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COMPARATIVE REVIEW OF CHILD SEXUAL ABUSE PRACTICES AND POLICIES IN KENYA AND THE UNITED STATES OF AMERICA (USA)

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ABSTRACT

Child sexual abuse is an umbrella that includes many forms of abuse including interfamilial abuse, abuse by persons unknown to the child and commercial exploitation, which includes sex trafficking, prostitution, exposure to and forced participation in pornography and use and abuse within a growing industry of sex tourism. Child sexual abuse policies and practice vary widely across the globe. Diverse social constructions, distinct cultural perspectives and differing political agendas create varied policies and practices to the same phenomena in a multitude of countries. This article examines similarities and differences in policies and practices enacted to respond to the problem of child sexual abuse in Kenya and the United States of America, via a lens of social welfare regimes. The liberal welfare regime of the United States of America emphasizes a child protective model as a response to child sexual abuse, while the social democratic welfare state of Kenya promotes a family service approach. Both models offer certain strengths, which must be examined within the social context of each nation. Policy proposals aimed at prevention of child sexual abuse and implications for social work in Africa, specifically Kenya are included in the analysis.

KEY TERMS: *child sexual abuse; child welfare policies; social welfare regimes; United States; Kenya*

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INTRODUCTION

Child sexual abuse is a global social and public health problem. Acts of child sexual abuse are defined by the World Health Organization as acts which include a child (defined as a person below the age of 18) in sexual activity that he or she does not fully comprehend or does not consent to. Sexual acts where a minor is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society, are also considered child sexual abuse. This may include but is not limited to, the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of child in prostitution or other unlawful sexual practices; or the exploitative use of children in pornographic performances and materials. The term child sexual abuse is an umbrella that includes many forms of abuse, including interfamilial abuse, abuse by persons unknown to the child and commercial exploitation. Child sexual abuse policies and practice vary widely across the globe and must be examined within the social context of each nation.

CHLD SEXUAL ABUSE IN KENYA

Incidence and background

Child sexual abuse negatively impacts the physical and psychological health of children worldwide, including but not limited to infection of HIV/AIDS and other sexually transmitted infections, traumatic injuries such as vaginal fistula, unwanted pregnancies, and anxiety, depression, post-traumatic stress disorder and increases potential for drug use (Kilonzo et al 2009; Wangamati et al 2019). While child sexual abuse is a global phenomenon, as there is a higher reported incidence in Africa than on other continents, making examination of the issue within African nations particularly important (Mutavi et al 2018).

Child sexual abuse in sub-Saharan Africa (SSA), with a particular focus on Kenya, is an area of developing research, deserving of exploration and attention. As recently as twenty-five years ago there was virtually no examination of this issue in sub-Saharan Africa; a review of studies of African children (Lalor, 2004) includes no published work on sexual abuse until the 1990s. Continuing research throughout the continent of Africa reveals imprecise yet elevated numbers, where approximately a third of adolescent girls reported that their first sexual experience was forced (Yahaya, et al 2012). In some studies, reported rates of sexual abuse reach 56% in males and 53% in females (Madu & Peltzer, 2000).

Kenya is a country in the East of the sub-Saharan region of Africa with a population of just over fifty-two million inhabitants, approximately 27 percent of who reside in urban areas. It is estimated that 40% of the population is under the age of eighteen (Mildred & Plummer 2009).

Child sexual abuse in Kenya occurs within a social ecosystem of extreme poverty, a pandemic level of incidence of HIV/AIDS, a lack of educational options and unprecedented scores of orphaned children (Mildred & Plummer 2009; Plummer & Njuguna 2009; Meinck et al, 2015). Further, the cultural context of patriarchy (Bridgewater, 2016), the societal attitudes and acceptance of physical and sexual violence against women, and in turn their children (Bridgewater, 2016), the endorsement of female genital mutilation (Plummer & Njuguna 2009) along with social disorganization as a result of residential instability and family disruption as a result of mortality due to HIV/AIDS (Yahaya et al., 2012) all contribute to the problem of child sexual abuse in Kenya.

Data on child sexual abuse in Kenya is often discovered as an aside in studies regarding related issues, such as HIV/AIDS or human trafficking. A recent study focusing on child sexual abuse in Kenya reported that 23% of girls and 12% of boys between the ages of 13-17 have been victims of some form of sexual abuse, including unwanted sexual touching, unwanted, attempted or pressured by physical force sex (Mwangi et al., 2015) and 32% of women and 18% of men, ages 18-24 reported having experienced some form of child sexual abuse before reaching age 18 (Mwangi et al, 2015).

