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Kenya's Over-Reliance on Institutionalization as a Child Care and Child Protection Model: A Root-Cause Approach

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Abstract: Institutionalization of children who are deprived of parental care is a thriving phenomenon in the global South, and has generated considerable concern both nationally and internationally, in the last two decades. In Kenya, the number of children growing up in live-in care institutions has been growing ever since the country's early post-independence years. Although legislative and regulatory measures aimed at child protection have been in place for a number of years now, and the national government appears to be standing by the commitment it expressed in recent times to implement care reform which encompasses de-institutionalization, the national child protection system remains very dependent on institutional care. Against the backdrop of a global and national movement towards de-institutionalization of child care and child protection, in this paper we tease out the range of factors reinforcing Kenya's over-reliance on live-in institutions as a child care and child protection model. Numerous factors—structural, political, economic, socio-cultural, and legal—contribute to the complexity of the issue. We highlight this complexity, bringing together different angles, while pointing out the interests of the different stakeholders in reinforcing institutional care. We argue that the sustainability, efficiency and effectiveness of the intended change from institutional care to alternative family-based care requires that a root-cause approach be adopted in addressing the underlying child care and child protection issues.

Keywords: institutionalization of children deprived of parental care; de-institutionalization of child care and child protection; root cause approach; Kenya

1. Introduction

In Kenya, despite an increase in national legislative and regulatory measures aimed at child protection over the last three decades, there have been rapid increases in the numbers of institutionalized children, and residential child care facilities¹. As a result of the observations made, concerns raised and pressure exerted by civil society organizations and international organizations with regard to these rising numbers, and their implications in relation to the welfare, and rights of the concerned children, in November 2017, the Kenyan government announced a moratorium on the registration of new live-in child care facilities. More recently, an active government-led and INGO and civil society-motivated care reform pilot project which encompasses de-institutionalization was launched in mid 2018, in Western Kenya, and is expected to be expanded to other counties countrywide over the next years (Miseki 2018). Yet, the national child care protection system remains very dependent on institutional care.

¹ Throughout this paper, we use the terms residential child care facilities, residential care institutions, live-in care institutions, care institutions and institutions interchangeably.

On the African continent, country specific dynamics and processes related to institutionalization are yet to undergo rigorous examination in existing literature. Hence, as Kenya embarks on a path of care reform, we propose to make a contribution towards this, by focusing on different aspects related to the child care and protection model in Kenya. More specifically we unveil the intertwined range of factors—structural, political, economic, socio-cultural, and legal—that have been reinforcing Kenya's over reliance on institutionalization as a child care and child protection model. We posit that focusing on addressing the root-causes underlying child care and child protection issues in the country is preferable to the current standard approach to child protection—which consists of addressing the visible factors of vulnerability.

While the focus of this paper is on Kenya, child and youth care reform is a crucial issue that is of global relevance, and is one that poses, and encounters particular challenges in global South contexts. Across global South countries, there are particularities, certainly, but also similarities, where issues and challenges related to child protection and care reforms are concerned. Hence, the discussions and insights in this paper are also relevant for readers whose interests may be on other global South countries.

From a methodological perspective, this paper is based on a comprehensive desk research, which included reviews and analyses of published and unpublished peer reviewed works (articles, books, book chapters, theses); grey literature; and press articles, on the thematic fields of child protection, child care, children's rights, institutionalization, de-institutionalization and care reform in Kenya. It is also informed by our professional and personal experiences, personal knowledge, questions and reflections on a range of issues related to the care and protection of children lacking adequate parental care.

We start from the observation that while a lot of knowledge has been generated on family and community-based care in Africa (see for example [Isiugo-Abanihe 1985](#); [Foster 2005](#); [Mathambo and Richter 2007](#); [Mushunje 2006, 2014](#); [Hampshire et al. 2015](#)), little is known about residential care institutions as a child protection and care model in African countries ([Hermenau et al. 2011](#)). Yet, for over two decades now, the rhetoric of 'Africa's AIDS orphan crisis'² has indirectly contributed to perpetuating the idea that on the African continent, institutions are the ideal solution for children deprived of parental care ([Richter and Norman 2010](#); [Cheney and Ucembe 2019](#)). This idea has been anchored by, and is evident through the large financial and logistical support, and volunteer or voluntourist labour that 'orphanages' in numerous African countries have continued to receive from individuals, associations, corporates, secular and religious charity organizations locally and more significantly from the global North. This has contributed to the proliferation of residential child care institutions on the continent ([Tolfree 1995](#); [Cheney and Ucembe 2019](#)).

2. Background

Evidence from medical and social science research has shown the negative impact institutional up-bringing has on children's physical, cognitive, emotional and social development ([Browne et al. 2006](#); [Engle et al. 2011](#); [Beckett et al. 2002](#); [Rutter et al. 1999](#); [O'Connor and Rutter 2000](#); [MacLean 2003](#); [Tolfree 2003](#)). Yet, the upbringing of children in live-in care facilities is still actively practiced in numerous countries around the world.

