



Battle for the Family's Soul: Anatomy of the Orphanage Phenomenon in Kenya

By Simon Njoroge



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Orphanages, alternatively referred to as children's homes or charitable children's institutions as per the Children Act 2001, have been in the headlines in the recent past for a myriad of allegations ranging from abuse and neglect of children, recruitment of children from poor families and involvement in a cartel of traffickers in the guise of adoption that has involved adoption societies, lawyers, children's officers and judicial officers. The dramatic case of Matt and Daisy Mazzoncini is the latest in a series of explosive exposés on orphanages and adoption in Kenya.

While all the focus has been on these emerging cases and the ensuing drama, a more profound discourse concerning the suitability of the orphanage as a model of care and protection of children has been ongoing for some years among policymakers, practitioners and childcare advocates. Deinstitutionalisation or the gradual replacement of the orphanage with social services at the community level coupled with family-based alternatives like foster care and kinship care have been proposed. To a keen observer, the question of whether there is a nexus between the two seemingly discrete occurrences naturally arises.

Deinstitutionalisation

Is the ongoing onslaught on childcare service providers related to the broader deinstitutionalisation

discourse?

But first, what exactly is deinstitutionalisation?

Any attempt to effectively unpack the concept of deinstitutionalisation immediately demands an answer to the question of how the orphanage, in the first place, came to stealthily occupy the space for the care and protection of children traditionally reserved for the family. Social inertia implies that norms and institutions anchored in tradition do not easily give way to new and exotic ones unless, as a prerequisite, the social forces that anchor them are weakened by changes within the same society. New norms and institutions only come in to fill a gap which they have not themselves created but which requires filling nevertheless.

What then are these social dynamics that significantly weakened the family institution and its cultural underpinning? Why and how did the orphanage emerge? What is the impact of the orphanage on children, the family, and communities? Is the orphanage a better alternative for care and protection of children than the family? What informs the ongoing deinstitutionalisation discourse and how is it likely to shape the national child protection policy?

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The orphanage is primarily a western concept. In North America, orphanages first emerged in the early 19th century while in Europe they can be traced far back to the Roman Empire. In the mid-20th century orphanages were gradually phased out in the West and replaced with foster care and welfare systems. There exists two schools of thought concerning what motivated governments in the West to adopt deinstitutionalisation policies. On one hand are arguments that the motivating factor was child welfare concerns informed by evidence of the long-term negative effects of orphanages on the developmental well-being of children while on the other are arguments that policymakers were more concerned by the high costs of orphanages as a model of care of children compared to foster care and provision of social services to needy families. Whichever the case, there is consensus that both factors played a role in the eradication of the orphanage in the West.

However, Eastern Europe and the former Soviet bloc continued the use of orphanages under the communist regime until the fall of the Soviet Union. When the former Soviet countries started to join the European Union, they were given a precondition of eradicating orphanages and the practice of intercountry adoption. The EU supported these initiatives, and this saw the rise of the concept of deinstitutionalisation as it is understood today, which is a policy-driven and systematic process of eradication of child care institutions (orphanages) as a model of care for children who have lost or are at the risk of losing parental care.

The growth of the orphanage in Kenya

While countries in the West had gotten rid of orphanages and those in Eastern Europe were in the process of doing so, the opposite was happening in Kenya and Africa in general. Though there exists very scanty data on the growth of the orphanage in Kenya, it is believed that the Thomas Barnado House (now Kenya Children's Home) was the first orphanage in Kenya. The Thomas Barnado House opened on or around independence to care for children born out of relationships between British colonial masters and Africans.

Anecdotal evidence indicates that the orphanage remained at the periphery of Kenyan society until late 1990s when the numbers began to swell rapidly, particularly in the wake of the AIDS pandemic that saw an increasing number of children losing their parents to the disease. Currently, there is no substantive evidence on the number of orphanages in Kenya though some studies indicate that there are 850 registered orphanages and an unknown number of unregistered and unregulated ones.

Traditionally in Kenya, children were cared for within the extended family and the community. This tradition was slowly eroding in Kenya by the early 1970s and by the turn of the century it was almost on the brink of total erosion or so was the impression. This trend can be attributed to several factors. The global economic downturn in the 1970s saw fluctuating prices of the country's major exports, low levels of technology and increasing debt. Other factors, such as drought and famine, high population growth, the collapse of the East African Community, high rates of urbanisation, and land fragmentation resulted in widespread poverty, food shortages and declining standards of living.

