBSS. This form of data management has been supported by GCN and FORUM. The Police also developed a Diversion Case register that is used at the CPUs and child protection desks. This is also done manually and information is rarely transferred to the computers. The computers at the Police and Children Department H/Qs, FORUM, CLAN and GCN have gone along way into strengthening the capacity of these organisations. The computers are used for information on the Diversion Programme and also for other donor programmes. Centralisation of this information on diverted children at the department of Children's Department H/Qs is yet to be done. The responsibility to do this lies with the department of children's service and need to move with speed to improve the data management system.

The department of children services through the district officers collects more information on children that are in contact with its office. This is because the office has a more elaborate structure to the community level that feeds the office with information of a child's background and home environment. Additionally, the office has the responsibility of furnishing other stakeholders on information such as social inquiries before a child can be repatriated. This therefore makes the office collect more information. Even though, their database management is also manual.

This objective aimed at having a clear data management system across each of the levels and partners in the diversion Program. This objective entailed equipping the partner institutions and organisations with computers to facilitate data management and networking between the project areas and the headquarters.

Use of computers was however concentrated among partners at the national/headquarters with minimal usage at the project area level. This was attributed to many factors such as lack of electricity, lack of computer literate officers, and non installation of a data management system.

4. Diversion Program Overall Evaluative Conclusions

This section presents the overall conclusion on the Diversion Program based on the findings presented in the report.

Effectiveness

Effectiveness means the extent to which a development intervention has achieved its objectives, taking their relative importance into account. The diversion Program had the six objectives whose achievements are at different levels. The following section will analyse the effectiveness of each of the objectives.

Reduced number of children in conflict with the law from the juvenile justice system in fourteen Diversion program areas in Kenya.

In total, about 6,000 children have been diverted from the 14 pilot sites including those that have been prevented from getting into activities that would get them to be in conflict with the law. The Program had envisaged to support 5,000 by the end of the program period. Diverting children from the mainstream judicial system is very critical in safeguarding the interests and the future of the child.

Previously and in stations where diversion concept has not been introduced, children in conflict with the law were/are mixed with other in-mates some of whom are hardcore criminals. Most a times this environment has a negative effect on the child, some of who have graduated into criminals out of their exposure to seasoned criminals. With diversion, there are fewer children being locked in stations or being aligned in courts. It is expected that fewer children will be engaging in crime in the future, with such early attempts to rehabilitate them.

Diversion however faces the challenge of lack of a clear legal backing. To date diversion is not provided for in the laws of Kenya, though efforts by program partners have seen the incorporation of diversion into the Children's Amendment Bill 2008 which seeks to amend sections of the Children Act. Legal backing is an important pre-requisite for success in the diversion Program.

Enhanced awareness of child rights and child protection for key stakeholders in the juvenile justice system in Kenya.

Effectiveness in the diversion Program heavily depends on the knowledge possessed by key partners and stakeholders on child rights and child protection. This is important given that the concept lacks a clear legal backing and interpretation. It is therefore subject to different kinds of interpretation depending on the stakeholder. It was therefore paramount that people dealing with children in conflict with the law have a common understanding on diversion as a concept and on children rights in general.

A number of sensitisation meetings were organised by key partners with support from the programme. In each of the project areas a minimum of 4 meetings targeting the police, members of the DDCT, children, government officers, media personnel and the community were held each year. For instance in 2005 alone a total of 375 police officers, 200 government officers, 100 members of the DDCT, 200 community members and 40 media personnel were trained under this programme across the 14 project areas.

In addition, the Program through the efforts by the National Diversion core team managed to lobby for the introduction of a course on children rights at the Police Training College in Kiganjo. This was a big achievement that targets all police officers joining the force, which in essence means that all police officers recruited after the introduction of the course are expected to have some basic understanding of the rights of the child and how to deal with children. This will eventually also address the problem currently facing the management of CPUs where officers trained on children issues get transferred or re-assigned leaving the CPU or the children desk without a trained officer.

These efforts have born fruits in a number of areas. For example, reports show that out of 1408 sexually abused and exploited cases reported in the country between January and June of 2006, more than half (793) of the cases were from the 14 project areas. This at the least is an indication of a higher level of awareness in the 14 areas.

Stakeholders interviewed in this evaluation echoed the need for more and detailed training. This implies that training received by stakeholders was not adequate.

Strengthened and empowered National Diversion Core Team to effectively provide a forum for collaboration, coordination and debate on juvenile justice issues and for lobbying for the implementation of children's laws and policies for child protection in Kenya.

The National Diversion Core team is the technical think-tank for the diversion Program. The team provides leadership, guidance and co-ordination of diversion activities. It also makes recommendations on policy issues that support diversion for children in conflict with the law. The team brings together the key stakeholders on children issues including department of children services, the police, probation department, prisons department, judiciary and non governmental organisation partnering in this program.

Set objectives under this objective include continuous lobbying for child protection laws and policies, inclusion of diversion in to Kenyan laws, existence of government budget lines on diversion, embedding the CPU into the police structure and continuous networking with other stakeholders.

One major strength of the NDCT is that it brings together heads of institutions and organisations who can easily make decisions and push for their implementation. It is as a result of this that a number of fundamental achievements were met in the diversion Program.

The first was the introduction of police training guidelines at the Kenya Training College in Kiganjo. The program through the NDCT managed to lobby for the introduction of this course in an otherwise closed system riddled by government bureaucracy. This was no small achievement.

