

PUBLIC POLICY TO PROTECT VULNERABLE CHILDREN IN KENYA: HISTORICAL PERSPECTIVES SINCE INDEPENDENCE

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Summary:

With regard to the public policy of prevention and protection of vulnerable children, the casual observer will find himself facing a law which borders on pessimism. Indeed, an emotional, family, social and economic insecurity persistently remains for thousands of children that are abandoned, neglected, ill-treated and exploited, forced to live on the streets or in garbage dumps, etc. The casual observer would also just as easily not only condemn the failure of this public policy, through the incapacity of the government and public authorities to address this problem, which has been in existence since the 1980s, but also blame it for its support by numerous non-government interests. In fact, the means by which to look after vulnerable children have had many changes since the 2000s. In the first place, they are influenced by changes in children's rights and the development of policies seeking to put in place a synthesis of various views of the challenge posed by vulnerable children and orphans, estimated to be almost 6 million at the beginning of the 2000s. Second, and within the framework of sustained public action, the issue of care of children, particularly in urban areas, still remains as acute while street children inevitably remain obliged to fend for themselves.

Résumé :

Au regard de la politique publique de prévention et de protection de l'enfance vulnérable, l'observateur profane se trouvera confronté à un constat prêtant au pessimisme. En effet, une précarité affective, familiale, sociale et économique demeure persistante pour des milliers d'enfants : enfants abandonnés, négligés, maltraités, exploités, contraints à vivre dans la rue ou sur les décharges, etc. L'observateur profane aurait également tôt fait de stigmatiser l'échec de cette politique publique, à travers l'incapacité de l'État et des autorités publiques à traiter ce problème prégnant depuis les années 1980 mais aussi du fait de sa prise en charge par une multitude d'acteurs non-étatiques. En fait, les modalités de prise en charge de l'enfance vulnérable connaissent des mutations profondes depuis les années 2000. Elles sont tout d'abord influencées par les modifications du droit des enfants et le développement de politiques cherchant à opérer la synthèse de visions hétérogènes face au défi que représente l'enfance vulnérable et les orphelins, estimés à près de 6 millions au début des années 2000. Ensuite, et dans le cadre d'une action publique soutenue, la problématique de la prise en charge des enfants, notamment en milieu urbain, demeure toujours aussi aigue, tandis que les enfants des rues demeurent inévitablement contraints à s'organiser par eux-mêmes.

Introduction

With regard to the public policy of prevention and protection of vulnerable children in Kenya, the casual observer will find himself facing a law that borders pessimism. This is due to the gap between protection rights and an unsustainable reality for thousands of children.

- For twenty years, Kenya has significantly strengthened its legislation on the rights of children, both in their recognition and in the methods of protection. Having ratified the 1990 UN International Convention on the Rights of the Child, Kenya revised its legislation on children in 2001 through the Children's Bill Act, giving some principles of the Convention a translation into national law as well as to those of the African Charter. During the constitutional reform of 2010, some rights of the child were constitutionalised.
- The activism of the public authorities is real, through the setting up of multi-year and cross-cutting strategies to handle the fragile childhood. Hence the first strategy established in 2005 aimed at orphans and vulnerable children, which resulted in the establishment of the first allocations intended for the poorest rural households, was, in 2008, linked to a National Action Plan for all children, including providing for the establishment of a Children's Fund. The activity of NGOs is also very important, since it is estimated that they support more than one and a half million children.
- Through this, an emotional, family, social and economic insecurity persists for thousands of children abandoned, neglected, mistreated, exploited, forced to live on the streets or in landfills, etc. The number of children who need protection is estimated at 6 million in the 2000s, among them 1.8 million orphans,¹ half of them orphaned due to the HIV pandemic.

However, this public policy, this manifestation of the "solid Government", is far from being easy to understand. Indeed, analysis of public policy cannot be satisfied with a "simple" institutional reading view of the social complexity of the process of public action, which generates continuous research of adjustment between the various boosting and accountability centres at all levels - local, national and international levels. Public policy is therefore seen as "spaces (forums) in which the various actors will construct and express a "relationship to the world" which refers to the way they perceive reality, their place in the world, and what the world should be."²

The exact purpose of this paper is, through a historical perspective, to show how public policy for child protection reflects the capacity of actors to intentionally lead projects according to logic that takes into account both their own values and their own interests, together with structural elements of the area that they will mobilize to manage this particular sector.

