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What might a decolonial perspective on child protection look like? Lessons from Kenya

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Abstract

Using decolonial perspective, this paper critically examines how certain child protection interventions in Kenya might increase childhood vulnerabilities among children from poor social backgrounds who are disproportionately represented in the justice system. Findings point to ambivalent child protection practices as a result of entrenched colonial legacies which criminalises juvenile 'delinquents', relying heavily on judicialisation while limiting social welfare investments. The study suggests alternative approaches to better child protection services that take into account southern-centric childcare practices and knowledge.

Keywords

Childhoods, Africa, indigenous knowledge, child protection, decolonisation, child rights

Introduction

Hegemonic narratives of deficient southern childhoods abound but calls to decolonise childhood studies in general (Balagopalan, 2019; Cheney, 2018; De Castro, 2020; Hanson et al., 2018; Twum-Danso Imoh, 2016) and child protection more specifically (Fay, 2019; Liebel, 2020) challenge and attempt to reframe these narratives. Southern theories (decolonial and postcolonial) enable a critical examination of the impact of historical processes like colonisation, globalisation and modernisation in producing and

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reproducing problematic narratives of the Global South. Other scholars take a different view, arguing that global economic, political and socio-cultural transformations intimately link global/local and internal/external forces to produce contemporary southern childhoods that are similar, but also distinct from northern childhoods (Abebe and Ofosu-Kusi, 2016; Katz, 2004). Specific modernisation projects like the United Nations Convention on the Rights of the Child (UNCRC) and development initiatives like the Sustainable Development Goals add new complexities to ontological and epistemological debates of problematic southern childhoods (Twum-Danso Imoh, 2016; 2019).

The devaluation of non-western cultures and indigenous knowledges produces a narrative of 'retrogressive' African cultures that is partly blamed for the continent's development lag and chronic poverty. Some of the cited areas include southern child-rearing practices and gender roles. Regarding women's rights, Nyamu (2000) cautions against a simplistic, dismissive, and negative attribution of African cultures and knowledge with failure to achieve social progress and gender equality. Instead she calls for pragmatism and a deeper appreciation of how interactions between formal legal institutions, culture and customary practices can be harnessed to support activism and the "progressive realisation of women's rights in pluralistic societies" (p. 382). Similarly, hegemonic narratives of western-produced abberrative southern childhoods can be countered by presenting more ontologically informed alternatives that legitimise and render African childhoods accurately and re-centre the previously marginalised knowledge of the 'other's childhoods. Kesby et al., (2006) argue that the reality of constant socio-cultural transformations result in what is presumably local or cultural childhoods being the 'other's experiences, but ideally reflects hybridised childhoods. While emergent childhoods represent changing realities, the drivers of change and their effects are insufficiently researched from a historical perspective. In response to calls for decolonial perspectives by subaltern groups, this paper adds to the decolonial debate by exploring how child protection practices in Kenya is a site for coloniality of knowledge and power. We analyse contemporary child protection practices to establish links between colonial-era child welfare interventions and systemic inefficiencies in the juvenile justice system as coloniality of power. We argue that coloniality produced an ambivalent and inadequate juvenile justice and child welfare system in Kenya. Using children's stories, we illustrate the inextricable links between historical and current systemic problems in the child protection system.

Cultural imperialism constrains the 'others' autonomy for self-determination, eroding their cultural identities, value systems and personhood, and curtailing their social progress. Domination of the 'other' creates hierarchies, subordinates them, and enables hegemony of western ideals (Ndlovu-Gatsheni, 2015; Santos et al., 2007). Coloniality maintains power imbalances between former settlers and 'natives' by subjugating the other's culture, knowledge and being, but through resistance the other can reclaim and legitimise their experiences, stolen history, and subjectivities (Ndlovu-Gatsheni, 2015). Equally, a decolonial lens on child protection can facilitate critical analysis of the influence of colonial practices like the use of coercive violence for maintenance of law and order, the introduction of formal schooling, normative child rights standards, and western ideals of a good childhood in transforming indigenous childhoods and contemporary child

protection efforts. We conceptualise child protection practices as all legal and programmatic interventions whose aim is to keep children safe from harm and exposure to violence, whether undertaken by the state or non-state actors. Furthermore, we assert that child protection is a power-laden process through which certain knowledges are privileged while others are silenced on account of different socio-cultural orientations.