The second was the construction of the CPU in 14 police stations as well as the introduction of children desks in police stations. Again, these two were milestones considering that there has not been any additions to any police station outside the conventional plans that have been followed since independence.

The third key achievement of the Program attributable to efforts by NCDT is the inclusion of diversion in to the proposed amendments on the Children's law. This was a good opportunity to legalise diversion in a speedy manner. The process was spearheaded by one of the team members and a partner in the Diversion Program – CLAN in the NDCT. Clan has the capacity that was needed to draft the diversion law and incorporate it into the Children's Amendment Bill (2008). Chances are high that the amendments will sail through parliament given that they are not contentions, and that members of parliament are being lobbied to pass the bill.

Before diversion is included into law, it will remain difficult for the government to pass any budget lines on diversion. However different institutions have been able to incorporate diversion and the related expenses into their normal operations through with serious challenges. The police for instance feed and sometimes transport children using money and vehicles from the larger other stations. The same applies to children's department. This is made possible by heads of such institutions having embraced diversion concept and consequently deciding to support it.

Lastly, efforts by the NDCT have brought on board other actors who were initially not in the Program but have overtime gained interest in the Program. These include the Governance Justice Law and Order Sector (GJLOS), the local authorities and religious organisations that support the Program in different ways.

Views and opinions of children in conflict with the law and other categories of marginalized groups of children are taken into consideration in issues that affect them at district and national forums.

The output in this objective was that children's right to participation and being listened to are respected within the 14 project areas. It is noted that the establishment of the CPU and children desks within police stations was one key step in guaranteeing children an environment that they can freely dialogue with police officers and other people who may engage them in a police station.

Moreover, through the CBSSs, children have been exposed to materials and training on child rights and other general children issues. More significantly, the diversion Program has facilitated the participation of children in national children congresses which bring together children and stakeholders from all the provinces in the country. In this forum children have an opportunity to engage and air their views and opinions to policy makers and other stakeholders in children issues.

Preventive and rehabilitative community based strategies developed alongside the child protection units for the care, rehabilitation and retention of children in conflict with the law.

Under this objective the Program aimed to establish at least 14 community based support system facilities along the 14 children protection units in 14 police stations located in the 14 pilot areas. The operational CBSSs are Pumwani, Kasarani and Kibera in Nairobi, Naivasha, Mwangaza, and Kitale in Rift valley province, Kakamega and Busia in Western, Siaya, Kosowo, Nyachogochogo and Tabaka in Nyanza.

There are 14 CPUs established in 14 police stations in the project sites. The oldest CPUs established in 2001 are Kilimani, Kamukunji, Nakuru and Kisumu police stations. These were followed by Buruburu in Nairobi, Naivasha, Gucha, Kakamega and Siaya which were established from 2004. From 2006 an additional 5 CPUs were established i.e. Kasarani (Nairobi), Bondeni (Kisumu), Kitale, Kisii and Busia. As noted earlier the level of operations within the CBSSs and the CPUs is different with some having picked up earlier than the others. Among the visited CBSSs for instance Mwangaza in Nakuru, Kosowo in Kisumu and Tabaka in Gucha were evidently more active compared to Kipsongo in Kitale and Awake in Kakamega.

Similarly the child protection units were also at different stages. For instance in Kilimani, Kamukunji, Buruburu, Gucha, Nakuru Central Police Station, Siaya and Kitale Police stations CPUs were fully equipped with furniture and beddings meaning that children could even sleep in them.

Key risks facing the CBSSCs and CPUs were ownership and community perception respectively. The CBSSCs are supposed to be community initiatives, but this had not quite been the case. In all the areas that we visited, community members had very little input in the management and running of the facilities. Stakeholders also mentioned that some community members were not ready to accept back children who have been diverted. This was blamed on popular belief that children who are problematic should be taken to a place where they get disciplined such as police station and children remand homes. This has significantly affected the success of the CBSSCs.

Concerning the CPUs, it is feared that many children may find comfort in the in it, while parents may see it as an alternative remand home. When equipped with a television, play ground and children are assured of meals; the CPU may provide a better environment than many homes can afford. To this respect they may be attractive to many children and a relief to parents or guardians.

Strengthened data base and information management system in project districts and project monitoring and evaluation.

This objective aimed at having a clear data management system across each level and partners in the Diversion Program. This objective entailed equipping the partner institutions and organisations with computers to facilitate data management and networking between the project areas and the headquarters.

The evaluation notes that computers were bought and distributed across all the partner organisations. However, use of computers was concentrated among partners at the national/headquarters with minimal usage at the project area level. This was attributed to many factors such as lack of electricity, lack of computer literate officers, and non installation of a data management system.

Notably the CPU had separate registers from but similar to the occurrence book (OB) at the main report desk. The essence of the register is to separate children cases from other cases received at the station. The level of usage of the CPU register was however different. In some stations such as Kisumu and Gucha, the registers looked like they have been used for long while in Siaya and Buruburu, the looked pretty newer. Additionally, in some stations the registers had been filled with all the information required while in others, some spaces had been left black. This implies that there is need to clear guidelines on information needed and how it needs to be captured in the CPU register.

Largely at the district level, the CPU and CBSSs information storage was manual, with minimal and unclear information sharing system between the offices at the project area level and with the national level.

Impact of the diversion Program

Impact means the totality of the effects of a development intervention, positive and negative, intended and unintended. Put differently impact of a development intervention seeks to measure how the evaluated activities affect the situation of target groups and other stakeholders positively or negatively.