Thus, until the 1990s, the issue of the child remains "confined" to a social problem. If both the increase and the publicisation of some manifestations of vulnerable children, including the abandoned, have this problem on their agenda, government intervention, especially in speech, will be to confine the solution to this problem to the family and community sphere, thus

¹ Republic of Kenya, *National Policy on Orphans and Vulnerable Children*, Office of the President and Ministry of Home Affairs, November 2005.

² Muller, P., « Vers une sociologie politique de l'action publique », *Revue française de science politique*, vol.50, n°2, avril 2000, p. 195.

explaining the absence of changes in the interventions of public authorities in this rather hinging period (Part One).

Cognitive struggles develop in the 1990s on tales of the reality of heterogeneous problems facing children, on its causes and also on how these are handled by the society. Non-governmental organizations act in this regard as true inhibitors of the emergence of the problem of vulnerable children. This policy is primarily more encouraged than fits into a framework of action where the government renews its refusal to regulate, through institutional means, a problem that lies within the family sphere. However, differences in understanding the problem of child prevent attempts to coordinate multiple initiatives to experience a favourable and lasting outcome, at least initially (Part Two).

In the 2000s, the terms of support for vulnerable children have been experiencing major changes, particularly since the accession of the NARC³ government to power. The support is primarily influenced by changes in the rights of children, particularly taking into account the principles of the UN Convention, and the development of policies seeking to synthesize diverse views of the challenge posed by vulnerable children and orphans. In the early 2000s, the number of such children has been estimated at nearly 6 million.⁴ As part of a sustained public action, notably through the National Action Plan for Orphans and Vulnerable Children (OVC), the issue of care for children in urban areas, however, still remains acute (Part Three).

³ The *National Rainbow Coalition* (NARC) was headed by in Mwai Kibaki in 2002, the current President of the country.

⁴ Republic of Kenya, *National Policy on Orphans and Vulnerable Children*, Office of the President and Ministry of Home Affairs, November 2005.

Part One: Until the 1990s, the issue of vulnerable children is confined to a social problem

Most of the provisions related to children in place until 2001 (year of the vote on the Children Act) were thus enacted between 1950 and 1970. Among these were the Children and Young Persons Act, which came into force a few weeks after Kenya's Independence in December 1963. These provisions reflect a monopolistic view of the child, and more so of the family, spanning the years before Kenya's independence to the regimes of Jomo Kenyatta and Daniel A. Moi. They are based on the principle of the duty of supervision and control of the child, which is the responsibility of parents and/or the close environment, reflecting the central position accorded to the family and the community within the organization of the Kenyan society.

1. This is reflected in the law and by the institutional function of a combination between child protection and discipline:

The December 1963 legislation, The Children and Young Persons Act, reflects the close interaction between protection and discipline that dominates the view of the child.

- Article 22, for example, contains a comprehensive list of children considered as being in need of protection or discipline, knowing that these two notions are not defined, and are haphazardly cited, such as, destitute children, those who go to bars or gambling houses, or those who are buying drugs, etc.
- The provisions penalizing neglect and cruelty are followed by a provision recognizing the right of parents, teachers or any person in charge of the minor to administer lawful punishment (Section 23 - reasonable punishment).

2. The cohabitation of these two viewpoints, protection and discipline, results in the establishment of a dual support scheme:

The first part of this scheme consists of the desire to maintain these children in their local area, which is measured through the provisions on juvenile law. The first method of preferred treatment is foster by guardians, to whom a specific part of the Guardianship of Infants Act of 1959 is dedicated. The law thus strongly encourages parents to accord to guardians powers and responsibilities similar to those of parents, and will, in the case of abandonment or non-compliance with parental obligations, award custody of the child to the guardians.

