



TITLE OF PAPER:

Topic

Institutionalization of children in Kenya: A child rights Perspective

Does institutionalization of children in Kenya neglect a child rights based approach?

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Introduction

Institutional care is defined as a “group living arrangement for more than ten children, without parents or surrogate parents, in which care is provided by a much smaller number of paid adult carers (Browne 2009: 1). Other popular interchangeable terms include residential care, and orphanages. In Kenya these institutions are referred to as Charitable Children Institutions (CCI). The Children’s Act 2001 (s. 58) of the laws of Kenya defines a CCI as “a home or institution which has been established by a person, corporate, or un-incorporate, a religious organization or a non-governmental organization and has been granted approval by the National Council for Children Services (NCCS) council to manage a programme for the care, protection, rehabilitation or control of children”. Adopting this definition, this essay examines institutional care not as a structure or facility, but as a model of care and protection for orphans and vulnerable children in Kenya. Essentially, the essay seeks to evaluate whether institutional care in its current frame of practice and related interventions neglects a Child Rights Based Approach (CRBA). CRBA in this context encompasses a child centered, participatory and empowering approach utilizing the principles enshrined in the Convention on the Rights of the Child (CRC) (Save the Children 2005: 21). Within this framework, children in institutions are rights-holders, and the government of Kenya is a duty bearer.

The paper is organized into four sections that, firstly includes a background that looks at current practices that are pivotal to institutional care. Secondly, examines the contextual reality of the practice. Thirdly, evaluates factors influencing institutionalization of children, and the role of the government and the private actors throughout the process. Fifthly, examines if care within institutions violates children’s rights as enshrined in the CRC.

Background Information

Most of the current research on institutionalization is based on positivist discourses on early childhood development. This kind of research shows that abuse, neglect and exploitation during childhood years affects socio-emotional, and cognitive well-being of children (Shonkoff and Richter 2013: 2) and hence they should not be place in institutions. These domains (socio-emotional, cognitive and physical) are posited as pillars of successful childhood, and determinants of productive adulthood. However, the gap with this kind of perspective is that exclusively, it neglects a Child Rights Based Approach (CRBA) that is equally imperative in the campaign and awareness against institutionalization of children. Indeed, it cannot be denied that proliferation of institutions, and widespread neglect, abuse and exploitation in institutions has created apprehension globally in recent years. According to UNICEF (2009:19), there are approximately more than 2 million children globally in residential care institutions. In sub-Saharan Africa, the rate of institutionalization has been alarming, and the proliferation of institutions has not abetted (Browne 2009:5, UNICEF 2009: 25). But the core concern of proliferation emanates from abuse, exploitation and neglect within the institutions, as well as, a litany of long term social, psychological and emotional damage associated with this model of child care. For example, Browne (2009:1), referring to a wide body of research shows that children in institutional ‘have reduced intellectual, social and behavioral abilities compared with those growing up in a family home’. Beyond the ramification of institutionalization stated above, more of

concern is the child rights violations within these institutions. Pinheiro (2006: 183) cites evidence showing that violence against children in residential care institutions is six times higher than in foster care and group care settings. These malpractices within institutions reflect a lack of accountability globally, as well as locally as illustrated in the following section.

Lack of Accountability

As a result of the aforementioned malpractices and violations, the government of Kenya and other duty bearers have a prime obligation to safeguard the rights of all children and ensure they are equally protected, respected and their rights are fulfilled (Save the Children 2005: 14). In this endeavour, and on a positive note, Kenya has ratified the UNCRC, which is an ‘embodiment of a whole new vision for children, a definitive turning point in the struggle to achieve justice for children’ (Alston and Tobin 2005: 2). As a result of ratification, Kenya Children’s Act 2001 reflects the CRC. However, “the existence of laws and protocols cannot be trusted as indicators of success in protecting vulnerable children” Cooper (2012: 495). For example, firstly, according to the Kenya Demographic Health Survey, Kenya is estimated to have 2.4 million orphans and vulnerable children. According to recently unpublished guidelines on alternative care, it is estimated that 30-45% of the 2.4 million orphans and vulnerable children in the country end up in charitable children institutions. On the other hand, a research by Stuckenbruck (2013: 4) approximates 700 institutions with around 50,000 children. Majority of these institutions are neither registered nor supervised as require by the law (Williams and Njoka 2008: 20).