Over the years, this has become a global preoccupation: concerns have been raised and experiences and practices related to children's institutionalization shared, debated and discussed within, and beyond national borders by child care experts, practitioners and children's rights activists. This, coupled with the human rights revolution, triggered a shift in thinking. Numerous national governments both in the global North and South—but more so in the former—embarked on de-institutionalization, understood as a long haul process through which the national child protection systems are comprehensively

² It was driven by [UNICEF \(2003a\)](#) and was taken up and propagated by a range of political and social actors (Governments, INGOs, NGOs and do-it-yourself humanitarians).

reformed, and institutions are replaced by a range of suitable alternative care services that prioritize prevention and are focused on family-based up-bringing of children ([Better Care Network 2017](#), p. 8; [Opening Doors 2012](#)).

In the Global North, notably North America and in numerous countries in Western and Northern Europe, public policies and child protection policies, in particular those related to education, health, employment/unemployment have gradually been transformed, principally targeting the family unit ([UNICEF 2003b](#), p. viii). Overall, reforms undertaken especially in Northern and Western Europe have resulted in a reduction in the number of institutions and the number of children being channeled into institutions, through the establishment of robust gate-keeping mechanisms and the enhancement of alternative family and community-based care services ([National Academies of Sciences et al. 2016](#), p. 14; [Tolfree 1995](#), p. 16).

Conversely, in several countries in Eastern and Central Europe, and in numerous countries on the Asian and African continents and in the global South more generally, the reverse has been happening: the number of residential child care institutions and the number of children said to be deprived of parental care—indiscriminately and strategically identified as ‘orphans’—have increased tremendously ([Opening Doors 2012](#); [Cheney and Rotabi 2014](#)).

In what follows, we begin by presenting a brief historical account of institutionalization of children in Kenya. Given the paucity of historical data on the subject, ours is but an attempt to identify the building blocks of Kenya’s contemporary institutional model—we therefore do not claim to be exhaustive. This is followed by a discussion of the country’s current child protection and care model, and an unravelling of its problems. We then move on to identify the root-causes underlying child care and child protection issues in the country, before concluding. Across the different sections we tease out the range of factors—structural, political, economic, socio-cultural, and legal—reinforcing Kenya’s over-reliance on live-in institutions as a child care and child protection model, highlighting the complexity of the issue, bringing together different angles, while pointing out the interests of the different stakeholders in reinforcing institutional care. Overall, we argue that the standard approach to child protection—which consists of addressing the visible factors of vulnerability—is inadequate, and the sustainability, efficiency and effectiveness of the intended change from institutional care to alternative family-based care requires that a root-cause approach be adopted in addressing the underlying child care and child protection issues.

3. The Beginnings and Progression of Kenya’s Institutionalization Model

In Kenya, the philosophy of institutional care for children deprived of parental care is prevalent. However, as a concept it is relatively recent. As Tolfree notes, there are not that many countries in the global South that have a long history of institutional care for children and this is because the institutional model was for the most introduced by missionaries or by colonial government departments, ‘which modelled themselves on their counterparts in the colonial power, often emulating the pattern of residential care which was widespread in Western Europe’ in the earlier decades of the twentieth century ([Tolfree 1995](#), p. 15). Pinheiro also shares that most ‘orphanages’ that have existed in most Africa countries were until not so long ago started by missionaries ([Pinheiro 2006](#), p. 184). Missionaries majorly provided health care and education ([Hearn 2002](#), p. 384; [Tolfree 1995](#), p. 38) and many of the aforementioned institutions were used to provide these services.

While the beginnings and historical progression of institutionalization of children in Kenya remains unclear, and is poorly documented ([Ucembe 2016](#)), one can nonetheless trace a historical outline of this phenomenon by referring to some historical events that significantly impacted the lives of families and communities. We see the need to briefly situate public and civil society concern for children deprived of parental care and Kenya’s contemporary institutionalization model in relation to on the one hand, *occurrences before, and during the country’s colonial period*, and on the other hand, *political, economic and socio-cultural transformations, and events which took place after the country’s political independence from the British*. The former include the East African slave trade, the second world war,

and the war for independence from British colonial rule. The latter include, rural urban migration, rapid urbanization, HIV/AIDS pandemic, economic structural adjustments and political and armed conflict that led to displacements, separation, loss of lives and accentuated poverty conditions.

Not much literature has been published about children in the East African slave trade. However, historical accounts show that in the late 19th century, the Kenyan coast, more specifically Frere Town and Rabai served as places of refuge and settlement for freed African slaves (Mbotela 1934; Morton 2009; Khamisi 2016). Although the trend in the literature has been to conduct analyses without distinguishing children among the adult slaves, the work of descendants of East African slaves like Mbotela (1934) and Khamisi (2016) as well as that of historians like Morton (2009), which focused on the experience of child slaves in East Africa, enable us to consider that perhaps one of the earliest forms of institutionalization of children in what is today Kenya took place in the late 19th century, when African child slaves who had been apprehended by British patrols were placed in the care of the Christian Mission Society (CMS).

According to Morton, these children, known as 'Mateka' became the teachers and evangelists (alongside 'Bombay Africans') whom the CMS used to establish mission stations on the Kenyan interior (Morton 2009, p. 66). A similar spirit of evangelization is to be found in some of today's children's institutions in the country, which are run by/or supported by religious institutions and donors from North America and Europe³.