The paper is organised into five sections. Section two describes our methodological approach; section three discusses decolonisation as a conceptual lens. Section four applies the decolonial lens to analyse specific examples of contemporary child protection practices that were shaped by colonisation and on-going socio-cultural transformations. Section five considers alternatives for realising a decolonised and contextual child protection praxis. Section six offers the conclusion.

Methodology

This study used a multi-method, exploratory qualitative design. Data was obtained through two separate but thematically interlinked empirical sources. One is the status report of the National Council on Administration of Justice (NCAJ) Special Task Force on Children Matters whose mandate was to address gaps in the administration of juvenile justice in Kenya. The second author participated in data collection, analysis and compilation of the synthesised report. Task Force members gathered field data during visits to 58 juvenile institutions between 2016 and 2018. Additional data was obtained through 13 key informant interviews, online questionnaires targeting Task Force members, child justice agencies, and literature review. The second data source was an ethnographic study conducted by the first author after obtaining ethical clearance from the affiliated institutional ethics committee. The study explored experiences of low income families of child protection services and involved reviewing case files by the Department of Probation and Aftercare Services, observations, and interviews with 10 parents on non-custodial sentence, four probation officers, five children officers, 10 child remandees, a remand home manager, and two senior judicial officers. The study utilised a social constructivist interpretive framework to enable subjective, multiple and complex perspectives that are socially and historically contextualised (Creswell and Poth, 2018).

The two sources provide evidence of entrenched colonial legacies and their continued negative influence on contemporary Kenyan childhoods, often frustrating the pursuit of the best interest of the child. The stories of Kamau, Ngesa, Bryan, and Lois are purposively selected as 'typical' cases (see O'Leary, 2004) that contextualise and illustrate responses to the most common forms of child abuse, neglect, and juvenile delinquency.

Historicising coloniality of power in child protection: making a case for a decolonial approach

Coloniality is the enduring corrosive effect of racialised colonisation in post-independent African states. Maldonado-Torres (2007: 243) defines it as "the long-standing patterns of power that emerged as a result of colonialism, but that define cultures, labour, intersubjective relations and knowledge production well beyond the limits of colonial

administration". Conversely decoloniality questions the subjugation, denial and invisibilisation of the other's experiences as subordinate to western ones. It rejects North-centric framings of southern cultures, knowledges and subjective experiences as irrelevant, deficient, or inferior. Subordination of the 'other' is attributed to the violent processes of colonisation as well as economic, political and cultural imperialism which created asymmetrical power relations between northern and southern societies (Ndlovu-Gatsheni, 2015). Regarding childhood, Liebel argues that "an unequal material and ideological or epistemic power relationship […] leaves little space for childhoods that do not correspond to the pattern of childhood that dominates the Global North" (Liebel, 2020: 2).

In 'conquered territories' colonisers sought to re-engineer the 'native' child through a seemingly benign western education, detribalisation, institutionalisation and re-programming into civilised, subservient and 'responsible' individuals (Keddell, 2018; Liebel, 2020; Kymlicka, 1995; wa Thiong'o, 1986). The process combined institutionalised physical violence with epistemic violence. wa Thiong'o argues that subjugation would be incomplete and ineffective "without mental control, and to control people's culture is to control their tools of self-definition concerning others" (p. 16). Thus, education, Christianity and brutal force became effective tools for 'civilising' and 'saving' the 'native' from 'doom' (see Liebel, 2020; Elkins, 2005). The 'native child' and childhood became important sites for exerting control due to their perceived malleability to western interventions (Campbell, 2002). African child-rearing practices were denigrated and repudiated along with indigenous education, knowledge and spirituality. Control of the 'native' was further bolstered by 19th-century western scientific knowledge on child development which was strongly influenced by psychology, anthropology and eugenics. Such knowledge framed the 'other' as intellectually inferior, immature, inherently wild, uncontrollable, and uncivilised (see Campbell, 2002; Cregan and Cuthbert, 2014; Liebel, 2020). Through this, new ideas of a 'good childhood' were implanted and became essential tools for the initial denigration and subsequent 'transformation of natives' into more 'intellectually evolved' beings (see Elkins 2005; Liebel, 2020).