Against the perturbing backdrop of lack of undistinguishable number of children in these institutions, and lack of registration and supervision is a reflection of lack of seriousness on the part of the government to be accountable to the children. The responsibility for ensuring that children are protected lies primarily with the government as a duty bearer (Save the Children 2005: 19). Furthermore, the Children’s Act 2001 (s.38) clearly say that the Department of Children’s Services (DCS) should “safeguard the welfare of children and shall in particular, assist in the establishment, promotion, co-ordination and supervision of services and facilities designed to advance the well- being of children and their families”. This contempt of responsibility and accountability is equally a disregard of CRBA. Consequently, through preceding examples, a stark contradictory reality exists ‘between principles and practice, between commitments and their actual implementation’ (Benedek 2003:198).

Entitlement not Charity

Besides lack of statistics, laxity in registration and supervision, institutional care has explicitly been defined and approached as an act of charity, a constituent feature of undesirable needs approach. For example, besides leaving most of the funding on child care and protection work to NGOs, the government still defines institutions as ‘Charitable Children Institution’ (Children’s Act 2001 s.58). This perception of charity eliminates entitlement to rights (Harris- Curtis 2005: 16), and repudiates governments’ responsibility and its definite obligations, and conceivably ignores its binding legal obligations (Save the Children 2002: 22). In addition, majority of projects related to support of orphans and vulnerable children in Kenya are funded by

international organizations. For example, according to a report conducted in 25 African countries, Kenya is among the countries that have failed to provide adequate support to families caring for orphan's and vulnerable children (UNAIDS, 2010).” Similarly, the USAID (2009), country analysis brief points out that civil society organizations provide approximately 91 % of services as opposed to 9 % by the government. The same narrative applies to institutional care; a research by Stuckenbruck (2013) shows that of over 500 care institutions in the country, the government only runs 26 institutions. This clearly demonstrates that the government does not consider children a priority and allocates meagre resources to orphans and vulnerable children, in essence leaving the responsibility to private duty bearers. However, the illustrations should not be misconstrued to mean that the government should open institutions, nor does it mean to downplay the responsibility or the role of the private actors. On the contrary, it shows that the government clearly neglects a CRBA as a duty bearer in the care and protection of orphans and vulnerable children in the country.

CRBA, Poverty, and Institutional Care

There is a blatant nexus between poverty, and institutional care due to the absent supportive role of the government. However, more often this subject of poverty is depoliticized and hence detached from a CRBA. The CRC (UNICEF 2015) preamble asserts the centrality, significance and the need to support and protect children from the vagaries of poverty within the family unit. This is also echoed eloquently by both the Children's Act 2001 (s.6), and the International Guidelines for the Alternative Care of Children (United Nations General Assembly 2010: 2). One of the principles in the guidelines states that “poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care...but should be seen as a signal for the need to provide appropriate support to the family” Ibid 2010: 4). However, empirically, the expectation is rather mythical than a genuine reality for many children in Kenya.

The menacing forces of poverty which are a daily reality (UNICEF 2003) have shattered the social fabric that protects children within families. Poverty has been cited as a leading contributing factor to institutionalization of children globally (CELCIS 2012). Locally, material poverty stands at 46% (World Bank 2008); lamentably, 8.6 million children are said to be living in absolute poverty (Williams and Njoka 2008: 4). A study conducted by Morantz. et al (2013: 6) shows that majority (36 %) of institutionalized children under the study were in institution as a result of poverty. This level of misery in poverty amongst children, and the fact that children are always disproportionately affected by poverty (Lichter 1997: 121), no doubt seems to incline parents/ caregivers to defer their parental roles to institutions.

The concept of institutionalization due to poverty affirms O'Neill and Zinga's (2008:40) point that, the term orphan is a misnomer, when used in reference to the vast majority of children in residential care institutions, as nearly all have living parents. However, from a CRBA perspective, poverty is a derisory justification to disembed children from communities and families. Civil society organizations together with unscrupulous individuals who hope to profit from children's misery have been involved in charity driven practices that disembed children from families and placing them in institutions for better standards of living (William and Njoka

2008: 10). These biased interventions apart from some being fraudulent, also fail to see children as holistic beings with not only protective, survival and developmental needs but also as beings with rights to belonging and identity, self-determination and right to participation (Benedek 2003:194, Kehily 2004: 128). Similarly, these needs are “Universal, indivisible, interdependent and interrelated” (Sengupta and Basu 2005: 24).

Taking these children away from their families and communities to institutions negates a fundamental human right of CRC (Art. 5) on belonging to a family as well as children right to participate in decisions about who they want to live with after they have lost their primary caregivers (CRC Art. 12). In most of the circumstances these children are disempowered, and cannot influence the process of placement, or consulted to determine their wishes before placement to institutions (Cooper 2012: 490). Essentially, they are treated as objects as opposed to subjects in the interventions, a practice that is not in with CRBA. As an upshot of this, poverty as a basis for institutionalization generally reflects the government’s functional failure to protect children from unfavourable economic situations (CRC Art. 2, 3, 4, 6). In addition, a let-down of right to sustainable livelihoods (Harris-Curtis et al 2005: 16) enshrined in Art. 10 and 12 of International Covenant on Economic, Social and Cultural Rights (ECOSOC). The ECOSOC covenant emphasizes the need to protect children from economic and social exploitation, as well as adequate standard of living, with access to the basic needs that often precipitate institutionalization.