The second world war, and the war for independence from British colonial rule (Mau Mau) are two other historical events that undoubtedly impacted the lives of African households and communities. As the works of historians like Parsons (1999) show, the involvement of men—sons, husbands and fathers—as soldiers in the colonial King's African Rifles army, resulted in deaths, in particular during the aforementioned war periods. Attention also needs to be drawn to the separation and deaths among civilian African populations that took place between 1952–1960, when British colonial soldiers arbitrarily arrested and detained families. This resulted in many permanent separations of children from their parents and extended families⁴.

In the post-second world war period (early nineteen fifties), formal concern for children's welfare in Kenya begun through the activities of the East African Women's League (whose members were predominantly European women), who lobbied for the Colonial Government's appointment of a special committee that would look into children's issues and would provide specific recommendations for improving child-related legislation, as well as develop the spirit of voluntary work with regard to children in need of care and protection⁵. The Child Welfare Society of Kenya, which was created in 1955, is itself a product of this spirit of volunteerism. It runs one of the oldest post-independence residential care institutions for children deprived of parental care—the Mama Ngina Children's Home which was founded in 1969.

Several interrelated factors can account for the growth of the institutional model during the post-colonial period. First, the accelerated unsustainable urbanization which resulted from the unrelenting migration of rural populations into urban centers, and which gradually accentuated poverty in the capital city Nairobi, but also in other towns such as Mombasa, and Kisumu (Cottrell-Boyce 2010). While the initial migration and urbanization were economically motivated, over the years, both continued unabated as both rural and urban populations also migrated into urban areas, in times of political unrest (discussed further ahead).

Second, the social and economic effects of the Structural Adjustment Programmes (SAPs) experienced in Kenya in the 1990s, also played a part in the growth of the institutional model.

³ For example, across the country, there are a myriad of educational as well as care facilities run by various denominations: the Presbyterians, Evangelicals, Catholics, Mormons, among others (see for example Hearn 2002).

⁴ See for example: <https://www.aljazeera.com/indepth/features/2016/04/mau-mau-kenyans-share-stories-torture-160428131800531.html> (accessed on 13 February 2019). See also White (1990) who mentions stories of parentless children in the East African Standard newspaper, which resulted from the colonial government's repressive acts on member's of Kenya's Central communities.

⁵ See <https://www.cwsk.go.ke/about-us/who-we-are/historical-background/> (accessed on 15 February 2019); <https://www.eawl.org/1950s> (accessed on 15 February 2019).

The drastic reductions in public spending imposed by the Bretton Woods institutions resulted in the loss of employment for thousands of civil servants, and cuts in public spending on social services. For struggling and poor families, the move from subsidized social services to cost-sharing represented considerable financial burden, and globally aggravated poverty. Alongside parents' struggles with trying to provide their children's most basic needs (food, shelter, clothing), many could no longer access essential services such as health care and education. Parallel to these socio-economic changes, the HIV/AIDS pandemic was raging through the country, resulting among others in deaths, impairment of parents and caregivers' abilities to care for children, shifts in family structure, poverty, and overall family instability (Skovdal and Campbell 2010).

Based on Tolfree's analysis of colonial and post-colonial child protection frameworks and services in former English colonies we can include Kenya in the number of African countries whose post-independence response to the plight of unprotected children was very similar to that of the colonial powers. Kenya's immediate post-colonial and present day legal framework was derived considerably from the 1930s and 1940s English laws governing the protection and care of children. Similar to the latter, the services availed through the post-independence child protection framework reflect a rescue, control (of "deviant" behavior which includes delinquency, vagrancy and prostitution) and train approach. The services, which were characteristically remedial, were comprised of approved schools and other kinds of residential care (Tolfree 1995, p. 39).

The dawn of SAP and consequent privatization policies created a significant space for Non-Governmental Organizations (NGOs) to intervene in providing public goods (Hearn 2002, p. 376). The reduction of public spending resulted in a reduction of the financial burden on the government but also increased humanitarianism through voluntourism and NGOs. This saw the dominance of privately funded child care institutions within a short period. Oversight of these institutions has been significantly wanting (Njoka and Williams 2008, p. 1) resulting in proliferation and all manner of malpractices. This poor oversight could be traced back to the earlier mentioned cuts in public spending through which the government's capacity to provide oversight over NGOs' activities was negatively affected (Hearn 2002, p. 387).

The manufacturing of an 'orphan crisis' by international organizations and individuals is another factor that has contributed to the proliferation of child care institutions. During the 1990s at the height of HIV/AIDS pandemic, the exclusive focus on 'orphans' by international development organizations such as UNICEF (2003a), led to 'misidentification' of children, triggering significant 'save' and 'rescue' interventions among social actors (Cheney and Rotabi 2014; Chege 2018), especially Christian evangelicals from the global North. Apart from the Christian interventions, non-religious groups and individuals ranging from gap year students to do-it yourself humanitarians—through voluntourism—also travelled to the country to offer support (Cheney and Ucembe 2019). The exclusive focus on 'orphans' resulted in an explosive supply of children by both local well-intentioned and unscrupulous organizations, to meet the demand coming from the global North.