HIV/AIDS is a pandemic health crisis, which cannot be separated from child sexual abuse, and in fact can be viewed as both a cause and consequence of child sex abuse. Over two million people in Kenya have HIV/AIDS, the ninth highest prevalence in the world (Plummer & Njuguna 2009; Bridgewater 2016). Child sexual abuse can be seen as a clear cause to the rise in infections, as it is reported that men in the region are more likely to target minors for sex, based on three assumptions. First, is the belief that younger girls are less likely to be infected (Bridgewater 2016). Second is the superstition that sex with a child has cleansing powers (Lalor 2004). Third is the myth that having sex with a virgin will heal a person of HIV and sexually transmitted diseases (Bridgewater, 2016). The transmission of the disease to the youth of the nation remains a devastating consequence. Further the havoc HIV/AIDS is ravaging upon the nation is also leaving scores of children orphaned, with limited or no parental protection from sexual abusers (Bowman & Brundige 2014; Wangamati et al 2019)

Kenya is a nation made up of over 42 tribal groups (Plummer & Njuguana 2009). The cultures of these distinct and traditional cultures need to be examined and considered in developing policy in all areas, but most especially issues within the family domain. In Kenya collectivist values are dominant (Plummer & Njuguana 2009) and,

historically, child welfare regulations were enforced via community norms, rather than national legislation. Consequently, there might be resistance to government intervention, in terms of child protection. Further, Kenya is a culture where tradition mandates that children obey elders unquestioningly. Recognizing this many advocacy groups have sought to frame child sexual abuse as a human and children's rights issue, rather than utilizing a child protective model (Wangamati, et al, 2019; Mildred & Plummer, 2009). This framing is currently in practice in, for instance, the widespread starting of children's rights clubs in schools and training of military officers to see their mandate as to protect children (Mildred & Plummer, 2009).

Legislative response

In 2006 that a major movement occurred identifying child sexual abuse as a specific social problem worthy of attention in Kenya. The Kenyan Sexual Offences Act of 2006 (KSOA) was the first comprehensive Kenyan national legislation addressing sex abuse. It was developed with dual objectives: to prevent and punish child sex abuse, and to protect the sexual and reproductive rights of sex abuse survivors (Bowman & Brundige 2014; Wangamati et al 2019). Efforts to accomplish its goals follow two paths, legal prosecution of perpetrators of child sex abuse and comprehensive post rape health guidelines (Wangamati, et al 2019). While the law is a nation-wide decree, the bulk of the implementation of the provisions of the act are locally based efforts, within 'home districts' (Plummer & Njuguna, 2009).

Legally, the KSOA expands and clarifies the definition of sexual offenses. The statute includes offenses against boys, as well as girls, and adds high minimum sentences for sexual offenses against children (Bowman & Brundige 2014). Further the penalties for specific crimes are delineated, including but not limited to mandatory life for defilement if the victim is eleven or under, a twenty-year minimum if the victim is between twelve and fifteen years old, and a fifteen-year minimum if the victim is between sixteen and eighteen years old. Defilement is defined as intercourse with a girl under a certain, regardless of whether she allegedly provided consent. The Act imposes a minimum sentence for incest of ten years, and if the victim is under eighteen, the offender is liable to be sentenced to life in prison (Bowman & Brundige 2014).

The health components of the KSOA are meant to provide medical and post rape services to victims of sexual abuse. Public healthcare facilities are generally the initial service providers sought out by children and guardians of children who have been victims of sexual abuse. Additionally, there are many charitable organizations that run clinics; these nongovernmental organizations (NGO) in collaboration with the Kenyan Ministry of Medical Services also offer post-abuse services, including medical and HIV/AIDS treatment (Wangamati, et al 2019).

The KSOA is a recognition by the Kenyan government of the problem of child sexual abuse and an attempt to put certain protections in place, but implementation has been slowed by significant barriers, both unintentional and calculated (Kilonzo et al 2009; Wangamati et al 2019). Lack of awareness regarding specifics of the Act within government agencies, police departments, judicial offices and the general public are challenges that can be ameliorated with time, professional training and public awareness (Plummer & Njuguna 2009). However, attempts to stymie prosecutions have also been present and have caused great concern and political action by feminist action networks (Bowman & Brundige 2014). Efforts to scare and punish, and thereby prevent victims from reporting abuse, reflects a vast disparity of power within Kenya between men and women, and by extension their children (Bowman & Brundige 2014).