The table below summarises the intended and unintended positive and negative effects of diversion on people, institutions and the physical environment. It is however noted that the time period between the implementation of the intervention and the evaluation is not long enough to adequately notice and measure long term effects of the Program.

Expected Positive	Unexpected positive
Change of attitude about children by the larger community	Improved image of the police force
A police force that is more sensitive to the children	Trained police officers, magistrates introduce diversion concept in areas they are transferred to
Reduced numbers of new criminals	
Growing interest on diversion from other organisations (e.g. GJLOS)	
Improved capacity of stakeholders to deal with children issues	
Demand for CPUs in stations not currently supported	
Children turn from juveniles to responsible members of community	
Draft Law on Diversion	
Closer working relationship between government institutions dealing with children	
	Unexpected negative
	Community misinterpretation of the role of CPU and CBSS

Without diversion it would be business as usual in the police stations and the country at large, where children do not get an opportunity to be listened to despite that they are forced by circumstances to get into conflict with the law out of necessity. Community would increasingly be pushing children out of the community structure into the juvenile justice system and into borstal institutions, or into the streets. This has significantly reduced.

Community attitude is also significantly changing particularly when they see governments concern for children through the CPUs and children desks. In addition, the police would still be a closed group, less friendly to the general public. Diversion Program has boosted the police image as members of the same community people live in.

Relevance of the diversion Program

Diversion Program came in at a time when the country was facing fundamental challenges in economic growth. Economic growth rates were in their negatives leading to massive job losses and unemployment. Many families lived (and still live) below poverty line with high levels of food insecurity.

In addition, the country has faced a bigger challenge of increasing numbers of orphaned children as a result of HIV and AIDS. These conditions took toll in many families forcing them to disintegrate and consequently forcing children to activities that exposed them to conflict with the law. Diversion therefore came in to fill a gap caused by failures in the society, which children were not responsible for yet they bore a huge responsibility and were most affected by the deplorable living conditions in the country.

The intervention is in line with development policies of the country and the region. Kenya is signatory to a number of international and regional instruments that guarantee protection of the child. The government has also enacted child specific laws to safeguard the interest of the child. It is in the interest of the government to forge alliances that work towards fulfilling its responsibilities under the different conventions. For this reason the government embraced diversion and is in the process on integrating the concept in its normal operations.

While diversion is a critical addition in the process of safeguarding the interest of the child, more emphasis will need to be focused on the community where stakeholders' belief, the solution to this developmental problem lies. As mentioned earlier children are pushed into conflict with the law by failures in the family and community at large. Therefore the real solution to the problem lies in addressing the real factors that push children to the streets and or into conflict with the law. In the meantime, diversion will have to make all attempts to salvage and rescue children who are already in the quagmire.

The Diversion Program has not only the potential for replication but is already being demanded in other areas. In a number of cases, magistrates, police officers and children officers as well as other stakeholders have introduced the concept in different parts of the country when they get transferred from areas supported by the Program. Besides the situation facing children, families and communities in Kenya are similar across the country. Diversion can therefore never be misplaced in any part of this country.

Sustainability of the diversion Program

One of the key indicators of sustainability of the Diversion Program is that it has actually been driven by the governments own department of children service and local organisations dealing in children issues such as Girl Child Network (GCN) and FORUM. The Program received significant funding from Sida and Oak Foundation and technical support from Save the Children Sweden). But, being a relatively new concept in the country it takes time for the otherwise more bureaucratic government structure to buy the concept.

In addition there has been enormous support from key stakeholders amid the ambiguity in law. The police for instance have played a key role including that of introducing a course on children issues in the curriculum they go through in their mother training institute. The Chief Justice has on the other hand appointed more children magistrates and established children courts. The children magistrates met to have strongly embraced diversion. They are the last people to make judgement on the fate of a child and it is certainly important that they have strongly come on board the Program.

Activities in the Program were conceptualised by the different stakeholders and are therefore easily acceptable by all of them. Though the concept is new, the activities and the manner in which they are planned is consistent with the situation in the country and the community. For instance noting that the solution to the problem of children getting in conflict with the law lay within the community, the Diversion Program has insisted on the need for the community to take up ownership of the Community based support systems. Though initially a challenge, ownership among community members is taking root as people appreciate the concept of diversion and the need to safeguard the rights ion the child.

5. Lessons Learned

The Diversion Program has taught stakeholders a number of lessons which include:

- Government bureaucracies delay release of project funds and disrupt project activities. Therefore, any available money should be established to ensure that project funds are processed on time.
- Different partners have different challenges. It is important to understand the operations of each partner and plan on how to ensure that some partners do not drag the process.
- Operation in the absence of a legal framework hinders and or slows smooth running of the project. However, it provides an opportunity to learn from the process and propose laws based on the experience.
- Tapping into the existing local structures predisposes local officials to support diversion, and its sustainability is enhanced.
- Networking with national government agencies and civil society groups results in effective synergies.
- Training, capacity building and well-defined roles promote effective collaboration of all program actors.
- Coordination with police, whose support is critical, must be further strengthened. Police transfer necessitate periodic trainings and updating
- Capacity building must be ongoing process especially for those serving in committees
- Effective rehabilitation and reintegration are needed to translate short-term gains into more lasting changes among diverted children. Without an after-care program, the reintegration of these children is superficial. Diverted children who have returned to unsupportive family or unsafe environments require even more attention
- Proper documentation is essential, not only for monitoring, but as the basis for lobbying for more government support
- Advocacy must be intensified to convince the public that diversion and reintegration are worthy governance issues so that the funds will be automatically allocated by the authorities to support worthy programs.
- It would be prudent for the anchor NGO to stay neutral during elections since partisanship among community partners may generate conflict which could affect program implementation

6. Recommendations

The link between the police and children's department and the court systems should be strengthened to expedite diversion cases and also eradicate possibilities of children being taken to court.