Charity and the representations of Children

From government’s failure to protect children from the vagaries of poverty, it is important to critically examine how institutions represent children in their fundraising and awareness processes. Using images of children from the south, the north is normally swashed with images of impoverished children that disregard the inherent dignity of the child, a portrayal that further victimizes these children’s plight. More often, these children are depicted as “in need of saving” (Cheney 2010: 6). And consequently, with a saviour mentality, reloaded with emotive charity, these children are removed from communities and placed in institutions. These kind of interventions are narrow in their scope and too simplistic to offer any sustainable solutions to the problem of children in need of care and protection. These interventions disconnect children from the wider socio-economic and political structures that mold their life chances and trajectories, ‘by concentrating on the symptoms of risk rather than the underlying causes...’ Pells (2012: 563). An upshot of this is that, the interventions by private and even a times government bodies concerned are overtly need based and negates the spirit of a child rights based approach in a myriad of ways. Firstly, this need based intervention disregards UNCRC, best interest assessment (Art. 3). Best interest assessment accentuates the significance of the views of the child in decision making, and a right to be heard (UNCRC, Art. 3). Secondly, as opposed to being treated as active participants in an intervention that momentarily affects their lives; being detached from family to a new strange environment, these children are treated as objects lacking agency. The duty bearers disregard, participation as a fundamental human right (Save the Children 2005: 14), before, during and after placement, children are often treated as passive recipients of services, and the influential role of the child’s agency is normally negated. Thirdly, emotive charity is often loaded with

sympathy and barely utilizes elements in CRBA in interventions or decision making. Emotive charity is normally reactive to symptoms of the root problem-poverty. Hence, “due to poverty or lack of access to basic services” Greenberg and Williams (2010: 19) children are often uprooted from families. CRBA on the other hand analysis the extent to which children’s rights are realized or not realized in communities, and the obstacles to accomplishing these rights before intervention (Save the Children 2007: 21). The importance of CRBA is that it dismembers sympathetic, emotional interventions that are deleterious to children’s well-being and which are fraught with child’s rights violations. Significantly, CRBA embraces the general principles of CRC (non-discrimination, best interest and participation) in interventions.

The Plight of Institutionalized Children

Having looked at how children are represented in the previous section, this section is going to examine some child rights violations in institutions through CRBA lens. Firstly, in November, 2014, the government of Kenya banned inter-country adoption. The government cited prevalence of illegal inter-country adoptions in institutions (Nation 2014: 1). Before the ban, a report commissioned by the government alluded to the malpractice after relatively high number of inter-country adoptions, the figure was at 38% (Williams and Njoka 2008:4). This figure is disproportionately high bearing in mind that Kenya is a signatory to the Hague inter-country adoption that emphasizes the subsidiarity principle which gives priority to local adoption (International Social Service 2007: 1) Meaning the number of inter-country adoptions should be significantly lower compared to local adoptions. The ban was justified on that basis and in line with CRC (Art.11), which states that States shall take measures to combat the illicit transfer of children abroad. Similarly, Kenya is signatory of Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption. One of the objects of the convention (Art. 1) is to ensure inter-country adoptions takes place ‘in the best interests of the child and with respect for his or her fundamental rights as recognised in international law’. In the same convention, article 32 objects to improper financial gain through the process. During the adoption ban, the Cabinet Minister said Inter-country Adoption had created a ‘loophole for fraudulent vested interests masquerading through ownership of children’s homes, adoption agencies and legal firms representing children, and adopters, to engage in the unscrupulous business of human trafficking under the guise of charity’ (Nation Media 2014: 1).

In addition, Williams and Njoka (2008: 20) framed some institutions as ‘money spinners for their owners’. The report suggested that some institutions human trafficking of children for their sustenance. An upshot of this is that, some of the institutions had turned charity into a lucrative industry that sweeps justice under the carpet. But again, the lack of or inadequate protection by the government before realizing the malpractice cannot go unmentioned. Subsequently, it means a significant number of children’s best interests were not considered. Furthermore, it was the government’s violation of CRC (Art. 20) that emphasizes ‘special protection’ to such children, as well as violation of CRC (Art. 19), which demands ‘protection from exploitation’. Moreover, the malpractice violated CRC (Art. 8) of which mandates the government to protect the national and cultural identity of children.