Political unrest and armed conflict notably in the early 1990s and in 2007–2008, during former presidents Moi and Kibaki's time in office, respectively, also created conditions that favored the institutionalization of children. Both resulted in loss of lives, displacement and separation of families, more so parent-child separations. The aforementioned socio-economic conditions of the 1990s followed by the political unrest and violence, resulted in the entry and intervention of several NGOs which gradually took over government functions in the social sector, notably in the domain of child protection, care and education.

Alongside, and as a result of these political, economic, and socio-cultural changes, came the disintegration of the kinship care support system, which previously served as a support network that catered for children in need within families and communities (Suda 1997; Mugo 2004). Children who, in the event of their biological parents' deaths or incapacity to care for them, would normally have been cared for by close relatives, ended up on the streets and in charitable children's institutions.

4. Kenya's Current Child Protection and Care Model and Its Problems

For several decades now, the care of children at risk or without parental care is increasingly being assured by secular or faith-based private residential care institutions, which are for the most run by national and international Non Governmental Organizations (NGOs) and/or by individuals. These institutions, officially termed 'Charitable Children's Institutions' (CCI), are recognized by the State, and their roles and legal obligations are outlined in Kenya's Children Act.

4.1. Gaps in Child-Related Statistics

The exact number of children growing up without parental care in Kenya and around the East Africa region today is hard to pin down ([Save the Children International 2015](#)). While a common database termed the 'Child Protection Information Management System' exists in Kenya since May 2017 ([Mutavi 2017](#)), it has not reached all of the country's counties. By the end of 2017 only 15 counties had been reached, with a plan to roll out the system in the remaining 32 by the end of 2018 ([UNICEF 2017](#), p. 33). To date, this has not been successful.

Such gaps in child-related statistics have resulted in the same or differing figures being recycled in both grey and scholarly literature over a period of years. For instance, in a 2015 study that was part of a UNICEF global initiative, the number of orphans and vulnerable children in Kenya was estimated at 3.6 million, among whom 646,887 were double orphans⁶. It was specified in a footnote that the exact number of orphans and vulnerable children was 3,612,679 ([Government of Kenya et al. 2015](#), p. 6). This figure was sourced from the Kenya Social Protection Sector Report published by the Ministry for Planning, National Development and Vision 2030, in June 2012, where it also appears to have been sourced from an earlier publication.

Comparatively, a study conducted in 2014 using data from the 2012 Kenya AIDS Indicator Survey (KAIS)⁷, estimated the number of orphans and vulnerable children in the country at 2.6 million, with orphans estimated at 1.8 million (among whom 15 percent or 270,000 were double orphans) and vulnerable children at 750,000 ([Lee et al. 2014](#)).

The aforementioned collaborative Government of Kenya, UNICEF and Global Affairs Canada study estimated charitable children's institutions in Kenya in 2015 at over 830 ([Government of Kenya et al. 2015](#), p. 8). According to the study, an estimated 40,000 to 42,000 children lacking parental care were living in CCIs ([Government of Kenya et al. 2015](#), p. 8)⁸. It is also estimated that over 80% of children in institutional care have one or both living parents. As with the national statistics on children living without parental care, these figures have been quoted and re-quoted over a period of several years, and it is often difficult to find the source of the estimates, which at best, are guesstimates.

4.2. National Laws Skewed to Care in CCIs

The Kenyan government is considered to be among the 'most child-friendly' on the African continent ([African Child Policy Forum ACPF](#), p. 6). Kenyan legislation related to children has often been referred to as progressive to the extent that the country was ranked first by the African Child Policy Forum (ACPF), in relation to its efforts to put in place an appropriate legal and policy framework for the protection of children ([African Child Policy Forum ACPF](#), pp. 49–51). The country is a signatory to the UN Convention on the Rights of the Child, the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, the African Charter on the Rights and Welfare of the Child, and the UN Convention on the Rights of Persons with Disabilities. However, Kenya's adherence

⁶ According to UNICEF's broadened definition of orphan, a 'double orphan' is a child whose both parents have died, while a 'single orphan' has one living parent ([UNICEF 2003a](#)).

⁷ For the 2012 Kenya AIDS Indicator Survey (KAIS) see [National AIDS and STI Control Programme](#).

⁸ The uncertainty surrounding these figures and the caution with which one needs to consider them is clearly reflected in the large bracket.

to these international legal conventions has not resulted in the successful protection of vulnerable children in the country. As Cooper rightly puts it, 'the existence of laws and protocols cannot be trusted as indicators of success in protecting vulnerable children' (Cooper 2012, p. 495). Although the country led in policy and legal frameworks with regard to child protection, the African Child Policy Forum in the aforementioned report shows that Kenya was ranked 20 (out of 52) in terms of the government's budgetary commitment to provide for children's basic needs and ensure their well-being (African Child Policy Forum ACPF, p. 64). The restrictive allocation of financial resources to child protection and care by the national government has been possible because it both passively and actively outsources child protection and care to the third sector (Ucembe 2015b; Chege 2018). Subsequently, a 'not our money, not our problem' mentality has characterized the last three post-independence governments' work related to child protection and care.