- It is important that welfare cases are totally separated from cases of conflict with the law. To achieve this, the department of children's services must take a lead role in developing and lobbying for strategies that ensure welfare cases are treated and handled as such.

- The Government needs to create a CPU financial allocation for the police stations. This account should hold money for both welfare and children in conflict with the law
- The government should have a clear policy and agreements should be reached on how to use any money available at the police stations or children's department for diversion purposes in case diversion money is delayed at the treasury. Evidently, there has been an over reliance on donor funds
- Community mobilization and creation of awareness on child rights and diversion should be done at village levels by key programme partners.
- The Department of children Services needs to support in the identifying and training community volunteers to monitor diverted children and follow up on both child and parent compliance in terms of agreement reached during mediation. Employing peer educators to reach out to the community could also be another alternative
- There is need for a government policy on community volunteers and peer educators must be facilitated in order to sustain volunteerism beyond the pilot stage
- There is need for local civil societies operating in the project areas to be involved in the diversion project. Their roles could include monitoring the activities of the project, providing guidance, supporting in capacity building, and also providing materials to the CPU's and CBSS. The civil society should also provide a link between CPUs and the CBSS including supporting with specialised services like counselling and psychiatry.
- The CPUs should be run by specialised (counsellors, child psychiatrists, criminologists) police officers. These should be trained police officers.
- Clear arrangements should be made between police and nearby health institutions to enable police officers take children to hospital if need arises.
- Complete ownership of the CPUs by the Police Department is required. There is need for a clear plan as to how the CPUs will be run e.g. how the children will be fed, clothed (those whose cases take long), protecting them at night, hygiene in the CPU etc.
- The program must continue to lobby and push the government to give a budgetary allocation specifically for diversion at the district children's office and at police stations
- There is need to gazette more children magistrates, these magistrates should have the power to operate in any area they are transferred.
- More emphasis should go to reaching out to stakeholders and potential partners to assist in equipping the CPU's and the CBSSs
- Diversion must be supported by all stakeholders at this crucial stage when there are real prospects of recognising it in the law, and when it is aggressively picking up. Exit by any stakeholder at the moment is likely to orphan the program
- There is need to finalise and implement the data management system for the diversion programme. This will ensure accurate data and availability of data even when officers are transferred. Similarly the department of children services needs to ensure that data management is centralised from the headquarter for more efficiency.
- Child rights should be entrenched in the education system

7. Methodology

The evaluation was undertaken by two evaluators (lead and an assistant). In the team also was a documentation expert whose role was to document the project. The evaluators were guided to the project areas by two project implementers namely Girl Child Network (GCN) and Forum for Child Rights Initiative (FCRI).

Both primary and secondary methods of data collection were employed. Secondary data was collected through literature review: Official policies, guidelines and directives, Program reports, workshop reports and other Program evaluation report.

Primary data was collected through:

Key informant interviews: These were held with key stakeholders in the Diversion Program including; NDCT members, DDCT members, Area Advisory Council members, Children Department Officers, Police Officers, Children's Court Magistrates CBSS members, Community members and Children.

Focus Group Discussion: Focus group discussions were held with children in conflict with the law.. These discussions were useful in capturing children's opinion and their experiences in the justice system.

Observation: Observation was used to collect data from the CBSS and CPU's. Observations were made on the extent of the construction of the CPU's, furnishing of CPU's

Case studies of five children diverted were conducted

Annex 1 Terms of Reference

1. Background of the Diversion Program in Kenya

Between 1987 and 2000 reviews of the Juvenile Justice System in Kenya were carried out by a number of agencies amongst which were the Children's Legal Action Network (CLAN), the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) – Kenya, Undugu Society of Kenya, Save the Children and Human Rights Watch. These reviews included an analysis of the administration of Juvenile Justice in comparison with international standards and the problem of children in conflict with the law.

All these reviews identified a number of key concerns within the juvenile justice system in Kenya. The key concerns were the following:

- Lack of appropriate legislative and policy frameworks to ensure the clear separation of social welfare issues from criminal justice issues and thereby ensure the effective protection of children within the system.
- Lack of policy and practice guidelines, which support child protection within the juvenile justice system.
- Inadequate resources including funds, infrastructure and personnel to provide for the basic physical and psycho-social needs of children in general and for the special needs of children who have been abused or traumatized.
- A high percentage of resource allocations are invested in institutions rather than the more cost-effective and sustainable community based alternatives and enhanced field services.
- Lack of effective data management systems within the JJ system in Kenya.
- Lack of co-ordination and collaboration within and between key government departments and civil society organizations involved in juvenile justice and its administration.
- The justice system in Kenya was being used to solve welfare issues. An estimated 80–85% of children who find themselves in police custody or in correctional facilities in the juvenile justice system are children who are in need of care and protection, the majority of these being street children.
- The majority of 15–20% of children in conflict with the law who are categorized as offenders have committed relatively minor offences, which could be linked to survival efforts.

As a principle outcome to this work, Save the Children proposed a series of practical recommendations including the need to divert children from the justice system as a priority.

In January 2001, a stakeholders' workshop for organizations involved in juvenile justice came up with a general consensus on the need to divert children in conflict with the law from selected police stations. A Diversion Framework was developed and this marked the beginning of Save the Children's Diversion Program for Children in Conflict with the Law in Kenya.