Secondly, one of the criteria for giving approval for an institution in Kenya Children's Act 2001(r.3) is that an institution "must accommodate or have capacity to accommodate at least twenty children". This regulation is problematic and violates two pertinent rights. One is the protection from intrusion with privacy CRC (Art. 16). These large dormitory settings do not encourage privacy or personalized items. Second, CRC (Art. 6) provides that state parties shall ensure "to the maximum extent possible the survival and development of the child". These large care settings often deny young children, consistent individualized support that is necessary for their survival and development. For example a report by Save the Children (2006: 37), shows the institution under the case study having a ration of staff to children at 1:50. In such circumstances children end up with inadequate or no individualized care that is pertinent to survival and development. And essentially, due to lack of individualized care and bond these children end up with attachment problems (Greenberg and Williams 2010: 5) and delayed developmental milestones. One of the loopholes in the Children's Act 2001 is that it does not specify the ratio of primary staff to children, and hence these care institutions end up having disproportionate high number of children against staff. Still on survival and development; several institutions offer education and accommodation to children in the same institution that children are accommodated (Williams and Njoka 2008: 22), this not only limits social interactions with other children and community members, which is pertinent to development, but also inhibits their freedom of association (CRC Art. 15).

Fourthly, although data on disabled children in institutional care seems scarce (Williams and Njoka 2008:23), but it still doesn't hide the reality of the situation. Institutionalization of children with disabilities has become like a panacea for families with children with disabilities (UNICEF 2013: 1). However, one major factor is the failure of the government to provide social, economic and rehabilitative support as provided in CRC (Art. 23) that has pushed families to abandon these children in institutions (UNICEF 2013: 46). As seen earlier most children who end in institutions end up living undignified lives and susceptible to abuse, in addition institutionalizing them should not be seen as a solution; creating institutions for such children reinforces discrimination.

Fifthly, some institutions in Kenya have become bastions of physical and sexual abuse. According to Pinheiro (2006: 183) some reports have shown that children in institutional care are six times more vulnerable to abuse than those in foster care, and even more than those in family care. There are cases in Kenya which affirm to this findings. For example, between April-June 2014 Mathew Durham a missionary from Oklahoma was found guilty of defiling around 10 children in a residential care center (Daily Mail 2014). Second, a British Airways pilot Simon wood was found guilty of molesting girls in institutions during stopovers in Kenya (Press Association. 2014). These violations by foreigners do not exonerate the fact that locals are also perpetrators. Children in institutions are often at a difficult situation to report violation from primary care givers for fear of reprisal, essentially lacking anyone to report to or trust. In addition, Most of the institutions are closed from outside inspection (Pinheiro 2006: 182), and the Government does not supervise most of these institutions (Williams and Njoka: 2008: 21). As an upshot, this situation is a clear indication that there is lack of accountability by the government

Conclusion

In conclusion; institutionalization of children in Kenya has been an increasing child rights phenomenon. Locally, proliferation of institutional care has been concomitant with deleterious physical, socio-emotional, and cognitive ramifications. Furthermore, as observed, the practice of institutionalization cannot extricate itself from being associated with abuse, neglect and exploitation of children. However, the dominant discourse on physical, socio-emotional and cognitive development, enmeshed with abuse, neglect and exploitation, significantly ignores a CRBA. Therefore, this essay used CRBA to evaluate whether institutional care in its current frame of practice and intervention neglects a CRBA. Subsequently, the analysis clearly shows that institutional care does not utilize CRBA. Firstly, the placement of children to institutions is normally a mere exercise of trying to address poverty and its symptoms. By looking at poverty alone, children end up being denied other equally important rights (Harris-Curtis and Oliver 2005:8). Secondly, the government seems to lack accountability; currently, its responsibility towards orphans and vulnerable seems to be more of charity than mandatory and obligatory. The government has left a substantial role of care and protections to charities, this approach is against a CRBA and has consequently contributed to institutionalization of children. Moreover, there seems to be a laxity in regulating, monitoring, and supervising the institutions to ensure proper care and protection. Within institutions, the way these children are portrayed in fundraising practises is exploitative and disrespectful and hence negates the rights based values. Furthermore, most institutions seem inundated with abuse neglect and exploitation. For example, illicit inter-country adoption, lack of privacy, lack of individualized care, institutionalization of children with disabilities, sexual abuse are but common. Thirdly, within the process prior and after placement, children seem to be de-centred and simply treated as objects as opposed to subjects with agency. They are not only not consulted before placements, but also after placement their voices seem stifled in the care process. Clearly, with all these malpractices and violations a CRBA is begging in the realm of institutional care. It is also clear that for the CRBA to be effective, laws should move beyond the text and be enforced on the ground (Khan 2009:206).

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