In addition, the country's adoption of Structural Adjustment Programmes (SAPs) in the late 1980s, which significantly impacted the government's investments in social services, especially education and health care and which led to rising unemployment and retrenchments. Joseph Rono, in his paper, "The Impact of the Structural Adjustment Programmes on Kenyan society" states:

"The SAPs are intended in the long run to improve the economy. However, in the short run, one area that suffers from the immediate consequences of the SAPs, which has been ignored, is the social aspect of human development; namely, the erosion of social services, especially among vulnerable groups, families and individuals."

Further, in reference to their impact on the family unit, he states:

"Although the government was committed to the reduction and eventual eradication of poverty in Kenya immediately after Independence, it has experienced difficulties in implementing its plans. Consequently, poverty has not only persisted, it has also increased significantly in the 1990s, negatively affecting all sectors of development and the family unit in particular."

In addition, the HIV pandemic further complicated the capacity of the family in two ways. One, it aggravated the already bad socio-economic conditions of the affected families and communities. The most infected were between the ages of 15 and 49 years, which constitutes the productive demographic. Many families lost their breadwinners and in most of the cases, one member of the family was forced to cut down on work hours or leave work altogether to take care of the one who was ailing. The number of orphans increased significantly with most being left in the care of either their grandparents or older siblings.

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Secondly, the stigma surrounding HIV/AIDS was a direct affront on the kinship care previously attributed with caring for children who had lost their parents. While orphaned children would previously be absorbed into the extended family or close family friends, they were now shunned. In this state, the family institution was vulnerable to any external idea that would seemingly save these children.

As the pandemic quickly morphed into a humanitarian crisis, the Government of Kenya was understandably caught flatfooted. It had inherited the colonial philosophy that did not consider child

care as a function of the state. As a result, Kenya didn't have a credible child care and protection system to cater for the increasing numbers of children needing protection. This is a fact demonstrated by the laws concerning children that existed prior to 2001 when the Children Act was enacted.

The Adoption Act of 1959 was a law to govern the adoption of children. The Guardianship of Infants Act of 1959 was for guardianship and custody of infants and the Children and Young Persons Act was for the protection and discipline of children, juveniles and young persons. This implied that as the family became increasingly overwhelmed, there was no law or policy framework for services to support families in crisis or for alternatives in case the separation of children was inevitable.

In addition to introducing the term orphan in international development, the term's definition was problematic in two ways. One, the definition branded the victim of the problem and not the problem itself. Secondly, the idea of orphan with its socio-economic connotations was hitherto alien to most African cultures.

In response to the crisis that had engulfed most African countries, the United Nations Children's Fund (UNICEF) came up with the concept of orphaned and vulnerable children (OVC) in an attempt to raise the profile of the crisis on the international development agenda. The term single orphan was introduced to refer to a child who has lost one parent while double orphan referred to one who had lost both parents. As a result, the number of orphans shot up instantly.

In addition to introducing the term orphan in international development, the term's definition was problematic in two ways. One, the definition branded the victim of the problem and not the problem itself. Secondly, the idea of orphan with its socio-economic connotations was hitherto alien to most African cultures. Evidence indicates that most African communities still define children left behind not based on their socio-economic deprivation but on their position within their community. In the Gikuyu community, for instance, the child is referred to as "Mwana wa ndigwa" or a child who has been left behind, implying a general understanding that the child had been left in the care of the extended family or the community.

Secondly, the wisdom of the concept of vulnerable children is questionable since its implication was that almost all children in sub-Saharan Africa became the target of interventions, consequently creating a false impression that the traditional child care and protection systems in Africa has completely collapsed. It's no surprise then that evidence indicates that between 80 per cent and 90 per cent of children in orphanages today have at least one surviving parent.

This was quickly followed by the emergence of the orphan care movement within the American Evangelical church. Though the church in the West, due to the simple lack of the bureaucracy of governments and international development agencies, was the first to respond to the crisis by mainly building orphanages through their local affiliates, the orphan care theology marked a watershed moment. Founded on James 1: 27, "Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress and to keep oneself from being polluted by the world, this new gospel became the rallying call for Christians to commit to helping children out of the orphan crisis. With that, taking part in helping orphans in African and other developing countries became a measure of how Christian one was, and donations rose to unprecedented levels and so did the number of orphanages. In Kenya today, the majority of orphanages are operated by churches and Christian-based organisations with funding from mainly the US and Western Europe.

The Children Act 2001 and the official sanctioning of the orphanage

To further reinforce the position of the orphanage, the Children Act of 2001 was enacted, placing the orphanage at the core of the childcare system. Under the Act, a child must be placed into an orphanage before they can be placed for foster care or adoption. More fundamentally though, the Act was silent on the services to support vulnerable families and prevent separation or relinquishment of children.