The progress made in legal frameworks cannot avoid being faulted for the many defects of the care reform. The current Children Act has paid more attention to elaborating institutional care than other family and community-based care options (Ucembe 2015a). For instance, while the Act in Part 5 has 15 sections and 55 mentions, kinship care is not mentioned, foster care has 8 sections and is not clearly defined to enable proper practice. The Act's third schedule is particularly problematic in that it stipulates that in order to receive registration approval, an institution, 'must accommodate or have capacity to accommodate at least twenty children'. This has led to many CCIs going out in search of children in families and communities so as to fill the required 20 children bed capacity. The government also came up with the National Standards for Best Practices in Charitable Children's Institutions (Government of Kenya 2013), and although well intended, in doing so, it furthered the narrative that serves to promote these institutions. The aforementioned third schedule clearly shows that certain legal provisions, if not critically examined, can hinder progress or change.

4.3. Fragmented National Framework and Absence of Coordination in Child Protection Policy

In 2011 Kenya defined a national framework for child protection system. However, the framework in question is quite fragmented. As was defined by the National Council for Children's Services (2011) it is weighed down by governmental ministries (nine) and state services, and not much place, if any, is accorded to communities and parents as stakeholders. A key consequence of such fragmentation has been the absence of coordination in policy development, implementation, and enforcement which has in turn been contributing to reinforcing the institutionalization of children. This can be seen, first, in the absence of coordination related to cash transfer programmes put in place by the national government. While traditionally in Kenya the care of children who were deprived of parental care was assured by kin, over the years, this changed following the socio-economic upheavals (discussed in the previous section), which resulted in deepening poverty and social inequality across the country⁹. This contributed to the disintegration of families and weakening of the extended family networks, which motivated the initiation of Cash Transfer Programmes in 2004, which included the Orphans and Vulnerable Children Cash Transfer (OVC-CT); Cash Transfer for Persons with Severe Disabilities; Cash Transfer for the Elderly, and the Hunger Safety Net Programme.

Since the introduction of these programmes, the country experienced a three-fold increase in public funding between 2010 and 2014 (Wanyama and McCord 2017, p. 11). However, these cash transfer programmes were, and are still not interweaved with alternative care, which would prioritize prevention and reinforce family-based care. This is despite the availability of evidence indicating the benefits of such an approach. A report that was officially launched and released in Nairobi by Family for Every Child (Roelen 2016), and which was based on a study conducted in three African countries (Ghana, Rwanda and South Africa), showed that cash transfers can among others 'prevent family

⁹ It is important to note that little effort was made to monitor these dynamics, and to institute social protection measures to protect against family disintegration.

separation and increase reintegration of children' and can 'enable families to care for children who are not their own' (Roelen 2016, p. 9).

The absence of coordination in policy development, implementation and enforcement can also be seen in the enormous time lapses between the periods when evidence of impediments to child protection is provided by official bodies within the country, and the national government's lagged response to the problems. From as early as November 2008, the Department of Children's Services under the Ministry of Gender, Children and Social Development on assessing the legal provisions and practices of guardianship, foster care and adoption of children in Kenya, observed that the proliferation and mal-practices of CCIs stood as an impediment to the development of alternative family care solutions. Therefore, the Ministry recommended that a moratorium on the establishment and registration of CCIs be pronounced and enforced. However, it was not until November 2017 that the government pronounced a ban on the registration of new CCIs¹⁰. This ban, and a related earlier one pronounced against intercountry adoption in November 2014 (discussed further on) revealed that Charitable Children's Institutions had become pathways of child trafficking¹¹.

It is important to note the connection between the institutionalization model and the growth of inter-country adoption. Since the late 1990s, there has been a decrease in the availability of adoptable children in the former source countries, namely Russia, China and Korea (Selman 2009). Consequently, over the last three decades, the African continent as a source for adoptable children, has increasingly attracted the attention of prospective adoptive parents and adoption agencies in the global North (Mezmur 2010; African Child Policy Forum ACPF; Cheney 2014). In Kenya, CCIs are a gateway to adoption, since officially, children have to go through an institution in order to be adopted, as provided in the Children Act (Laws of Kenya 2001). The combination of demand for adoptable children through inter-county adoption¹² and inter-country adoption being a money spinner, has resulted in a process whereby more adoptable children, in this case young children, have to be produced and admitted to institutions for inter-country adoption purposes, thus resulting in commodification.

In Kenya, pervasive inter-country adoption malpractices by institutions led to a countrywide ban pronounced by the national government in 2014¹³. A government commissioned study showed unusually high rates of inter-country adoption relative to domestic adoptions: between 2003 and 2008, the latter amounted to approximately 62 percent of total adoptions, against 38 percent in inter-country adoption (Njoka and Williams 2008, pp. vi, 16, 17). These statistics were considered unnecessarily high as the number of children being placed for inter-country adoptions is expected to have been significantly lower. This is so since the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption—of which Kenya is a signatory—underscores the principle of subsidiarity (Dambach 2019, pp. 6, 7), which means that priority is unquestionably accorded to local adoptions.