In depth examination of present implementation cannot be complete without an understanding of the historical past of Kenyan community norms. Before British colonization Kenyan government was one of tribes, clans and villages. Children were the responsibility and wards of a large family, often referred to as a clan. This traditional rural clan system and communal form of family care and responsibility was not governed by written rules or regulations, but rather by community standards and norms. The needs and protection of the young and weak were the responsibility of the clan, based on morality rather than compulsion by law. After a lengthy period of British rule Kenya declared independence in 1964, and social welfare policy was patterned after British colonial power.

As a result, the Department of Social Services was established to investigate child neglect/abuse matters, however that system does not work symbiotically with the local professionals who work with children (Mildred & Plummer 2009).

While Kenyan law recognizes the imprimatur of traditional courts, which are generally held in rural areas and presided over by local chiefs and village elders in petty and civil matters, those same courts are legally forbidden from resolving sexual violence or sex abuse cases (Wangamati et al 2019). This creates a barrier to victims who are more familiar with the system of traditional courts from seeking justice in these matters, citing distrust of legal institutions (Wangamati et al 2019). It is also common that guardians of children who have been abused opt to pursue the matter in informal traditional courts, as these courts have greater cultural authority (Kilonzo et al 2009) and as victims are entitled to compensation from perpetrators in tribal courts (Wangamati C., et al. 2017). These choices are often made based upon family financial considerations and this choice by the parent or guardian of the child prevents the child survivor from exercising his/her own agency (Kilonzo, N. et al 2009).

Additionally, research suggests very few people seek services for medical/psychological conditions resulting from child sexual abuse. More than 90% of sexual abuse survivors do not see health care after their victimization and of those who seek treatment, many are unable to receive necessary medical interventions due to the delay in seeking services (Mutavi, et al 2018). There is limited research why so many people are unable or unwilling to seek services, although poverty, stigma, unavailability of coordinated services and lack of referrals to services seem to have an impact on help seeking (Mutavi, et al 2018).

Problems with delivery of services to sex abuse survivors plague Kenya, given the lack of coordination of services and standard post-exposure prophylaxis (PEP) against HIV. Contributing to the confusion, the Division of Reproductive Health in the Ministry of Public Health has a separate and unconnected program to that of the Ministry of Medical Services (Kilonzo, N. et al 2009). Many hospitals that offer survivors services are beleaguered by a lack of equipment, limited trained health care providers and lack inability to follow up with patients (Mutavi et al 2018).

CHILD SEXUAL ABUSE IN THE UNITED STATES OF AMERICA

Incidence and background

The issue of child sexual abuse in the United States is one that is widely studied, with a large disparity in findings regarding prevalence. While one study estimated that one in every three girls, and one in every seven boys were sexually abused at some point during their childhood (Anderson, 2014), other studies place the number at closer to 20% of girls and 5-10% of boys nationwide (Finkelhor, 1994). Official figures do not account for unreported child sexual abuse. Some research suggests that only 30 % of child sexual cases in the U.S. are reported to authorities (Anderson, 2014).

Legislative response

United States federal policy regarding child sexual abuse is delineated by three major pieces of legislation. The Child Abuse Prevention and Treatment Act, (CAPTA) in 1974, provided federal funding to enable states to respond to child maltreatment by enacting prevention, investigation, prosecution and treatment programs.

CAPTA was not specifically enacted to address child sexual abuse, but rather, sexual abuse was encompassed in the larger child maltreatment model, which included neglect, physical abuse and sexual abuse, as well as foster care initiatives.

In 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act was passed. It specifically addressed the issue of child sexual abuse, apart from other issues of child maltreatment. This federal statute mandated that states implement sex offender registration programs for offenders who had been criminally convicted of specifically designated sex offenses (Anderson, 2014). Two years later, it was amended to include a community notification system regarding registered offenders (Anderson, 2014). If states failed to comply, they risked a 10% forfeiture of federal funds for state/local law enforcement.

Finally, The Children's Justice Act was enacted in 2013. It is "a federally funded program that helps States develop, establish, and operate programs to improve the investigation and prosecution of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim". A review of the policies enacted, and the programs put in place; to address child sexual abuse within the US shows intent to protect children from sexual abuse via law enforcement and criminal prosecution. Specific tools for enforcement are lengthy prison terms, punitive sex offender registries & community notification programs. Though some states approach prevention through education programs, there is no federal initiative or mandate for such (Anderson, 2014). Sex offender registries are billed as prevention measures although they can be critically viewed as extensions of punishment.