By the 1930s, violence was the preferred tool by colonial state officers and their agents to impose their authority and maintain discipline and order within the police force, schools, courts, and other penal institutions in Kenya (Elkins, 2005; Ocobock, 2012). Generally, physical violence was sanctioned as an alternative punishment for disobedience, breach of contract or the forceful extraction of cheap African labour. Gradually colonial courts began substituting imprisonment, fines and other forms of punishment with corporal punishment for juveniles, fearing that long-term imprisonment would turn vulnerable youths into hard-core criminals (Ocobock, 2012). While delinquency was attributed to "theories of African physical or mental inadequacy" (Campbell 2002: 141) which were propagated by the British Eugenics Society, or poverty and poor living conditions, the colonial social welfare and child protection policies remained racialised, under-resourced and inadequate. Instead they sought to discipline and align southern childhoods to prescribed western standards.

Ocobock (2012) notes that though corporal punishment is considered a common feature of African childhoods, in traditional societies, parents and elders were only

allowed to use physical punishment to discipline devious young males but not females. He further argues that the colonial rule "muddled the disciplinary landscape" by sanctioning its use on a wider scale and by multiple players than previously permitted. Its use extended to "missionaries, schoolteachers, employers, chiefs, and the colonial state" (Ocobock, 2012: 31), and to girls. These major shifts regarding violence within childcare practice are rarely acknowledged. Instead, there is an uncritical acceptance of the narrative that in traditional African societies corporal punishment was commonplace.

Similarly, contrary to colonial administrators' assumptions about the lack of formal education, Otiende et al. (1992) show that despite being non-literate, pre-colonial African societies had formalised education systems whose main objective was to raise morally upright, culturally-grounded, and socially competent individuals. Corporal punishment and the excessive use of force were discouraged or restricted especially when teaching technical and economic skills. Instead, other culturally appropriate, gendered and age-specific instructional methods like songs, play, riddles, storytelling, proverbs and apprenticeship were used to stimulate learning of differentiated skills and values. Harsh punishments like food deprivation and whipping were reserved for teaching social skills and morality (Otiende et al., 1992). Against this background, a universalised framing of child abuse based on the UNCRC results in singular southern narratives and universal solutions at best (See Twum-Danso Imoh, 2016). At worst, it leads to a hyper-focus on extreme cases (Cornwall and Nyamu-Musembi, 2010). A narrow approach criminalises difficult childhood circumstances and provokes punitive measures against caregivers who 'fail' in their parenting roles. Furthermore, UNCRC and the development industry reinforces the notion of childhood as a universally carefree, playful, innocent period that is unencumbered by adult responsibilities, which reflects the ideal white middle-class childhood (Bourdillon, 2017; Smith and Phillips, 2017). Working children, those living in the streets, or out of school are also criminalised because their lives contradict the ideals of a 'good childhood' (Abebe, 2019; Bourdillon, 2017; Liebel, 2020). Such approaches ignore children's contributions, traditional values of shared responsibility for the wellbeing of the family grounded in the ethos of Ubuntu. Ubuntu espouses communal living and social solidarity with one's kin and community. Similarly, the state's failure to address structural causes of poverty and childhood vulnerabilities obfuscates the effectiveness of child protection policies and programmes.

Failure to appreciate the socio-cultural and historical contexts leads to criticism of non-western societies for ambivalence or outright resistance to children's rights (see Fay, 2016; Moyo, 2012; Kaime, 2005). In defence, critical scholars attribute the presumed resistance and tensions between international norms and African traditions to globalised social, economic and cultural contexts impacting children's contributions and upbringing (Abebe, 2019; Beiter, 2018; Kaime, 2005). Although the African Charter on the Rights and Welfare of Children (Organisation of African Union-OAU, 1990) attempts to reconcile these concerns, Mutua (2016) alleges double standards are still pronounced in international human rights. These also lack cultural legitimacy due to the strong association of core human rights principles with western ideals (Kaime, 2005). Nevertheless, emphasising the importance placed on childhood, Kaime (2005: 226) argues that child protection and "children's rights are not a concept alien to traditional African culture".