The second plan limits institutional care by the government to investment in "rehabilitation" centres, which are among the dozen or so monitored education centres (Approved Schools). The first of these was opened in 1910 in Nairobi, and also a dozen more correction houses (Remand Home). In addition, the law drastically limits the possibility for a local authority to look after children. This depends primarily on ministerial authorization, which may be issued "from time to time", while the Government must authorize any expenditure by the local authority towards supporting a child.

Thus, judicial public intervention aims at keeping the child in the private sphere, whether through the family or the community through guardians. This method prefers recourse to community solidarity, which broadly reflects the ideology based in post-Independence Kenya, governed by the slogan *Harambee* initiated by the head of state, Jomo Kenyatta, in 1964. This ideology continued to influence development activities to the extent that it became the symbol of the regime.

3. The publicisation of the problem of negligence of children in the 1980s does not modify public intervention and the reference to the child remains unchanged:

In the 1980s, the Press frequently reported difficult situations experienced by some children. The abandonment of children, in particular, was addressed, as shown by the titles: "*the great shame of child abandonment (1986)*," "*abandoned children, victims of deplorable conditions (1984)*," "*a new sad case of abandoned children (1989)*." Other realities were also publicized, such as teenage pregnancy, domestic exploitation in urban areas, the increasing number of street children in urban areas, particularly Nairobi. This publicity more widely reflects the process shattering Kenyan society, notably the destabilization campaigns and the emergence of an urban life.

This perception of a growing problem does not in any way change as a public problem. Narratives and discourses converge around the 1980s concerning the "loss" of individual and collective values.

The term used by the Press echoes not only the strong feelings (sadness, shame)⁵, but also the regret for values lost, including that of respect for tradition.⁶ In contrast, the importance of family education is recalled, based on generosity, care, honesty and loyalty.⁷

Public authorities use the same expression. The President of the republic, D. arap Moi, repeatedly denounced these acts of abandonment and neglect. He demanded primarily individual reaction and self-discipline, as evidenced by an excerpt from a speech in 1984 citing cases of abuse suffered by children: "*this is the result of human action and can be easily eradicated if men behaved well and had respect for social order.*"

Until the 1990s, the view of childhood appears to be relatively homogeneous, with a convergence – between law, public authorities, and in some ways, the society – of the reports and values.

⁵ The Kenya Times, *The great shame of child abandonment*, 25/01/1986. This article mainly focuses on the consequences of an absent father on the family, the shame of men who shun their responsibilities and the rise in such cases in Western and Nyanza Provinces.

⁶ The Daily Nation, *Abandoned children, victims of dying conditions*, 28/02/1984.

⁷ The Daily Nation, *Why school is not the only place to learn*, 14/02/1987.

Part Two: Cognitive struggles on the issue of vulnerable children

The 1990s, however, marked a substantial change, which would result in significant cognitive struggles between:

- On the one hand, the Promotion of the Rights of the Child and the growing development of non-governmental initiatives to support children in difficulty;
- And on the other hand, the unchanged stand of public authorities, who did not wish to interfere more in institutionally regulating the family circle raising the child.

1. Non-governmental organizations as true inhibitors of the emergence of the problem of vulnerable children:

Since the 1980s, Kenyan associations defending the rights of the child led to a publicisation of a notion, that of "abused and neglected children", which was immediately taken up by the Press. Among them, the *Kenya Medical Women Association* (KMWA), the *Children Welfare Society of Kenya* (CWSK) and the *African Network for the protection and prevention of child abuse and neglect* (ANPPCAN) were particularly invested. These groups had the shared objective of 'promoting' the rights of children and were supported by international organizations, especially UN bodies, chief of which was UNICEF.

At the same time, since the 1970s, in the absence of organised support by the public authorities, initiatives carried out or funded by churches developed significantly, especially in urban areas. This was the case with *Undugu Society*, founded in 1973 by Father Arnold Grol. It has since become the key organisation supporting street children in Nairobi; others are the Salvation Army, involved since the 1950s in Kenya; as well as *SOS Children Villages*, open in 1973 in Nairobi, then in Mombasa in 1979.⁸ The care for children in difficult conditions was thus organised progressively around multipolar, individual or community initiatives, in which public authorities were largely absent. In the 1990s, ANPPCAN counted more than 110 organisations in Nairobi, concerned with helping street children.