Through the Children Act, the orphanage was thus officially and legally sanctioned as the default mode of care for children separated from their family while the family was left to its own devices. Stephen Ucembe, in his paper titled, "Institutionalization of Children in Kenya: A Child Rights Perspective", notes that the reference to the orphanage as a charitable children's institution in the Children Act 2001 clearly demonstrated the government's abrogation of its role as the primary duty bearer of children's rights - a fact demonstrated by the historical low budgetary allocation to the Department of Children's Services and the National Council for Children's Services. The government today only runs 26 statutory institutions meant for children in conflict with the law while churches and Christian organisations and individuals operate the 850 registered orphanages and an unknown number of unregistered ones. This is not surprising given the bizarre provision in the Charitable Children's Institutions Regulations of 2005 that requires an orphanage to have at least 20 children before seeking registration. An orphanage simply needs to keep its numbers below this threshold and it can legally operate outside regulation.

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Another key factor was the introduction of free primary education in 2003 which has been coupled with decreasing levels of funding for education, consequently reducing the quality of education in public schools. It's estimated that 1 million primary school-age children were out of school by 2017. With orphanages either having schools within their precincts or securing sponsorships for children to attend private schools, impoverished parents relinquish their children and even ask them to lie that they are orphans to get into orphanages. Today, access to education is one of the leading reasons why children are in orphanages. Other reasons for placement of children in orphanages include abuse and neglect, gender-based violence, especially female genital mutilation, alcoholism and drug abuse, disability and discrimination.

What is the impact of orphanages on children, families and communities?

A 1999 study titled "Growth and Development of Abandoned Babies in Institutional Care in Nairobi" concluded that infants under institutional (orphanage) care have poorer growth and development compared to mothered infants. This is consistent with decades of research that has proven that care in orphanages has adverse impact on the cognitive, intellectual and social development of children, especially those below the age of three. The rule of thumb is that for every three months that a child below the age of three spends in an orphanage, he or she loses one month in development. Institutionalisation of children under the age of three is classified as a form of violence by the World Report on Violence Against Children.

In addition, evidence also demonstrates that violence against children is six times more likely in orphanages as compared to family settings - a fact not openly acknowledged due to the secluded nature of orphanages which allows most abuse to go unnoticed. Children in orphanages, their

parents and the community also lack agency and are less likely to report abuse, especially if the benefactor is the perpetrator.

The orphanage perpetuates social isolation resulting in adjustment challenges once children exit. Care leavers lack social capital since they are cut off from their families and communities. They lack social skills to negotiate life outside the orphanage. Research indicates that they are more likely to end up in crime and prostitution, more inclined to suicide, while young women are likely to end up in abusive relationships and their children are likely to end up in an orphanage, thus perpetuating an endless cycle of poverty and institutionalisation.

Additionally, the orphanage infringes on children's right to parental care, growth and development, freedom of association and of worship, particularly when children attend school and church within its confines. It also encourages discrimination and stigma against children.

The orphan ideology and the orphanage institution are a direct affront on the ideology and institution of the family. As indicated earlier, the idea of the orphaned and vulnerable child is not only foreign to African culture but also creates a false perception that the contemporary African family is irredeemably and inherently incapable, abusive, neglectful and exploitative towards children by classifying almost all children as being in need of care. For instance, there are reported to be 3.6 million orphaned and vulnerable children in Kenya out of which approximately 50,000 are in orphanages while between 400,000 and 500,000 live on the streets. Even if the number of children in orphanages was doubled to cater for those in unregistered orphanages, at least 83 per cent of these children would still be living with their families, though at risk of separation.

In a more direct affront on the position of the family, orphanage operators often refer to the orphanage as a family, and/or outrightly delegitimise the impoverished family. In a study titled, "Children's Personal Data: Discursive Legitimation Strategies of Private Residential Care Institutions on the Kenyan Coast", Njeri Chege notes that references to the orphanage as a family on orphanages' websites are meant to legitimise the orphanage by attributing to it the authority of the family as a social institution. She highlights that the communication advances a rescue discourse that portrays the dysfunctional family as either an inherent threat to the child's well-being or helpless. The orphanage is portrayed as the saviour and appropriate environment for the child. She further notes that communications by the orphanages only refer to unfit mothers with no mention of the fathers, while the extended family is only mentioned in situations where they are referring children to the orphanages.

Such narratives erode the legitimacy of the family both locally and abroad and further reinforce the impression of the hopeless African family created by the orphan and vulnerable children concept. This is especially potent for the younger generation of Kenyans born into the era of the orphanage and who because of the orphanage's prominent presence and the repeated reference to it as a family end up internalising it as a legitimate or even better form of family while in actual sense it's a much inferior alternative. The orphanage thus diverts resources that would be sufficient to provide social services to families at the community level. Evidence demonstrates that both provision of services at the community level and community foster care are more cost-effective than running orphanages.