Collective childcare offered safety and guaranteeing the social protection of its most vulnerable members in the event of unforeseen tragedies, whilst severe sanctions were prescribed for abusers (Suda, 1997; Ocholla-Ayayo, 2000). Contemporary African societies remain interdependent, reliant on solidarity and reciprocity for survival. Reciprocal care networks are evident across multiple households and communities even among migrant groups (Abebe, 2019). Such contextualised readings of southern childhoods could offer new epistemological possibilities that can contribute to the improved protection of children. We agree with Liebel (2020), Cheney (2018) and De Castro (2020) on the usefulness of a decolonial lens in challenging universalised interpretations that ignore important structural factors contributing to child vulnerabilities.

A colonial legacy of violence and its links to juvenile justice in Kenya

Merely adopting a discourse of child rights does not guarantee the protection of children (Cornwall and Nyamu-Musembi, 2010; Cooper, 2012; NCAJ, 2019) as one ethnographic study in Western Kenya showed. Cooper (2012) concluded that Kenya's child protection system suffers from a systematic lack of accountability to children due to insufficient resources; a limited range of alternatives for children officers; obsession with fulfilling bureaucratic and legal obligations at the expense of addressing individual children's needs; and institutionalised neglect arising from the tendency of officers to serve the state rather than the best interest of children. A decade later, the Task Force deplored the broken juvenile justice chain, systemic failures to deliver seamless and efficient services, and the inability of state actors to safeguard children's rights (NCAJ, 2019). Building on this work, this paper examines why the weaknesses persist. Our analysis identified four thematic issues, which are illustrated by the stories of Kamau, Ngesa, Bryan and Lois. The palpable neglect of Bryan, the mishandling of Kamau and Lois, as well as the sanctioned use of physical violence against Ngesa are consequences of systemic inequality, underresourcing of child welfare services, and deep-rooted violence in the system. We argue that colonial state violence continued to be replicated in the post-independence era through the mismanagement of underprivileged children. These four stories amplify the multiple layers of continuing violence and neglect of children in the juvenile justice system. They foreground inadequacies and ineptitude of the juvenile justice actors to the detriment of children's wellbeing. They also underscore the broader systemic challenges that bedevil effective administration of juvenile justice and the provision of child welfare services.

The continuance of violence and neglect

The colonial state popularised and institutionalised coercive violence making it pervasive (Campbell, 2002; Ocobock, 2012). Notable was the use of "*kiboko" (the cane)* in Kenya and "*sjambok"* in South Africa as the dominant and humiliating means of publicly disciplining young people (Ocobock, 2012). This form of corporal punishment which was widespread in elite British boarding schools was adopted in Kenyan juvenile facilities

despite its negative consequences (Wasonga and Makahamadze, 2020). The first boarding facilities in Kenya were juvenile detention and correctional centres set up to reform 'delinquent' youth arrested for loitering in urban centres in breach of racial segregation policies. The Kabete Reformatory (now Kabete Approved School) was established in 1912 to rehabilitate the 'illegal' migrant youth, most of whom were children of Africans displaced *en masse* through land expropriation programmes or incarcerated *Mau Mau* combatants[1] (Elkins, 2005). Wamumu, another juvenile centre, was established by Dr Geoffrey Griffin, a former detention camp officer at Manyani who later established Starehe Boys Centre as an institution of academic excellence and discipline for brilliant Kenyan boys[2]. Manyani was reputed to be the worst detention camp for its brutality and detention of children in Kenya's history (Wasonga and Makahamadze, 2020). These juvenile centres were grossly underfunded, used excessive corporal punishment, forced manual labour and involuntary repatriation to native reserves, and their graduates exhibited high rates of recidivism (Campbell, 2002).