Since 2001, the Diversion Program has been implemented in 14 program areas. These areas are: Kilimani, Kamukunji, Buruburu, Karasarani (Nairobi); Naivasha, Nakuru, Bondeni and Kitale (Rift Valley); Busia and Kakamega (Western); Kisumu, Siaya, Kisii, Gucha (Nyanza). The parties involved in the implementation are partners at the National level who comprise the National Diversion Core Team and the Strategic Alliance, partners at the districts' level who form the District Diversion Core Teams

and partners at the community level. The Department of Children's Services (DCS) coordinates all the program activities from the national level, to the provincial, district and community levels. The Police department on the other hand, coordinates all child protection activities at the Child Protection Units. Key partner civil society organizations are involved in program activities that support the government in the protection of children in the juvenile justice system.

Agreements of collaboration on the implementation of the program have been signed between Save the Children Sweden and the Children's Department, the Police Department, Children's Legal Action Network, Girl Child Network and Forum for Child Rights Initiatives.

2. Goal of the Diversion Program

More children in conflict with the law and other categories of marginalized children are better protected against abuse and are rehabilitated and re-integrated.

3. Objectives of the Diversion Program

1. Reduced number of children in conflict with the law from the juvenile justice system in fourteen Diversion program areas in Kenya.
2. Enhanced awareness of child rights and child protection for key stakeholders in the juvenile justice system in Kenya.
3. Strengthened and empowered Strategic Alliance and National Diversion Core Team to effectively provide a forum for collaboration, coordination and debate on juvenile justice issues and for lobbying for the implementation of children's laws and policies for child protection in Kenya.
4. Views and opinions of children in conflict with the law and other categories of marginalized groups of children are taken into consideration in issues that affect them at district and national forums.
5. Preventive and rehabilitative community based strategies developed alongside the child protection units for the care, rehabilitation and retention of children in conflict with the law.
6. Strengthened data and information management systems in program districts up to the national level.

4. Purpose of this Evaluation

Save the Children Sweden took over the management of the Diversion program from Save the Children UK in January 2004. Since then, the program has been implemented with the financial support of Sida and the Oak Foundation. The program funding period ends in December 2008. The evaluation is an end-of-project activity which will provide SCS, project donors and partners with an understanding of the extent of the achievement of the projects' objectives. The evaluation will aim to see the impact and changes that the program has brought about in the lives of children in Kenya, particularly for the target group. The evaluation shall also identify the changes in policies and practices affecting children as a result of the project, the effect the programme has had on raising children's voices, changes in capacity of partners to support children and the methods used to bring about these changes. The recommendations of the evaluation will inform Save the Children's decisions on how to include these experiences in its new planning period, 2009–2012.

5. Objective of the Evaluation

The objectives of the evaluation are the following:

- To review status versus planned outputs (achieved)
- To assess relevance of program objectives and challenges in realizing them;
- To assess to what extent the four SCS working methods were used in program implementation. –
 - Research and analysis;
 - Direct support;
 - knowledge dissemination and capacity building;
 - Advocacy and awareness raising.
- To establish the impacts of the program interventions on the respective beneficiaries by assessing what changes the program has had in the following five dimensions of change:
 - Changes in the lives of children;
 - Changes in policies and practice affecting children;
 - Changes in children's and young peoples' participation and active citizenship;
 - Changes in equity and non-discrimination of children and;
 - Changes in the capacity of the civil society and communities to support children's rights
- To review networking among programme implementers and the overall emerging impact on women's human rights in Kenya.
- To examine the information management systems for children in conflict with the law and whether this system contributed to improved analysis, practice and policy.
- To propose appropriate areas of intervention in the area of child protection for partners in Kenya including identifying priority needs, existing capacities and gaps.
- To review and advice on possible replicability and possibility to upscale the various interventions to national level and recommendations of strategies for so doing
- To review and analyze the viability of systems and structure of programme management on the Programme sustainability.
- To review behavioural changes that can be attributed to the programme including all arms of government involved in line with existing socio-economic, religious and cultural issues/behavioural patterns.
- To provide overall analysis of Program impact in view of planned results/outcomes, sustainability; stakeholder participation, reintegration, complementarily and collaboration in general.
- To document the unanticipated results (positive and negative) of the programme and possible instigative measures in place.
- To review overall impact versus financial input within the Programme ('value for money' component)
- Where possible, generate baseline data on changes occurring in communities for future planning purposes on the Programme.
- Review personal stories of change emerging from programme impact/implementation that could be included in the Annex of the Report.

6. Methodology for the Evaluation

The evaluation will be carried out through:

- a review of program files, narrative and financial program reports and partner narrative and financial reports.
- interviews and group discussions with children, with members of the Districts Diversion Core Teams and National Diversion Core Team, members of Area Advisory Councils of the fourteen project area, members of community based support systems for children, key community leaders, members of partner civil society organizations, personnel of the justice system and beneficiaries associated with the program who include parents and guardians.
- field visits to all fourteen project sites of Kilimani, Kamukunji, Buruburu, Karasarani (Nairobi); Naivasha, Nakuru, Bondeni and Kitale (Rift Valley); Busia and Kakamega (Western); Kisumu, Siaya, Kisii, Gucha (Nyanza).
- national level consultations with heads of key government departments and donor agencies.

7. The Evaluation

The evaluation will be carried out by a team of two comprising a team leader who is the main evaluator and an assistant. The following is the criteria for the main evaluator and the assistant.