Another consequence of fragmentation of the framework can be seen in the absence of preventive action that the national ministries would be expected to undertake. It has now been several years since social scientists, INGOs and Intragovernmental organizations begun drawing attention to the practice of orphanage tourism and orphanage voluntourism in the global South and their detrimental effects on children and their families (cf Guiney 2012, Save the Children¹⁴, UNICEF¹⁵). Voluntourism

¹⁰ See: https://www.bettercarenetwork.nl/nw-17382-7-3673126/nieuws/kenia_schort_de_registratie_van_nieuwe_kinderhuizen_op.html (accessed on 15 December 2018)

¹¹ See Mathenge and Otieno (2014), <https://www.standardmedia.co.ke/article/2000142876/kenyan-government-bans-adoption-of-children-by-foreigners> (accessed on 15 July 2018)

¹² See Ochieng (2018b), <https://www.nation.co.ke/news/How-children-are-sold-to-highest-bidder-in-name-of-adoption/1056-4640320-x1fce6/index.html> (accessed on 15 July 2018)

¹³ See Ochieng (2018a), <https://www.nation.co.ke/news/Experts-want-tough-laws-on-adoption/1056-4772800-or9q5jz/index.html> (accessed on 1 October 2018)

¹⁴ <https://blogs.savethechildren.org.uk/2016/05/why-we-dont-support-orphanage-volunteering/> (accessed on 31 May 2019)

¹⁵ <https://www.unicef.org.au/blog/news-and-insights/august-2016/travel-tips-avoid-orphanage-tourism>; (accessed on 30 May 2019) <https://blogs.unicef.org/east-asia-pacific/children-not-tourist-attractions-keeping-families-together-in-myanmar/> (accessed on 30 May 2019)

and orphanage tourism are widespread in Kenya, more so in its touristic coastal region. Yet, to date, no efforts in the form of national or transnational sensitization campaigns have been made towards sensitizing international tourists, students and schools to the need to stop establishing or supporting the establishment of children's homes (and rather support efforts geared towards de-institutionalization notably by supporting initiatives that focus on strengthening families and communities).

Similarly, there have been no official campaigns geared towards deconstructing local attitudes through which institutions have come to be considered good solutions for children from poor families, in particular within communities situated in regions where the presence of numerous foreign sponsored residential child-care facilities are functioning as pull factors for parents who are struggling to provide for their children's most basic needs.

5. Addressing the Root Causes

The problem with institutional care in Kenya and elsewhere is not just the earlier mentioned socio-emotional, physical and cognitive challenges it engenders for the children, and the adults that they later become. It is also the fact that institutionalization of children by itself never addresses the underlying issues and is often a reactive model in many instances.

Currently, with on-going care reform efforts, the Kenya government has accepted that the model is harmful, unsustainable and significantly misused. However, there are complexities and challenges in how the issue of children without adequate parental care is addressed in the country. Some of the institutional care actors have argued that they are responding to poverty; their intervention thus involves addressing issues related to the provision of education, food, health, shelter, protection from abuse and neglect, which are mostly visible factors or symptoms of vulnerability. While treating these symptoms is essential, addressing the underlying issues is fundamental. We argue that the standard approach to child protection—which consists of addressing the symptoms—is inadequate at best and counter-productive at worst.

For example, *the issue of street connected children* has reinforced the relevance and maintenance of institutions with many of their administrators arguing that they are a lesser evil, compared to having children growing up on the streets. This is a very narrow, yet widely held view. Section 5 of the World Report on Violence against Children, decries the use of institutional care for these children and urges governments to look into alternatives because of their harmful nature (Pinheiro 2006). Despite the country having over 200 institutions focusing on street connected children, the number of children on the streets keeps growing (Onyiko and Pechacova 2015, p. 161). This is evidence indicating that institutions are not a panacea. It also underscores the fact that expecting different results while continuing to use the same approach is at best illogical.

In the case of street connected children, institutional care is not only harmful but fundamentally ignores the root causes of their presence on the streets. Research has shown that most children who are to be found living on the streets are predominantly there as a result of poverty (Onyiko and Pechacova 2015), and poverty-related issues that would include violence, abuse, neglect, and abandonment by their families or displacement during armed conflict (Suda 1997; Cottrell-Boyce 2010). Subsequently many of them end up in institutions. It is worth noting that the 2015 case study conducted under UNICEF, in collaboration with the Government of Kenya and Global Affairs Canada showed that over 76 percent of children in Kenya had experienced a form of violence—sexual, physical, and emotional (Government of Kenya et al. 2015). It is these plights—violence, negligence, exploitation, and which are intricately connected to poverty in families—that often drive many to seek salvation on the streets (Suda 1997; Cottrell-Boyce 2010). While a sizeable number of these children find their way to the streets, and subsequently end up in institutions, some are 'rescued' from their malfunctioning families; they are withdrawn from their homes and taken to residential child care institutions. Indeed, it seems that it would make more sense if organizations galvanized themselves in prevention, since the current approach is often cyclical, and organizations only end up addressing the symptoms.

Although *discrimination against children living with HIV/AIDS and those with disabilities* has reduced over the years, children in these situations still continue to face stigma and discrimination in families and communities. They have often been condemned to upbringing in institutions, which claim to respond to their needs. However, relegating these children to institutional life often reinforces *othering*, which subsequently widens the gap between them and their healthier and non-disabled peers, and society at large, hence reinforcing stigma and discrimination. Intensive efforts to create awareness and to bring resources closer to communities would be sensible in reducing such inequalities as well as the stigma and discrimination. For such children to develop and attain their full potential like all other children, their upbringing in loving and accepting families and communities is essential.