The post-colonial state maintained similar minimalistic and punitive strategies for management of juvenile delinquents (NCAJ, 2019). Caning persisted for long despite child rights rhetoric and legislative reforms of the 1990s. The Children Act of 2001 repealed the Children and Young Persons Act of 1963, the Guardianship of Infants Act of 1964, and the Adoption Act (1958) which borrowed heavily from the metropole's Victorian era juvenile policies (see Campbell, 2002). The 2001 law recognised vulnerable children in need of state care and protection rather than juvenile delinquents. Parents were assigned the primary responsibility for childcare, with the state stepping in as the last resort. However, a legacy of neglect, and in some cases, the use of force is still entrenched in Kenya's justice system (see NCAJ, 2019; Cooper, 2012). Other notable challenges frustrating long-term child protection goals relate to orphanhood, widespread poverty, limited social protection programmes and a high affinity for the institutionalisation of children (Chege and Ucembe, 2020). Persistent use of violence by some protection actors alongside state neglect frustrate the realisation of child rights as demonstrated by experiences of the four children described below.

Ngesa's case illustrates the unmitigated use of violence. Initially Ngesa stole small amounts of money from her mother at the age of nine, progressing to stealing bigger amounts to buy a smartphone. This eventually got her into trouble with her single mother who made a living through casual work in Kibera slums. After beating her severely, the mother took Ngesa to the police station where she was thrashed before release. On the second arrest for theft, she was charged and remanded at the Nairobi Children's Home and once again released under parental supervision. Her mother strongly opposed this decision, arguing that the state ignored her parenting struggles (Interview, Ngesa's mother, August 2018).

While empirical data on this issue is limited, there are reports of desperate parents taking their children to the police to be 'disciplined' (Wamahiu, 2015). Preliminary findings of ongoing action research documenting intergenerational perspectives conducted by the second author confirm that some parents authorise schools to physically punish their children. Both actions contravene article 29 of the Kenyan Constitution 2010, which bans corporal punishment on children regardless of the setting and who administers

it -whether parents, teachers, administrative chiefs or the police. Article 53 (1) reaffirms the right of children to be protected from all forms of abuse, violence, inhuman treatment and punishment while article 20 (1) makes the Bill of Rights binding on "all law and […], state organs and all persons". The Constitution voids the right of parents and others to use corporal punishment, contradicting Article 127 (5) of the Children Act of 2001(Republic of Kenya, 2001). The Children Act of 2022, which repeals the previous Act, was enacted into law in June 2022 but the changes are yet to be effected.. Similarly, the Education Act 2013 bans corporal punishment in schools but is not explicit on the same within the family. Some parents believe in juvenile detention and state-enforced discipline. Those struggling to raise adolescents with behavioural challenges prefer that their children are committed to state rehabilitation centres for management and to reduce the risk of re-cruitment into criminal gangs (Interview, Remand Manager, June 2018).

Ambiguous child protection protocols and lack of accountability

Kamau's life trajectory was shaped by the ignorance and 'wilful' negligence of various state agents. Schooling is compulsory for children below the age of 18 in Kenya (Republic of Kenya, 2013); a child can be apprehended for failure to attend school without reasonable cause, under Section 119 (1) (f) of the Children Act (Republic of Kenya, 2001). Despite child work not constituting a 'reasonable cause', Kamau was apprehended and sent for psychological assessment, which is mandatory for child offenders. Having not committed a 'crime', he should have been handled as a vulnerable child in need of care and protection. With limited assessment facilities nearby, Kamau was transported 700 km from his home in Central Kenya to Likoni Remand Home. Neither the magistrate issuing the orders, nor the children officer executing it noticed this error. At Likoni the state failed further by not providing education and training opportunities, forcing Kamau to continue selling water, while awaiting the assessment. During the course of his work, Kamau was charged with defiling a girl in the neighbourhood, a serious charge that firmly put him in conflict with the law.