Global an national policy shifts

The foregoing notwithstanding, the suitability of the orphanage is being questioned in Kenya today. This conversation has been driven by several factors at the international and national levels.

The Government of Kenya in 2010 formulated the National Social Protection Policy followed by the Social Assistance Act of 2013. The Act provides for, among other things, a cash transfer for

orphaned and vulnerable children. The stipend is meant to enable vulnerable families to take care of their children. Other cash transfers include that for the elderly and persons living with severe disability.

In response to the United Nations Guidelines for Alternative Care of Children adopted by the UN General Assembly in 2009, the government developed the Guidelines for the Alternative Family Care of Children in Kenya, which were launched in 2015. The guidelines recommend the development of a deinstitutionalisation strategy. Since then, there has been a consistent push by a section of civil society for the implementation of the guidelines, which culminated in the formation of the Association for the Alternative Family Care of Children in Kenya in 2016. The government, through the Department of Children's Services and in collaboration with UNICEF Kenya and other partners, is currently piloting the guidelines in Kisumu County.

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Perhaps one of the clearest indications of the inevitable change is the decision by the trailblazing SOS Children's Villages Kenya to gradually shift focus from their villages to the integrated foster care model, which basically involves moving the family units from the centralised cluster and scattering them within the community, effectively eliminating social isolation and allowing children to better integrate into society.

At the global level, several developments have heightened the prospects of a global shift, which inevitably exerts pressure on national policymakers. These include the inclusion of orphanage trafficking as a form of modern day slavery in the Australian Modern Day Slavery Act in the midst of an initiative to have all Commonwealth countries enact modern day slavery laws. The resolution by the Commonwealth Youth Forum at the Commonwealth Heads of Government Meeting in London in 2018 calling on all member states to prioritise policies and programmes that prevent placement of children into orphanages. The latter is particularly interesting given that Commonwealth Heads of Government Meeting in 2020 will take place in Kigali, Rwanda, a country that is the trailblazer in deinstitutionalisation in Africa.

In 2018 the European Union placed its first ever call for proposals for deinstitutionalisation, signaling a possible intent to export its deinstitutionalisation policy position outside its jurisdiction, while the UN General Assembly selected "Children without Parental Care" as the theme for the Rights of the Child in 2019. All eyes will be on New York as it hosts the UN General Assembly in September 2019 when the resolution will be released.

Recruitment of children into orphanages has also become increasingly recognised in the US State Department's Report on Trafficking in Persons. Most significant though is the recently launched US Government "Advancing Protection and Care of Children in Adversity" Strategy 2019-2023", which has "Put Family First" as one of its three core objectives. The strategy represents the most explicit and candid policy position by a major donor on the need to eradicate orphanages as a form of care.

Schools of thought and policy positions

In this context, it seems inevitable that the orphanage will inevitably either be eradicated or it may undergo some radical change. Undeniably, the actors in the country are aware of this and have embarked on initiatives to try and shape the discourse in their favour, either for self-preservation, positioning or even raw power play.

Three schools of thought or policy positions have emerged, each with a different motive, deinstitutionalisation ideology, and theory of change. The first policy position is the “conservative” position associated with the Association for Charitable Children Institutions in Kenya, which is the umbrella body for orphanages in Kenya. Unsurprisingly, this school of thought, though acknowledging the harm caused by orphanages, argues that the situation on the ground makes orphanages inevitable. “How do we take children back to the same families who abused and neglected them in the first place?” is their argument. Fundamentally though, they have redefined deinstitutionalisation to mean removal of children from orphanages through reintegration as opposed to removal of the orphanage from the childcare and protection system, effectively turning the orphanage system into a revolving door where children come in and out. Consequently, they are proposing the strengthening of orphanages to adhere to the National Standards of Care for Charitable Children Institutions and the strengthening of families at the same. They do not propose when and how the actual transition from orphanages to families will occur.

The second position is the “slash and burn” position whose proponent is the Child Welfare Society of Kenya. Though seemingly unrelated to deinstitutionalisation, this school of thought presents the most radical strategy for reintegrating children within three years, closing of all orphanages and replacing them with 47 mega foster care centres, one in each county. Funded by the national budget, construction of the facilities is currently underway in several counties. The second proposal is the centralisation of policymaking and service provision at the Child Welfare Society of Kenya. The argument is that a government agency will better guarantee child safety as opposed to private ones, which have been branded as rogue. However, evidence suggests that the key to safeguarding children lies in strict enforcement of sound regulations and presence of checks and balances at all levels and not necessarily whether the service provider is a state or non-state agency.