Retrogressive cultural practices such as genital cutting and early marriages for girls have also been a major concern in several parts of the country (UNICEF 2018a). Official reports show that although there has been a general national decrease in prevalence of female genital cutting¹⁶, it is still highly prevalent in certain communities¹⁷ (National Council for Population and Development 2013; Kenya National Bureau of Statistics et al. 2015, p. 333; UNICEF 2018a, p. 94). Similarly, early/child marriages are also rampant in Kenya, due to social economic factors, which include poverty, low education and the view that girls are economic assets (UNICEF 2018a, p. 96), with one in six teenagers aged 15–19 years being reported to be pregnant or a mother¹⁸. Girls who want to avoid undergoing genital cutting and early marriages often seek shelter in ‘rescue centers’. These children tend to spend long periods of time in such institutions, and are generally entirely separated from their families and communities because of fear of discrimination or punishment.

Research has shown that millions of households are living in *extreme poverty*¹⁹. In these conditions, care givers—including biological parents who have little or no support—sometimes become desperate enough to let their children go to residential care institutions whose representatives sometimes come knocking at their doors (Ucembe 2015c, p. 22). Furthermore, there is evidence showing that some institutions see children as commodities, and as bait for funding at best (Njoka and Williams 2008, p. 20). Additionally, many consider that having high numbers of children in their institutions is viewed more favourably by donors who consider institutionalization as assisting children (Cheney and Ucembe 2019, p. 41). This preoccupation with numbers and orphans has significantly resulted in children being separated from their families and communities and labelled as ‘orphans’. Many refer to their facilities as ‘orphanages’[”] having realized that individuals and charitable organizations in North America and Europe are willing to financially and materially support ‘orphans’ in ‘orphanages’ in African countries.

These and other unscrupulous people have tapped into this model, as it *lacks adequate oversight by the national and county governments*. This absence of proper oversight comes with drastic repercussions for the concerned children and young people. Indeed, the accounts of some young Kenyans with care experiences have shown that it is not unusual for children to be moved back to their families by the owners of institutions, when the latter decide to pursue business opportunities with the available infrastructure, material and financial resources (Ucembe 2015c, p. 33). Such malpractices are often possible when the care institutions are unregistered and unregulated. In addition, the absence of regulations obliging the administrative actors of all CCIs to declare their funding sources and to formally account for the use of their funding and resources, also contributes to such gross misconduct. Evidently, such a lucrative model—one that allows people to acquire property and infrastructure and that brings in easy money—becomes increasingly difficult to abandon and to dismantle.

¹⁶ According to the 2014 Kenya Demographic and Health Survey, 21 percent of women aged 15–49 had undergone genital cutting, which is a drop from 27 percent in 2008–2009 and 32 percent in 2003 (Kenya National Bureau of Statistics et al. 2015, p. 333).

¹⁷ It is worth noting that genital cutting for girls/women is not a generalized practice among all Kenyan ethnic communities; it is present in some and absent in others.

¹⁸ See Otieno (2018), <https://www.nation.co.ke/newsplex/earlymarriage/2718262-4876266-41d2rb/index.html#> (accessed on 10 December 2019)

¹⁹ See Government of Kenya (2012); <https://www.unicef.org/kenya/social-inclusion> (accessed on 10 December 2019)

6. Concluding Discussion

Research based evidence about and around institutional care stretches back almost eighty years. Yet, in Kenya, the child protection system has failed to take an evidence-based approach. Some stakeholders, notably those running residential care facilities, have argued that since the research on children and institutional care is predominantly eurocentric, the findings do not apply to the Kenyan context. Although there is a dearth of research on institutional care in Kenya, this argument is undoubtedly narrow because the residential child care model in Kenya has characteristics that are similar to those previously found in western institutional care models, and from which it has 'inherited', imported or replicated.

The denial or ignorance of evidence has opened up grounds for charity. However, acts of 'doing good' which are not based on evidence have proved to be detrimental to child protection efforts and to children's well-being. Well-intentioned religious groups or individuals and other philanthropists from the global North often fall prey to sensationalized poverty and are generally made to believe that institutions can offer the concerned children a haven. This, coupled with an unregulated child protection system leads to the proliferation of residential care institutions, contributing to the country's reliance on institutionalization as a child protection model.

A major limitation of the national government's decision to leave care and protection in the hands of the third sector, has been that charity has replaced the idea of rights and social justice, and oversight of the child protection system has also been weakened (Ucembe 2015b, p. 3). There is a need to resist child protection that is grounded on a mentality and approach that commodifies children and child protection, as it encourages situations whereby desperate care givers feel obligated and constrained to give up their child or children in exchange for support that would be provided to the child within a certain space that is neither the caregivers' nor the child's home. Such approaches are not beneficial to the children, but rather are detrimental to their well-being.

Indeed, the concerned children are rarely the main beneficiaries of Kenya's institution-weighted child protection and care system; quite the contrary. Evidence shows that those who benefit the most are not the children, but rather owners of residential care facilities, their employees, tourists and volunteers, and the state. In numerous cases, it is not the local actors who determine how to support children, but owners of the facilities, who also double as fundraisers or donors. For example, it is the owner-fundraisers/owner-donors—not child protection 'professionals'—who decide whether or not a child should go home to their family. Their decision is often based on their perception of what constitutes a family and a good family environment. Often, the village life that is the lived reality of many children and their families does not match these perceptions, and some facility owners argue that taking a child (back) to a village amounts to taking her/him to poverty, and that the child is better off within their facilities.