These 1990 changes in non-governmental support reflect the awareness of the cross-cutting nature of the child problem, especially in the city. Some structures have set up cross-cutting activities, aimed at providing the child with the foundation of his immediate or future autonomy, taking into account the family structure to which it belongs. Rehabilitation programmes and school enrolment launched since 1991 by the Catholic Brothers of St. Lwanga, in Huruma slum in Nairobi, illustrate the growing cross-community care. These programmes, which benefited 200 children in three years, also included the parents (of the 200 children, only ten had no parents). Based on the provision of informal education, their ultimate goal is to reintegrate the children into the school system by offering loans to parents to fund school fees. Loans are also granted to parents to start their own small informal business, generating income for their livelihood. The programme also supports them with food, using a system of 'lunch at a shilling', as well as providing some free medical care.⁹

⁸ A new SOS Village for children was opened in Eldoret in 1991.

⁹ The East African Standard, *Hope for Street Urchins*, 09/06/1993.

2. This development of publicity and support is accompanied by a discourse on the social risk caused by children in difficult circumstances:

The message on the potential offender and disorder in society induced by deprived children is hammered home by the same associations that defend their rights. Thus, a spokesman for the ANPPCAN highlighted the risk of growth in crime rates.¹⁰ The Archbishop of the Church of the Province of Kenya also put forth the risk of social disorder: "*we are making trouble makers and criminals by ourselves, to bring trouble to ourselves.*"

This speech took hold all the more as it fits in an urban context, particularly in Nairobi, where street children generate a strong sense of insecurity in some places (in the case of Nairobi, particularly Tom Mboya Street, by the markets) and for motorists in general. In urban areas, the parading of children at the juvenile court is *de facto* the only response by the central authorities, while the children return to the streets after a short time. In 1993, 13,000 children cases were judged by the only court in Nairobi, according to the report of the Ministerial Department responsible for children. These children come mostly from the slums of Kibera and Kasarani, but some are also from Kiambu, Muranga and Kakamega. The Press has largely emphasized the shortcomings of the Children's Court in Nairobi, which are overloaded and without adequate means,¹¹ in view of the number of cases to be handled. Note that in 1993, between seven and eight children of 4 to 13 years of age were identified as abandoned every week in the capital by the ministerial department responsible for children.

3. However, the Government does not wish to change the terms of support:

The review of children's rights, following ratification of the 1991 United Nations Convention by Kenya illustrates the cognitive struggle between the Government and the associations. Expected for the end of 1993, the presentation of the Bill before Parliament was repeatedly rejected¹². The first presentation of the Bill in Parliament, in May 1995, strongly criticized the organizations and associations. 25 NGOs denounced "serious omissions."¹³ In general, these organizations denounced the concept of the problem of the child as essentially being a crime, in the same vein as the pursuit of disciplinary action-oriented and not of rehabilitation, as well as the lack of practical tools which would render implementation of child protection possible, including acting on economic and social problems. The Bill was therefore postponed until 2001.

The rapid halt of the "*Nairobi Cares for its Children*" initiative also reflects the difficulties of convergence between the social actors and the Government. "*Nairobi Cares for its Children*" was an attempt at coordinated action by the City Council, international donors and 35 organizations supporting street children, whose armed wing was the Undugu Society.¹⁴ More than KSh 4.6 million was mobilized during 1993–1994 in favour of this umbrella association: KSh 1.5 million from the NCC, KSh 1.5 million from UNICEF and KSh 1.6 million from the sale of raffle tickets at KSh 10, sold by the Barclays Group banks. The initiative, through

¹⁰ The Kenya Times, *Street kids task force*, 04/11/1994.

¹¹ The Kenya Times, *A visit to the juvenile Court*, 14/06/1996.

¹² The East African Standard, *Will new law be effective?*, 16/06/1993.