COMPARISON

Utilizing the systematic comparisons based on welfare regime models and social policy developed by Esping-Anderson (1999), it is clear that the policies and practices of the United States and Kenya have markedly different underlying ideals. Given the complexity of social work and social policy, along with the multi-dimensional issue of child sexual abuse, cross-national comparison can provide insight regarding development of policy.

Comparing welfare models, the United States and Kenya begin at different baselines, with the U.S. rightfully considered as a country that originates from a residual welfare model where families are responsible for managing social issues and the state interposes in exceptional cases of need. This would be further explained as a liberal welfare regime. The United States reaction to child sexual abuse, which mainly consists of post-abuse prosecutorial responses, rather than preventative measures, is a specific example of this model in action. Certain

policy makers would offer that sex offender registries should be considered prevention. Such assertions are flawed, in that in order for the *prevention* to take place, an abuse, a report & successful prosecution/litigation must first occur. At best, sex offender registries and monitoring programs should be deemed tertiary efforts, in that they have the opportunity to impact whether offenders abuse again. This model in the US is consistent with an unfortunate lack of a comprehensive plan, but rather a system of applying bandages to wounds that have already occurred.

This liberal welfare regime emphasizes a child protection model, which tends to focus on legal remedies and has been found to delay intervention responses (Mildred & Plummer, 2009). The child protective model fails to place a focus on the agency and human rights of children, by stepping into the family in a patriarchal way, once the family patriarch has been deemed to have failed to protect the child. Within the U.S. focusing on incarceration, sex offender registries and community notification programs as a response to the social problem of child sex abuse is an example of Deborah Stones' discussion of positive vs. negative liberty. Rather than frame the issue as one of children having the right to live free of abuse and harm, discussions are focused on limiting offender's movements and freedoms (Stone, 2012). It could be argued that this is related to the culture of fear and violence that is ever present in American society.

Kenya, having recently gained independence in the early 1960's from British Colonial imperialists is still developing its social welfare model. As Kenya's social policy develops, it appears the cultural value of community (traditional clans) being responsible for providing for individual citizens has not been lost. There are calls for the nation to be considered one of a "welfare state" (Munaita, 2017). The rationale of *harambee*, a term included in Kenya's coat of arms, which has the meaning of community involvement, is encouraged. These can be viewed as the underpinnings of the value of universalism, which is seen in the social democratic welfare state (Esping-Anderson, 1999) Social democratic welfare regimes are said to have a family service approach to social problems, child sexual abuse specifically, which are preventative in nature and service oriented (Mildred & Plummer, 2009).

While it is true that Kenya is just at the beginning of the process of addressing child sexual abuse nationally, it has also started on the correct foot by viewing the issue of child sexual abuse as a children's rights issue. Kenya has ratified the United Nations Convention on the Rights of the Child (hereinafter referred to as the UNRC), which is a human rights treaty laying out social, health and cultural rights of children. The UNRC is widely sanctioned globally, with the United States of America being a notable exception (Mildred & Plummer 2009). Kenya is starting the discussion from a positive liberty point of view (Stone, 2012), declaring that children have the right to live free of abuse and harm. Nairobi was recently the host to an International Conference in African on Sexual Abuse, which consisted of many collaborations and presentations. Most notably a children's march and children's conference were held, where over 300 Kenyan children were transported to the capital to participate (Mildred & Plummer, 2009). The inclusion of children in these events is not merely window dressing; it reflects an understanding that children should have a voice in their own lives and destinies.

It is important to note that any cross-national comparison of any African country and the United States of America must be approached with caution and sensitivity. Defining terms as basic as, Child, Sexual and Abuse within the social construction of the privileged position of a U.S. researcher is just the beginning of the possible chasm between the world of Sub-Saharan Africa and that of an American academic post. The impact of war, extreme and durable poverty and the HIV/AIDS pandemic are blunt realities of Sub-Saharan Africa and cannot be neglected when conducting a contextual analysis of any social issue.

Within the United States, child sexual abuse is a social problem which is recognized by society and is presently receiving media and public attention. This heightened attention can be attributed to various high profiles cases, survivors speaking out and the connection the #MeToo movement (Anderson, 2014), which makes the issue ready for review. Unfortunately, federal policies currently in place are punitive in nature and fail to address prevention in any meaningful way. Although a popular state law currently in effect in 35 states, initially drafted as Erin's Law (IL PA -0961524), calls for the implementation of sexual abuse prevention programs within public schools (Anderson, 2014). This policy would be more widely and fully implemented if there were funding components and resources for operation. Given the bitterly divided nature of politics within the U.S. presently with a tremendous amount of focus on the president and possible impeachment, it could be an ideal time to pass a non-controversial bi-partisan bill, which provides protection to children and promotes mental health and education.