Historically, there was limited formal education and training for juvenile remandees. In the colonial era, official reports described the Kabete Reformatory as more of a prison than a school with a grossly inadequate reform programme that played a "punitive than educative role" (Campbell, 2002: 138). This trend has persisted to date. In 2016, a High Court ruling compelling the Kenyan government to develop a comprehensive framework for the provision of education for children in detention facilities within 120 days (NCAJ, 2019). However, integrating education programmes with the public education system is yet to be enforced by the two responsible state agencies; the Ministry of Education and the Department of Children Services (DCS). Their inertia confirms the continuation of colonial policies within the juvenile justice system. Besides, while the colonial state generally shifted responsibility for social welfare to charities and religious organisations, in contemporary Kenya, most child services continue to be offered by civil society organisations (Chege and Ucembe, 2020) even within juvenile detention centres. Children charged with serious offences like defilement are also not granted state-funded legal

representation which is mandatory for adults facing capital charges, though the new Children Bill aims to address this exclusion (NCAJ, 2019).

Though In traditional African societies participation in work and other daily activities offered vital learning opportunities for young people, international development agencies like the International Labour Organisation (ILO) and UNICEF assert that child work is incompatible with the enjoyment of children's rights (Smith and Philips, 2017: Bourdillon, 2017). The Kenyan legislation and practices echo this incompatibility, which creates problems for children like Kamau whose survival depends on paid work, and for whom the choice between education and work is a Faustian bargain. Curiously, (Smith and Philips, 2017) observed that western countries have notably few distinctions between formal and informal learning spaces with learning encouraging curiosity and occurring in virtually all contexts, but learning opportunities in non-western locales like Tanzania have been restricted to formal school settings which are presumed to be more protective, but ultimately limit acquisition of skills relevant for southern socioeconomic contexts. Further, Abebe and Biswas (2021: 5) challenge the "supremacy of white scientific knowledge and the privilege of schooling as a singular form of education". Instead, they agitate for recognition of children and community rights *in* education. Recognition of *rights within* education would confront epistemic and cognitive injustice perpetuated by contemporary schooling. It also promotes a dynamic view of education as multiple experiences going beyond a singular focus on formal schooling. Such a perspective can unlock potential for millions of African children and youth by providing contextualised skills that address arrested adulthood, wastage and unemployment.

Delays and mishandling of sexual abuse cases

Limited and often ill-equipped personnel in the juvenile justice system affects children's access to justice. The Task Force found unnecessary delays and denial of justice to victims by incompetent and ignorant judicial, police, prisons, and children officers. About 60% of the pending cases in sampled courts were unresolved for more than 6 months, while others had been pending for years. Evidence also indicates many officers frequently mishandle children's sexual offence cases. Lois' story illustrates both police incompetence through shoddy investigations, and the failure of the magistrate to ground the sentencing in evidence, testifying to the deeper problems within the juvenile justice system. Three-year-old Lois was defiled while in the care of her grandmother. Although the alleged perpetrator was arrested, the shoddy investigations by the arresting officer resulted in the dismissal of the accused by the High Court on appeal because no investigations were conducted to rule out the possibility of any other suspect (NCAJ, 2019).

Similarly, the Task Force noted that "many magistrates do not have specialised knowledge in children's laws, policies and child rights issues. They also lack understanding of the Sexual Offences Act 2006 and the Children Act" (NCAJ, 2019: 34), even though sexual offences form the bulk of children's court cases. A significant proportion of these are allegedly perpetrated by boys like Kamau (NCAJ, 2019), yet the law does not recognise consensual or experimental sex between young people below 18 years. Instead, it criminalises it as defilement, leading one Court of Appeal Judge who dismissed a sexual

offence case involving a 15-year-old boy and a 16-year-old girl, arguing that "criminalisation of consensual adolescent sex by the Kenyan society was not a child-friendly response" (Deche et al., 2019: 12).

Punishing poor families

Bryan's story is illustrative of punitive approaches and intergenerational transmission of child injustice among poor families. By the time he was eight, Bryan was already using drugs; by 10 he was addicted to heroin and glue. Mercy, Bryan's mother, was arrested for neglect and failing to provide medical care to Bryan for a broken arm. When Mercy first sought help from the state for Bryan's addiction as well as her two children's daily care and support, she was arrested by the chief and accused of scheming to abandon her child. A second arrest and trial for gross child neglect saw both her sons admitted into separate children's homes with no clear plan for family reunification. Mercy hoped for support to start a business during her probation but the lack of funds frustrated such efforts as the supervising officer confirmed. The lack of preventive, rehabilitation and family support programmes accelerate poor children's entry into the juvenile justice system. Unfortunately, some children officers believe prosecuting 'neglectful' parents instils a sense of responsibility. One officer alleged that a mother who reformed after months of incarceration thanked the officer for the life lessons. *"I never want to go back there […] you madam have given sponsorship to my children. I am very happy now"* (County Children Coordinator interview, June 2018).