Such approaches also put children at risk of *institutional abuse* (Tolfree 1995, p. 107; 2003, p. 5) defined as 'any system, programme, policy, procedure or individual interaction with a child in placement that abuses, neglects, or is detrimental to the child's health, safety, or emotional and physical well-being, or in any way exploits or violates the child's basic rights' (Cashmore et al. 1994, p. 10). In the country, there have been several cases of sexual abuse in residential care facilities, perpetrated by both local and foreign persons. Since background checks are rarely conducted, known pedophiles and other unidentified sexual offenders generally have easy access to children, and are sometimes the very persons who establish and run the care facilities, or are employed within them (See Scolforo 2019 for sexual and psychological abuses perpetrated by a 'missionary' founder). Other sexual offenders gain access to the children through the funds, material donations or the volunteer services they offer, often using an overt 'missionary' identity or prestigious occupations to gain the trust of children and their adult care-givers (see Wright and Allen 2013; Ferrigno 2017 for sexual abuses and psychological abuses perpetrated by a young 'missionary' and an airline pilot).

It is worth noting that during interventions, solutions which focus on removing children from their families are also rooted on an exclusive focus on children, that is, children are viewed in isolation,

with little or no consideration given to the role of their environments and their primary care givers in assuring their consistent care, protection and overall well-being. In a way, the emphasis and focus on 'orphans' legitimizes this approach. From the preceding, it is evident that the sustainability of the intended change from institutional care to alternative family care requires that a root-cause approach be adopted in addressing the underlying child care and child protection issues. For instance, research clearly indicates that child protection efforts need to be combined with income-generating and poverty-reduction projects, as this would help curb child abuse and neglect (Lachman et al. 2002) and would thus reduce the pressure to relinquish children experienced by financially and subsequently emotionally struggling parents. Therefore, it is necessary that policy and legal frameworks that strengthen and develop alternatives to institutional care be established and enhanced. In parting, let us consider some evidence from the African continent that indicates government-led root cause approaches to child protection are more effective and sustainable compared to institutionalization. In 2013 the government of Rwanda in collaboration with UNICEF launched *Tubarerere Mu Muryango* (TMM—Let's Raise Children in Families)—a care reform programme that seeks to accomplish change from an institutional model of care to a family and community-based model. In 2017 the project's first phase was evaluated and showed a dramatic decrease in the number of children and young adults living in institutions: out of a total of 3323 children and youth, 2388 had been reintegrated into families and communities, which resulted in improvements in different aspects of their and their families' well-being (National Commission for Children et al. 2019, pp. 14–15).

Although the government of Rwanda still needs to do more, it has sustainably increased funding for social protection which is key in addressing poverty and its related issues. A national survey of children in institutions in Rwanda showed that one of the major reasons of institutionalization was poverty (Government of Rwanda and Hope and Homes for Children 2012, p. 9). A 2018/2019 social protection budget report prepared by UNICEF shows that over a period of 5 years, government spending in the social protection sector rose from FRW 73.1 billion in 2014/15 to FRW 138.3 billion in 2018/19, representing an increase of 89.3 percent (UNICEF 2018b, p. 9). The country's social protection sector has a number of core and complementary social protection programmes (involving services and cash transfers) which support families and different categories of vulnerable and marginalized citizens (children, orphans, elderly and disabled, low-income earners); they cover livelihood, shelter assistance, finance, health and education. The same report also shows a rise from FRW 6.4 billion to FRW 22.9 between 2017 and 2018 and 2018 and 2019 in the budget allocated to child-centered social protection (nutrition and child protection).

Alongside budgetary measures, the government has also invested in strengthening the performance of its larger child protection system through the training and recruitment of a social work force (social workers and psychologists) and governmental oversight and monitoring. It has established and strengthened responsive community structures with 29,764 community volunteers (local), whose roles include identifying needy families and linking them to support, responding to issues of violence, and monitoring the well-being of children (National Commission for Children et al. 2019). Through a sensitization and training programme, it has established foster care on a large scale, and has also undertaken awareness raising in communities to curb discrimination against children with disabilities. Additionally, it has embarked on constructing and supporting sustainable community centers to respond to the needs of the poor with regard to livelihoods, respite care, schooling and early childhood development.

Today, no new institutions can be established in the country and children can no longer be placed in institutions. The country is currently reported to be on track to be the first country in Africa to be orphanage-free by 2022²⁰.

²⁰ See Graham (2018), https://apolitical.co/en/solution_article/rwanda-wants-to-become-africas-first-orphanage-free-country-heres-how (accessed on 4 April 2020)

Transforming Kenya's child protection and care approach is a long-haul process within a complex social system. As the experiences of other countries show, it will take considerable time, effort, financial and human resources, and will necessitate sacrifices and trade-offs in the short-term. It requires political and public will, inclusive and collective action at all levels, coordinated commitment as well as governmental ownership of the process.

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