A) The main evaluator should meet the following criteria:

- 1) Should have a Minimum of Masters Degree in Social Sciences, Research or Law with a minimum of five years work experience in evaluations, research and/or situation assessments
- 2) Prior experience in carrying out evaluations, research or situation assessments for child focused organizations will be an added advantage
- 3) Should have experience in Child Rights Programming
- 4) Can properly articulate international, regional and national Human Rights/Child Rights instruments and can analyze government policies and regulations.
- 5) Should have experience in conducting interviews with children
- 6) Should have excellent report writing skills.
- 7) Is able to travel to the fourteen diversion programme areas of Kilimani, Kamukunji, Buruburu, Karasarani (Nairobi); Naivasha, Nakuru, Bondeni and Kitale (Rift Valley); Busia and Kakamega (Western); Kisumu, Siaya, Kisii, Gucha (Nyanza)
- 8) Should have read and be ready to abide to the SCS Code of Conduct

B) The Assistant Evaluator should meet the following Criteria:

- 1) Should have a minimum of a Degree in Social Sciences, Research or Law with a minimum of five years work experience in evaluations, research and/or situation assessments for child focused organizations
- 2) Should have experience in working with children and communities and conducting interviews with children
- 3) Can properly articulate international, regional and national legal instruments on child protection and can analyze government policies and regulations.

- 4) Should have extensive experience in writing and reporting on children issues
- 5) Should have read and be ready to abide to the SCS Code of Conduct

8. Expected Outcome of the Evaluation

Expected outcome

- An evaluation report of the Diversion Programme for Children in Conflict with the law in Kenya to be presented to the Sida, Oak Foundation, Save the Children and the National Diversion Core Team.
- Diversion Programme replication plan made based on the recommendations drawn from this Evaluation Report.

9. Time Frame:

The program evaluation will take a total of 29 working days. These days will be used as follows:

- a. Four days will be used for planning for the evaluation and for carrying out desk reviews
- b. Five days for meetings with key partners and members of the NDCT and donors
- c. Ten days for evaluation in the 14 project areas as follows: Nairobi 2 days, Rift Valley 3 days, Nyanza 3 days and Western 2 days
- d. Four days for writing 1st draft of evaluation report
- e. Two days for incorporating into the report input from SCS and members of NDCT
- f. One day for report presentation to key stakeholders and to donors
- g. Three days of incorporating input from workshop participants and finalizing final draft of evaluation report

The evaluation will be undertaken between 21st October 2008 and 4th December 2008 as follows:

Date(s)	Activity
21st–24th Oct	a) Planning of the project evaluation between consultant, Save the Children Sweden, Department of Children Services (who are the project focal point) and members of the National Diversion Core Team b) finalization of logistic issues and financial support c) Carry out a desk review
27th Oct–31st Oct	Interview key partners, donors, and heads of key government and civil society partner organizations
3rd Nov–13 Nov	Evaluation of the 14 program areas
17th Nov–20th Nov	Report writing
21st Nov	Present 1st draft of evaluation report to Save the Children Sweden (SCS) who will distribute the report to members of the national Diversion core team (NDCT) for comments
26th Nov	Finalize 2nd draft of evaluation report with input from SCS and NDCT
28th Nov	Present evaluation report findings to key stakeholders and donors in a one day workshop
4th Dec	Present final copy of evaluation report to SCS which has incorporated input from workshop participants

Annex 2 Diversion in Other Jurisdictions

Uganda is one of the countries in the continent where the concept seems to be working well; the country enacted its statute on children in 1995, after ratifying the Convention in 1990. The commitment of translating the spirit of international instruments on the rights of the child is reflected by the statute's codification of fundamental principles, which are to inform any tribunal charged with the responsibility of looking into issues on minors.

Upon the juvenile's apprehension, the Children's Act empowers the police to deliver a caution and let the child go, the police may dispose the case themselves without recourse to formal proceedings. If the police are convinced that the child should not be diverted at this stage, then the child may be released on a personal bond or a bond entered into by his/ her parents. A child friendly and non-stigma imposing adjudicatory process is envisaged through the Village Resistance Committee Court (VRCC). The VRCC has a sentencing jurisdiction that is limited to reconciliation, compensation, restitution, apology and caution.

The intimidating Court environment is obviously absent and the minor is accordingly made to relax even as the VRCC applies its mind on the charges against the minor. The VRCC lacks the powers to deprive a child his/her individual liberty. A minor's first contact with the Court system in Uganda, comes when the above mentioned tiers of diversion fail to work, the minor will then be taken to the Family and Children's Court as a court of first instance, the family court has power to make the following orders: absolute discharge, caution, conditional discharge for a maximum of twelve months, binding the child over to be of good behaviour for a maximum of twelve months and compensation, restitution or fine noteworthy, a commitment to detention is taken as a last resort.

It is imperative to point out that it is only cases in which a minor is jointly charged with an adult or on capital offences where a minor will be subjected to a magistrate in the first instance. The statute implements the principle of diversion at the point of first contact itself in tandem with the Beijing Rules.

Beyond the grassroots level, the Police also deal with the minors, at the police station the juvenile offender can be released with or without a caution. The last level is the judiciary where again the child offender may be released with or without a caution.

The practice of diversion had developed in South Africa even before the country enacted legislation. South Africa ratified the CRC in 1995 and immediately embarked on a process to arrive at a suitable policy and statutory provisions on juvenile justice. Diversion was initially embraced without a legal framework, later the Child Justice Act, was enacted. The legislation provides for a number of diversion options.