The four stories above affirm a minimalist approach to social welfare programmes reminiscent of the colonial era. Periodic capacity development of officers would significantly alleviate these challenges; unfortunately, this has largely been left to NGOs as in the colonial era when missionaries were largely left to support social welfare services (Elkins, 2005). At the same time, broad-based social protection policies would build resilience in families like Mercy's that are struggling. The next section explores some of the strategies that could address coloniality within the child protection system.

Strategies for attending to the coloniality of child protection services

Drawing on the children's cases we propose three avenues through which child protection goals could be better achieved by utilising indigenous knowledge and ideas.

Value-based education

Child protection is a collaborative effort that involves different social institutions. Since children spend an inordinate amount of their time there, the school is an important site for child protection and nurturing. Unfortunately, many schools are frontiers for corporal punishment despite article 28 (2) of the UNCRC stipulating that education must be provided humanely, and promote non-violence in school (United Nations, 1989). The use of corporal punishment violates this provision by disrespecting the inherent dignity of the

child and the strict limits on school discipline. The Convention further urges state compliance with the values articulated in article 29 (1) requiring schools to be child-friendly and consistent in all respects with the dignity of the child.

UNICEF promotes Child-Friendly Schools (CFS) for the holistic development of the child, which includes ensuring that all children are safe and secure from harm. Although Kenya embraced CFS, its principles have not translated into widespread practice for improved child protection. Similarly, the Education Act makes corporal and other forms of humiliating punishments illegal, but it is still widely used in Kenyan schools to instil 'discipline'. Children may also be suspended or expelled from school for minor infractions like "unkempt hair", "breaking school rules", or "inappropriate hairstyle" (Wamahiu, 2015). Both Wamahiu (2015) and Wasonga and Makahamadze (2020) found Kenyan schools were sites for excessive use of violence perpetrated by teachers on children, as well as children-initiated violence. The latter includes bullying, threatening teachers violently (with knives), physical fighting, vandalising school property and arson and school-sanctioned violence by student leaders (prefects and class monitors) on other children. These examples suggest the education system is yet to decolonise despite the rhetoric of African renaissance in and through education.

In response to violence, indiscipline in schools, and the challenge of educational relevance, Kenya recently embraced value-based education. Embedded in the new curriculum framework are three elements - values pillar, guiding principles and core competencies (KICD, 2016). Its delivery is through both the curriculum and curriculum support activities like community service learning and clubs. If well-implemented, value-based education can offer protection for future generations through a combination of knowledge, training and sustainable living underlined by humanistic values reflected in the concept of Ubuntu. Ubuntu refers to the African moral philosophy on the humaneness and dignity of all people and the interdependence of community members (Mbiti, 1972; Ulvestad, 2012). Solidarity was encapsulated in early childhood education and development practices through the African proverb 'it takes a village to raise a child'. The family, clan and other kinship ties were important care networks through which responsibility for the upbringing and education of children was shared among parents, other adult members of the extended family, siblings and the broader community (Abebe 2019; Ocholla-Ayayo, 2000; Serpell and Adamson-Holley, 2017; Suda, 1997). It is too early to say if value-based education as conceptualised in the new Kenyan curriculum will achieve similar goals of developing "ethical citizens" by nurturing "learners who do the right thing because it is the right thing to do" (KICD, 2016: 13), and not out of fear or expectations of extrinsic rewards. While respect and integrity are among the core values espoused in the curriculum, compassion which is inherent in Ubuntu is conspicuously absent. In addition, though the curriculum recognises that examinations and testing are not suitable for determining the effectiveness of value-based education programmes, stakeholders are grappling with developing appropriate methods for assessing the learning outcomes.