In Kenya, child sexual abuse is extremely prevalent, which is widely recognized as a grave problem. Yet given the multitude of other problems, such as extreme and durable poverty, the HIV/AIDS pandemic, and, educational inadequacies, the nation must often focus efforts on policies that can sustain life, which leaves child sexual abuse nearer to the bottom of the priority list (Plummer & Njuguna, 2009).

The political attitude in Kenya is in transition. Kenya is moving towards a social democratic welfare state and can develop a family service approach to child welfare, including, but not limited to child sexual abuse. This maturing political state is ripe for comprehensive prevention legislation, despite a lack of funding and a lack of coordinated services being hurdles in implementation.

In all parts of the world, cases of sexual abuse are underreported for a variety of reasons, such as stigma & embarrassment, fear of reprisal, fear of disbelief and, negative experiences by caretakers with institutions of authority (law enforcement & child welfare workers). Further, specific to Kenya there is a culture of acceptance of violence against women and children, along with extreme poverty, which, has the potential to make the economic cost of seeking medical care or judicial intervention near impossible. Additionally, when cases of abuse are reported, children are often not believed. Legal prosecutions of matters are not always victim friendly and can discourage participation because children's testimony is often discredited. Accordingly, reported and successfully prosecuted cases cannot accurately measure the prevalence of the problem and cannot guide the intervention.

A further complexity in considering child abuse policy is the existence of child sexual abuse myths, which are attitudes, beliefs and presumptions which are widely publicly held, despite having no basis in fact or truth. In both the U.S. and Kenya common child sexual abuse myths are, denial of the prevalence of child sexual abuse, emphasizing "stranger danger", when most perpetrators are known to their victims, denial of the lasting effects of child sexual abuse, the concept that children (particularly adolescent girls) are capable of consent and often encourage sexual contact. Specific in Kenya, child sexual abuse is inaccurately seen as an activity predominately perpetrated by homosexuals (Lalor 2004). Additional falsehoods, related to HIV/AIDS are also present, in beliefs that younger girls are less likely to be infected (Bridgewater 2016); sex with a child has cleansing powers (Lalor 2004) and sex with a virgin will heal a person of HIV and sexually transmitted diseases. (Bridgewater, 2016). These fallacies are based on several misconceptions, which make it so preventative measure relating to child sexual abuse should begin with education.

Recently, several states within the U.S. have passed legislation that mandates evidence based sexual abuse prevention programs within public schools. These programs are fairly new and little research has yet to be done on their effectiveness, but I would suggest that given the punitive nature of the current U.S. federal prevention programs and the absences of prevention programs in Kenya, any efforts at prevention would be considered genuine progress.

IMPLICATIONS FOR SOCIAL WORK IN KENYA

Academic research of child sexual abuse must be the starting point. Obtaining data, in an ancillary way, when studying other related issues, such as HIV/AIDS or human trafficking limits the strength of the information. In Kenya, specific and rigorous research, which is culturally informed should be pursued.

Policies aimed at prevention of child sexual abuse must be implemented with a focus on the local culture and drawing on the strength and diversity of the Kenyan people. While some areas of the country remain resource poor, they are also diversity and community rich. The community centric nature of the country and the emphasis on community involvement is a vital strength which must be capitalized on. While there are undoubtedly organizational and systemic barriers to the elimination of child sexual abuse in Kenya, a "top-down" approach does not suit the local and grass roots belief system of Kenya.

The policy that I propose to be implemented in both Kenya and in the United States, which would act as a true preventative measure, is one of a multidisciplinary educational campaign against child sexual abuse, targeting, Children; Parents/caregivers; Institutions (Schools/churches); and Broad culture (Media/publicity of laws in place). Using an ecological model, which considers the societal macrosystem, the community exosystem and the familial microsystem, would be an ideal framework to consider interventions.

CONCLUSION

Child sexual abuse is a global social and public health problem. Child sexual abuse in Kenya occurs within a social ecosystem of extreme poverty, a pandemic level of incidence of HIV/AIDS, a lack of educational options and unprecedented scores of orphaned children. To achieve any measure of success in ameliorating the scourge of child sexual abuse in Kenya it should be framed as a human and children's rights issue, rather than utilizing a child protective model and the entire community, on all levels should be educated and involved in prevention measures.

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