The Statute places much emphasis on a new procedure called the preliminary inquiry, which aims to ensure that the case of each child is carefully considered and that as much as it is practicable, the child ought to be diverted from the criminal law infra-structure.

For diversion, a child must voluntarily admit the crime before being considered for diversion. The Bill sets out large range of new diversion options, based on identified needs and the diversion options currently available. The options are categorized in three levels from least to most difficult.

Level one diversion comprises the least difficult options, such as written apologies, family time orders, referral to counselling or therapy, and symbolic restitution. Level one order may be for a maximum of three months. Level two includes orders contained in level one but may be for a period of six months. Orders for a maximum of 50 hours community service over 6 months, referral to family group conferences, and referral to victim-offender mediation are also level two orders. Level three contains the most

difficult diversion options and applies only to children older than 14. This level includes referral to a Program with a residential element, that is, the child will live away from home for part of the Program. Community service of 250 hours over a year is also a level three option.

The Act provides that probation officers must assess children arrested and make appropriate recommendations with regard to diversion at a preliminary inquiry. They must also monitor whether the child does the diversion properly, and if a child fails to comply with any condition of a diversion option, inform the inquiry magistrate of that non-compliance

Annex 3 Case Studies

Case Study 1

Ann (not her real name), 18 years, did not complete her primary education but dropped in class 7. She lived with her single mother who engaged in casual jobs to make ends meet. Ann is the firstborn in their family. To assist the mother in bringing up the other 4 siblings, Ann looked for a job as a house girl and she worked for about three months. During the time of this employment Ann had not been paid by the employer. But she also occasionally stole money from the employer. One day she stole Kshs 6,000 which she took to the mother and consequently disappeared in to the streets.

On the streets she joined a group of girls involved in commercial sex, but she had other ideas. One day in a night club she drugged a man and stole Kshs 10,000 from him. She tried it again but this time she was discovered arrested and taken to a police station. The police saw her as too young and were reluctant to charge her. She stayed in the cell for 4 days before she was rescued by a lady from a human rights lobby group. She joined a CBSS and trained in hair dressing. She is now employed in a salon in the town.

Case Study 2

Jackson (not his real name) is a 20 year old young man. His parents separated when he was about 10 years and he since lived with the mother. It was a struggle for the mother to feed him and his siblings so he dropped out of school to go sell paper bags in one of the major towns. It was a life of hide and seek in the town as he cunningly avoided police swoops. One day Muthoni, who worked for a CBO (currently partnering in the Program as CBSS), approached Jackson and asked him to leave the streets and join the Program. Jackson initially hesitated but was later convinced. He joined the CBSS in 2002, aged 11 years, but after a few days went back to the streets where he could get quick money. But Muthoni followed him. The same year Jackson's mother passed on and Jackson started living with foster parents. At this time Jackson was full time at the CBSS where he underwent informal education to bridge the gap lost while on the streets. He later joined another school near where he lived. He finished class 8 in 2001 and he managed to defeat many of his classmates in the exam. Jackson is currently a volunteer instructor in the CBSS he went through. He lives with 2 other orphaned children and has become a good example for children in the CBSS

Annex 4 Evaluation Tool

Design and Planning

Project Staff (GCN, SCS)

- What was the project planning and design process like? Was it participatory (including stakeholders and does it reflect country and stakeholder priorities?
- What roles were played by all stakeholders in the design of the project?
- Were the needs of stakeholders taken into account in the design?
- To what extent is the project linked to other child rights interventions?
- What are the inputs, activities, outputs and objectives? And are the linkages between inputs, activities, outputs and objectives clear and logical?
- Are there any Policy support measures developed by Government for diversion of children in conflict with the law?
- What direct action programmes were implemented?
- What strategies were employed in implementing the activities?
- What capacity development programmes (training) were initiated as part of the implementation of the project
- Is there a common understanding of what constitutes diversion under the project?
- What was the timeframe for programme implementation and sequencing of activities? Are they logical and realistic
- Were there any baseline research surveys conducted prior to implementation of the project? If so how useful were they?
- To what extent were available information on socio-economic, cultural and political situation taken into consideration in the design of the project?
- To what extent have the implementing partners cooperated (networked) in the implementation of the project?
- Has the design included the preparation of a monitoring and evaluation plan including the indicators and milestones?

Implementing partners (GCN, Forum, Police, CBSS)

- To what extent did you as an implementing partner participate in the design of the project?
- What was the project planning and design process like? Was it participatory (including stakeholders) and does it reflect your organisation priorities?
- Were your needs as stakeholders taken into account in the design?
- To what extent is the project linked to other activities/programmes in your organisation?
- What direct activities were implemented by your organisation?

- Do you think there is a common understanding of what constitutes diversion under the project?
- What was the timeframe for activities implementation? Are they logical and realistic?
- To what extent were available information on socio-economic, cultural and political situation taken into consideration in the design of the project?
- To what extent has the implementing partners cooperated (networked) in the implementation of the project?
- Has the design included the preparation of a monitoring and evaluation plan including the indicators and mile stones?