Alternative rites of passage

Indigenous education systems inclusive of values, knowledge transmission and socialisation practices like the rites of passage helped to shape young people's identity, self-worth and inculcated a sense of responsibility towards the family and society (Serpell and Adamson-Holley, 2017; wa Thiong'o, 1986). Though some of the practices were harmful, many were useful and necessary. Rites of passage equipped the youth with vital skills and prepared them for a life of solidarity, mutual care, and for collective wellbeing. Devaluation of this knowledge and practices has implications for family life, childhood and the safety of children in modern times. For instance sex and sexuality lessons were imparted through indigenous curricula in communities that practised circumcision (male and female) or other forms of formalised initiation rites. Despite efforts to dismantle them, initiation schools have been resilient, prompting some civil society organisations to offer alternative rites of passage, particularly where female genital mutilation was practised. These alternative rites exclude the 'cut' but retain the teaching of values and social norms. Noting resistance to sex education through schools, these fora could be a more culturally acceptable pathway for teaching sex and sexuality education. However, further research is needed to establish and develop alternative rites of passage that are aligned with children's rights, promote gender equality, and respect for all.

Juvenile justice institutional reforms

The Kenya Constitution 2010 entrenched human rights through article 53 of the Bill of Rights (Republic of Kenya, 2010). The country has since undertaken far-reaching institutional reforms that recognise children as rights holders who should be treated humanely and separated from adults within the juvenile justice system. As the first contact points in the child protection system, children officers, local chiefs and the police set the tone for children and parents seeking services. Consistent with this, issues of human and children's rights have been integrated into the training curriculum of key service providers and security agencies. However, service delivery practices need further reforms. For instance, police stations should have child protection units staffed with child-friendly officers trained to effectively work with children, but so far only a handful of the special units have been established. The changes are not systematic and efforts are largely led and funded by civil society organisations rather than being a core part of the national budgetary allocation. Kenya has a gap in the social welfare workforce with severe understaffing of DCS. The department bridges the gap by appointing volunteer children officers who, as non-civil servants, are not fully accountable to the public (GoK, UNICEF and Global Affairs Canada, 2015). This strategy reflects low prioritisation of child welfare services. Inadequate training and resourcing of the volunteers also limit their capabilities. DCS also works closely with chiefs, who were historically notorious for their use of violence during the colonial era (see Elkins, 2005). This institution is yet to undergo comprehensive reforms.

There is still a high rate of juvenile incarceration. By 2015, only 15–20% of children in juvenile correctional facilities were offenders, with the rest being children in need of care

and protection (GoK, UNICEF and Global Affairs Canada, 2015). The state needs to comply with UNCRC article 37 which stipulates that juvenile offenders be detained as a last resort, and for the shortest time possible. Moreover, children in difficult family circumstances should not be criminalised. Instead, the state should facilitate adequate social protection policies that reflect the rapidly changing socio-economic realities.

Conclusion and implications for practice

Evidence shows that Kenya's child protection system is beleaguered by its colonial history and neoliberal thinking. This manifests itself in the poor quality of services; high dependence on charity due to limited state investments in child welfare programmes; and high levels of violence against children in contact and conflict with the law. To serve children holistically, the juvenile justice system requires transformative strategies that can effectively protect and prevent child abuse especially within state institutions. The state should cease unnecessary detention of children and separate child offenders from those in need of care and protection. Children's cases should be resolved efficiently and a wider range of welfare tools provided to protection agencies, especially those targeting low-income families. While ongoing reforms and experimentation with alternatives are commendable, palpable tensions remain between the old and new ways that are most visible in the lives of children with troubled childhoods. The intersection of coloniality, neoliberal ideologies, harmful traditional practices and anti-poor mindsets make the realisation of epistemic justice an arduous task. Alternative child welfare and child protection options that fuse southern-centric childcare practices, the spirit of Ubuntu and scientific knowledge are imperative for positively transforming the Kenyan child protection regime.

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Notes

1. *Mau Mau*: An armed African resistance group in Central Kenya (among the Kikuyu ethnic group) fighting for land rights and independence in the 1950s.

2. https://www.standardmedia.co.ke/counties/article/2000091464/white-man-who-had-a-heart-for-black-children-in-need

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