¹³ The NGOs that have been heard are: *Federation of women lawyers, Don Bosco, Westlands Children's Ministries, Association of the Physically Disabled of Kenya, Thomas Barnado Children's Home, Kenya Alliance for advocacy on Children's Rights, Dagoretti Corner Child Care programme, Christian Children's Fund, Undugu Society of Kenya, Child Life Foundation, St Francis School, Save the Children, Young Muslim Association of Kenya, Family Life Counselling Association of Kenya, Children Relief Foundation, etc.*

¹⁴ The Daily Nation, *Ray of hope at the end of a dark tunnel*, 16/06/1993.

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pooling of funds, aimed at continuing lines of action initiated by the Undugu Society, in particular, building four emergency shelters located in Kawangware, one near the Kenyatta Market, another in Dandora and finally, one in Kariokor, as well as the launch of food programmes. A few months after the launch of the "*Nairobi Cares for its Children*" initiative in 1994, the Government decided to close one of the initiative's emergency shelters - the Kariokor Social Hall - for security reasons. About one hundred children were cared for there after going through the juvenile court. This decision undermined the initiative, which also suffered from internal problems. It therefore ceased in 1994.

Part Three: Repertoires of action in the 2000s – innovations and constraints of new modes of action

The terms of support for vulnerable children have experienced profound changes in the 2000s, particularly since the accession of the NARC government to power. This support is primarily influenced by changes in the rights of children, particularly taking into account the principles of the UN Convention, and the development of policies seeking to synthesize heterogeneous views facing the challenge of vulnerable children and orphans, estimated at nearly 6 million in the early 2000s.

1. The definition of a national strategy in favour of orphans and vulnerable children (OVC), based in a rural setting:

Since 2002, the Presidency and the NARC Government have been engaged in a resolutely cross-cutting strategy of support for orphans and vulnerable children. The strategy is seen through the development of various organs and the formalization of several political middle-grounds. Without being able to give more details today, I will present a joint initiative which seems to me to correspond to a synthesis of values and world views, which have long been understood as antagonistic.

The government programme of “money transfer” thus operates a synthesis between public willingness to act on the one hand, and on the other, promoting the maintenance of the vulnerable child in his environment. Beginning in 2004, the Department of Children's Services initiated, with financial support from UNICEF, a pilot programme to transfer money to poor households taking care of OVC in three pilot districts (Nairobi, Kwale and Garissa). The eligible households were extremely poor homes hosting one OVC. This latter is defined as a resident child less than 17 years of age, where one parent is deceased or chronically ill, or whose caregiver is chronically ill. These households receive a monthly allowance of KSh 1500, by this constituting a "minimal social protection", aiming at, through regular and predictable transfer of money, providing maintenance for children in the poorest households. In 2005, the British DfID funded the extension of this experiment in four new districts of Nyanza Province, namely Kisumu, Homa Bay, Migori and Suba. The allocation of KSh 48 million supplementary funds by the Government in 2005–2006 allowed for a further expansion of the programme to ten additional districts.

This programme has since been extended through external funding and benefits in 2010 to over 100,000 households and 230,000 OVC throughout the country. Programme results were considered conclusive. Before the decision to sustain the programme in 2007, the Government and UNICEF actually authorised a private consulting firm, Oxford Policy Management (OPM), to carry out an assessment of the impact of remittances on children's health, their education and their economic environment. Conducted among 2,500 households in seven districts in two intervals, 2007 and 2009, the study found, with regard to poverty reduction, increasing food expenditure of households benefiting from the allocation, as well as dietary diversity. In education, the proportion of college enrolment in the affected areas increased by 6%. However, the enrolment rate in primary school remained stable. The evaluation also found a 3% reduction of child labour in children under 12 years.¹⁵

¹⁵ Musembi, Daniel N, *Results of an operational evaluation on the impact of money transfer in favour of programmes for orphans and vulnerable children (CT-OVC) in Kenya*, Impact assessment workshop held in Accra (Ghana), 24 - 28 May 2010.

The strategy for OVC is carried out, beyond this programme, through the emphasis on education, including the launch by the new NARC Government programme for Free Primary Education (FPE) in 2003, which led to the abolition of tuition fees in 18,000 primary schools in Kenya.