Project Implementation (Achievements /Implementation Efficiency, and Effectiveness)

Project staff,

- What are your experiences in terms of the efficiency and effectiveness in the implementation of action plans?
 - To what extent were the objectives and outputs of the project spelt out in the design met?
 - How would you assess the implementation in terms of,
 - coordination and information sharing with other child rights initiatives in the country?
 - information sharing with the other regional and international interventions?
 - Was the delivery of project outputs by implementing partners in terms of quality and quantity timely?
 - How adequate in terms of output and the resources allocated?
 - Has the project achieved its intended output? and to what extent?
 - Does the results justify the cost incurred?
- Was there any delay and what are the reasons and the consequences? How were these addressed?
- What are the capacity constraints of implementing partners?
 - How did it affect the implementation of designed activities?
 - What is your level of satisfaction with the performance of implementing partners? What explanation can you give for the differences in the level of performance?
 - Has the project generated interest among stakeholders in participating in the project at the local and regional level? Which ones?
 - Who are the stakeholders and what are their roles? And how were they involved in the project?
 - What were the main problems in the development and implementation of activities under the diversion project?
 - Was the project effective in raising awareness on child rights, child diversion and in promoting social mobilisation to address the issue of children in conflict with the law?
 - What networks were built between organisations and government agencies on child diversion issues?
 - Were there monitoring and evaluation mechanisms in place? How useful/effective were they?

- How useful were the workplans in monitoring?
- Were there any mechanisms for documenting, replicating and up-scaling the project?
- Were there any external factors that affected progress in project implementation? and How were these problems solved?
- What are the synergies in project implementation in relation to other child rights interventions within the implementing partners.
- Were these initiatives complementary or competitive?
- What is the level of interaction of SCS projects in influencing national policies, debates and institutions working on children rights?
- What has been the effect of the diversion programme to the judicial system in Kenya?

Implementing partners

- What action programme did you implement?
- What is the level of implementation? Completed or not if not why)
- How many children were diverted?
- Were there any drop outs?
- What were the reasons
- Disaggregate data on number of beneficiary children by gender
- What awareness creation, capacity building programmes were implemented?
- What were your major challenges in the implementation of the project activities?
- How can these challenges be addressed.
- What networks were built between organisations and government agencies on child rights issues?
- Were there any major changes or delays in the implementation of activities? If so what were the reasons and consequences?
- How can delays be reduced and delivery rate increased?
- How satisfactory is the level of involvement and commitment of government and other agencies?
- If not satisfactory, How can the situation be improved?
- How do you rate the level of support of SCS project coordinators in the development and implementation of project activities?
- If not satisfactory what are your suggestions?
- Were there monitoring and evaluation mechanisms in place? How useful/effective were they?
- How useful were the workplans in monitoring?
- Were there any mechanisms for documenting, replicating and up-scaling the project?
- Were there any external factors that affected progress in project implementation and how were these problems solved?

Beneficiary children

- How did you come into this project?
- Which skill area were you trained?
- Have you (child) completed the training?
- If the training is not completed, why? What was the problem?
- How do you think this problem could have been solved?
- How useful was the training?
- Were there any challenges in the training project?
- Would you recommend that the training be expanded to other beneficiaries (children)?
- Give reasons for recommending the expansion of the project
- What videos did you watch, what did you learn from them?
- Would you recommend the videos shown to other children?

Training Service Providers

- What service did you provide to the project?
- What preparation did you go through before the start of your service provision (training)?
- What would you say about the children you trained? Were they eager to learn, how did they perform etc?
- What challenges did you face?
- How were these challenges addressed?
- What recommendations will you give in order to improve this programme

Relevance of the Project**Project Staff, Partners, Implementing Agencies and Beneficiaries**

- Was the project relevant to the needs of the country?
- Why do you say so?
- How relevant?
- Does the need which gave rise to the project still exist? Explain?
- How useful were the various activities implemented in addressing the needs of the country?
- How relevant is the project to the needs of stakeholders?
- What do you think of the strategies used in this project? What needs to be improved?
- Are the interventions carried out by implementing partners useful? How useful are they?
- How valid is the project approach?
- Would you recommend the extension of the project?
- Give reasons

Lessons Learnt

Project staff, Partners, Implementing Agencies and Beneficiaries

- Are there any lessons learnt?
- Are there any Policy support measures developed by Government
- What are the major challenges?
- How were they resolved?
- Are there any good practices? And were they documented?
- How can they be replicated?

Sustainability

Project Staff, Partners and Implementing Agencies

- Are there any sustainability measures in place?
- What are these measures?
- How effective do you think they are?
- What contributions has the project made in strengthening the capacity of stakeholders in terms of knowledge base to encourage ownership?
- What is the level of commitment, technical and financial capacity of partners including government to continue programmes on diversion
- Does the socio-cultural and gender conditions endanger the sustainability of the project or otherwise?
- Are local institutions sensitised well enough on the project?
- Are there possibilities of replicating all or part of the project in different locations or on a bigger scale?
- What good practices have you identified in terms of efficiency, effectiveness, sustainability and relevance? Can they be replicated by SCS or other partners? Mention them and how it could be done.

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THE DIVERSION PROGRAM IN KENYA

The Diversion Program in Kenya was established in order to protect children from inappropriate institutionalisation and demonstrate a viable alternative to custodial care. Its main aim is to ensure that children in conflict with the law and other categories of marginalized children are better protected against abuse and rehabilitated and re-integrated back into the community. The project was implemented in phases since January 2001 and expanded to 14 program areas. (The project areas are Kilimani, Kamukunji, Buruburu, Kasarani (in Nairobi Province) Naivasha, Nakuru, Bondeni, Kitale, (Rift Valley Province) Kisii, Siaya, Kisumu (Nyanza Province) and Busia, and Kakamega (Western Province) in Kenya.) The Diversion Program was supported by funding from Swedish International Development Agency (Sida) and Oak Foundation. Save the Children Sweden provided technical support and programme implementation advice and disbursed funds to the program partners.

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