To justify overrunning of all the other players, this school of thought has adopted the emotive child trafficking in the guise of adoption narrative. It should, however, be acknowledged that adoption and child protection in general suffers deep systemic weaknesses that are beyond the scope of this essay, and not simply a matter of some alleged rogue players as the narrative seems to portray. The situation has further been aggravated by years of poor regulation, which has seen the rise of unscrupulous orphanage operators that expose children to abuse, neglect, exploitation and trafficking. This school of thought is focused on centralised regulation as opposed to reform.

The third position is the “care reform” position propagated mainly by the Association for Alternative Family Care of Children. In this case, deinstitutionalisation is just an entry point into broader social reforms aimed at provision of basic social services at the community level and resourced family-based alternatives. Though radical in its intended outcome, this school of thought is advocating for a more systematic approach encompassed in a clear strategy comprising political will for reforms, building the capacity of civil society organisations and the social workforce, building evidence through, among other avenues, piloting of the concept, and the securing of funding for reforms, including ring fencing of resources being channeled into orphanages currently. This position is informed by the model applied mainly in Eastern Europe and Rwanda and its main global proponents are the international charities Hope and Homes for Children and Lumos, a charity founded by the iconic Harry Potter author J.K. Rowling.

Currently, this model is being piloted in Nyamira, Kisumu and Kiambu counties under the banner of Changing the Way We Care programme spearheaded by the Department of Children’s Services, Catholic Relief Services and Lumos. USAID, under the “Advancing Protection and Care for Children in Adversity” strategy mentioned above, is co-funding the initiative alongside the MacAuthor Foundation. A similar pilot is currently underway in Murang’a County under the stewardship of the Department of Children’s Services and the charity Stahili Foundation.

In his thesis titled, "For the Benefit of Children Alone? A Discourse Analysis of Policymaking Relating to Children's Institutions in Indonesia, 1999-2009", Brian Keith Babington examined the process of deinstitutionalisation policymaking in Indonesia and found out that the policy position finally adopted in the country was not informed by child welfare concerns but was a compromise between the policy positions adopted by different players, in addition to some influence from external development partners. The Kenyan situation is similar to that of Indonesia in terms of orphanage ownership, poor regulation, the emergence of different policy positions and the involvement of major development agencies. In addition, the robust civil space in Kenya makes policymaking highly participatory in most cases. It is, therefore, likely that in the long term, a compromise of the different policy positions and the influence of international development agencies will shape the final policy position adopted in Kenya.

In conclusion, it is evident that though the family was gradually weakened by socio-economic factors from the 70s, the tipping point was the HIV pandemic and the lack of a child care system at the time of its emergence. The interventions and narratives that followed, including the concept of the orphan and the orphanage, further aggravated the situation by affronting traditional child care systems and focusing on the symptoms of the problem and not the problem itself.

The ultimate solution, therefore, lies in changing the ideological foundation and narratives, policies and practices on child care to focus on the family and community. Rehabilitating the family and community child care systems will not only eradicate the need for the orphanage but will also solve the problem of children living on the streets, reduce abuse and neglect of children and improve the overall well-being of children, their families and communities. Failure to do this will only see the family, especially the impoverished one, increasingly fail in its child rearing role, which could be disastrous considering that children make up to slightly over half of the Kenyan population.

Against this backdrop, it is stark clear which of the policy positions is sounder from the perspective of the problem as defined herein.

This notwithstanding, the "slash and burn" position seems to have the support of the executive perhaps due to the proximity of the Child Welfare Society of Kenya to the First Family. The president was their patron at the time they were made a state corporation after succeeding his mother. The position by the Labour and Social Services Cabinet Secretary on the government's plan to close orphanages therefore need not be interpreted as a sign of political goodwill for care reform but rather for a specific policy position within the broader care reform discourse. More interesting is the seeming difference in position between the Department of Children's Services, on the one hand, and the Cabinet Secretary and the Child Welfare Society of Kenya, on the other.

The ultimate solution, therefore, lies in changing the ideological foundation and narratives, policies and practices on childcare to focus on the family and community. Rehabilitating the family and community childcare systems will not only eradicate the need for the orphanage but will also solve the problem of children living on the streets.

With all the pushing and shoving, the deinstitutionalisation policymaking process is likely to produce on the most dramatic and interesting policy processes witnessed thus far. It can only be hoped that in the end, the best interest of Kenyan children will prevail.

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