It also focuses on encouraging non-governmental initiatives. The National Action Plan for OVC in 2005 evaluates the management of 973,000 children by NGOs, 498,000 by religious organizations and nearly 60,000 by community organizations, to a total of over a million and a half children assisted by non-governmental structures.¹⁶ A study on 23 organizations committed to supporting OVC by Boston University showed that they all carry out several activities: 78% are invested in the protection against abuse and exploitation, 65% provide access to education and training, and 52% are concerned with food assistance.¹⁷

2. Street children in urban areas:

Estimated at 500,000 across the country, street children are extremely vulnerable. Generating fear among the urban population, they are often persecuted by the police, especially in the City Centre, from where they are repeatedly evicted.¹⁸ Because of this, the children organise themselves either by relying on structures or by investing in the informal sector, particularly that of waste management.

For example, Undugu Society of Kenya supports recycling projects, mostly in the eastern part of the city. One of its representatives, whom I (the author) met in 2003,¹⁹ explained that the investment in waste management took off at the beginning of the 1990s. Currently, the NGO gives 300 children an opportunity to take learning courses at the *Machuma School*, in Mathare, in exchange for garbage collection one day a week.

Street children are also directly involved in the excavation of waste. These children come together at landfills (dumpsites), mainly at Dandora. Having been evicted from the City Centre, life at the garbage dump allows them to generate some revenue. The excavation that they carry out is to re-sell to middle-men material of value that they find there (metal, plastic, paper). The excavation on the dumpsites however, remains a low-paying and random activity, where one can hardly hope to earn more than KSh 300 monthly.²⁰

These 'dumpsite children' are organised into bands,²¹ with precisely demarcated territories, which, if infringed upon, lead to violent retaliation. They have developed a set of rules governing excavation activities, rules that are as professional as they are structural that they

¹⁶ Republic of Kenya, *National Policy on Orphans and Vulnerable Children*, Office of the President and Ministry of Home Affairs, November 2005, p. 6.

¹⁷ *Kenya research situation analysis on orphans and other vulnerable children – Country brief*, Boston University/Center for Global Health and Development, 2009, Boston.

¹⁸ "Getting Kids off the Streets", *Weekly Review*, March 27, 1998 and "The making of street children", *The People*, January 10, 2001.

¹⁹ Interview with George Odette, representative of Undugu Society of Kenya, 3 July 2003, Nairobi.

²⁰ This estimated figure is conservative, as the volume of the collection and the sale price are random and not fixed. Kilbride, P., Suda, C., Njeru, E., *Street Children in Kenya: voices of children in search of a childhood*, London, Bergin & Garvey, 2000, p. 74.

²¹ See the different works by Deyssi Rodriguez-Torres on street children in Kenya, such as « Le gang Serena : origine et production d'une contre-société de la rue à Nairobi », *Politique Africaine*, N°63, octobre 1996, p. 61-71. Also refer to, Mugo, J.K., *Rehabilitation of street children in Kenya: approaches, quality and challenges*, Frankfurt, IKO, 2004.

merge with social rules as the group constantly lives together. Internal socialisation of the group is important: hierarchy and mutual assistance are characteristic features of this life. For example, the very young children are more often than not accompanied by an older child (a more experienced one), charged with the responsibility of watching over them. In Umoja, the three main informal dumpsites, which the author visited between March and June 2001, were each surrounded by a group of children, who were there exclusively. At the dumpsite closest to Moi Drive, the group comprised about 40 youth, ranging from children of less than 10 years to youth of 20–25 years. They had constructed several makeshift camps with various recovered materials (metal sheets, cardboard, plastic). The most robust shelter was reserved for their leader – the eldest collector – an illustration of the hierarchy that structures the group. A true division of labour structures their daily life, distinct according to age groups: the youngest gather, with the main product sought for being paper, the “*juniors*” deliver the waste to businessmen, and the “*seniors*” generally remain at the camp.²²

²² The groups of street children cover three age-sets: the *children*, aged from 6 to 13 years; the *juniors*, from 13 to 25 years, and the *seniors*, aged more than 25. Rodriguez-Torres, D., op.cit., p. 64.

Conclusion:

This historical perspective shows the evolution of apprehension of the child problem and of the means of the most appropriate care since Independence. It emphasises not only the difficulties but also the challenges linked to setting up coordinated public action.