

Towards the Social and Legal Protection of Foster Children in Rwanda

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Introduction

The 1994 genocide against Tutsi and the war left Rwandan children the indelible consequences among which deprivation of the right to live and to enjoy family environment, special protection against abuse and exploitation. More seriously some of those vulnerable children still undergo sequels linked to poverty, lack of family bond, lack of access to education and health services that prevent them to enjoy their rights to the maximum level.

Up to present, a lot has been done to ensure the respect of children's rights in all government policies and politics. However, there are still gaps to cover as far as vulnerable children's rights are concerned, more especially the rights of foster children.

Despite the current issue of these children under kinship care or spontaneous care, formal foster care and residential or institutionalized foster care, the government of Rwanda has not turned the back against them. As stated by the Head of State, Paul Kagame, there is a government political will to move toward the "one child, one family" being implemented to give the children the right to own a family and ensure that children are living comfortably in the families.

In the implementation of this will, some families with humane heart have volunteered to foster some of the orphaned children living in centers. Other families already took the initiative to foster children of their relatives or friends who lost their

lives during the tragedy that befell the country. However, a thorough analysis on the children living in foster care shows difficulties faced by these children in families that received them. Some of foster families exploit them and even deny them their rights; hence foster children need advocacy on special social and legal protection.

Guidelines governing foster care in Rwanda do not clearly specify the legal obligations of foster parents as opposed to an adoptive parent. More specifically instructions on informal foster care that mostly poses threats to the child's rights do not appear in the government guidelines. Consequently, some families fostering children informally hide behind this gap and mistreat children under their guardianship withholding them the right on education and access to health and worst the right on the property of their parents or legal entitlements. Another major hindrance is the poverty that may characterize some of the families that have fostered children either informally or formally. Consequently, fostered children, failing to cope with such difficult life of deprivation of enjoyment of his/her rights choose to lead a vagrant life in the streets.

The purpose of this paper is to highlight the general situation of fostering in Rwanda. The paper puts much emphasis on how foster care should be perceived as opposed to adoption. The author shows different causes of foster care in Rwanda, conditions of foster children in Rwanda, challenges faced by these children, foster parents and state social and legal protection. At last, the author provides a way forward on how foster parents and the government of Rwanda should understand their obligations towards the protection of fostered children.

Defining foster care

Foster care is defined as situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family that has been selected, qualified, approved and supervised for providing such care. (UN, 2009 Art. 28)

The Convention of the Rights of the Child states, in article 20, that foster child is:

A child temporarily or permanently deprived of his/her family environment, or in whose own best interests cannot be allowed to remain

in that environment shall be entitled to special protection and assistance provided by the state. State parties shall, in accordance with their national laws, ensure alternative care for such a child.

Fostering is divided into two main categories namely formal and informal foster care. Formal fostering is an arrangement made by an intermediary whereby a child who is unable to live with his/her own family is placed with an individual or family with whom he or she has no blood ties, and with whom he or she has not previously lived. Spontaneous, or informal fostering, is a situation in which a child lives with an individual or family with whom he or she has no blood tie, but where no external agency or authority has been involved in making the arrangement.

Unlike adoption, foster care may be long term. Due to the different motivations behind fostering and adoption, adopters usually want to extend their family by offering full membership to unrelated child. Foster parents on the other hand are more likely to be motivated by a child living

status, and intrinsic or extrinsic motivations behind integrating the child in the family.

Foster care is practiced in many different ways throughout the world, depending on underlying factors such as the needs of the child, the culture and the systems in place. Foster care underlies substitute parenting for children who cannot safely stay with their own families or who do not have families because of a number of reasons. The foster home provides the child with physical care such as clothing, food and shelter. The family also gives guidance, supervision and positive modeling as they integrate the foster child in the family.

Fostering in the Rwandan Context

In Rwandan, fostering has different forms. The form that is mainly dominant is informal foster care. This one is a private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives, friends or by others in their individual capacities without the involvement of administrative or judicial authority or a duly accredited body.

In addition, we find formal foster care that consists of a care provided in a family environment, which has been ordered by an administrative or judicial authority, and all care provided in a residential environment including care in private facilities.

Considering the Rwandan context, fostering is not clearly defined legally. The fact that it appears in many instances akin to a form of de facto adoption, or a permanent care arrangement leads to many foster parents to exploiting and denying foster children their rights. For example, some of children without parental care were sometimes fostered by families for the perceived economic benefit of doing so or because families desired the agricultural or domestic labor that an additional child could provide. In these instances it is important to question whether the family environment is invariably the best context for all separated children and whether it always furthers the best interests of the child. As a result, then this answers the question why many children prefer to live in centers, or live in streets or in child-headed households within the community rather than living in foster families.

Causes of foster care in Rwanda

The genocide against Tutsi and the war has seriously affected many children by leaving them parentless and without care. Other underlying factors explaining the need of fostering in Rwanda include:

- Lack of support to families/ extended families
- Weak social welfare system (lack of effectively trained social workers)
- Low Government priority on care and protection issues
- Low status of children's voices
- Gender Inequality
- Abuse against girls and boys
- Patriarchal culture
- Discrimination on the grounds of gender, ethnicity, disability or HIV/AIDS status
- HIV/AIDS epidemic
- Poverty
- Lack of access to basic services (health, education, social protection)
- Unemployment
- Migration
- Family disintegration
- Family stress

- Alcoholism and drug use within the family
- Domestic violence
- Child abuse and neglect

All these sequels emanating from the war and the genocide against Tutsi caused the government of Rwanda to adopt measures in order to curb down the number of helpless children that lived in dire conditions by reintegrating them in families so as to ensure their social and legal protection.

Social protection of fostered children in Rwanda

Obligations of foster parents

By fostering, a family receives a child without expecting aid. It is not any family that affords receiving a child. There are certain conditions to be fulfilled by these Good Samaritan families before taking children from centers. These include socio economic abilities to cater for the child's growth. They have also to ensure that the child is socially protected. By protection, foster families have the obligation to make sure that foster children are well treated

physically and mentally. That is to say, the family has to ensure that:

- The child is at ease in expressing itself,
- The child is clean and has clothes
- The child is polite and well-brought up
- The child grows up well (as the child grows, one can say that the child eats well)
- The child is not a vagabond
- The child does not lose its culture
- The child eats easily and does not isolate itself
- The child is physically well
- The child is well-integrated
- The child approaches parents and other children without difficulties

Parents have also to ensure that there are no misunderstandings between the child and the family of origin for those who still have one or all parents. For the child to feel more comfortably, foster parents' own children should take care of the foster child. Besides, parents should cope with child's caprices and some unwelcoming behaviors by cultivating patience and accountability in

that task of upbringing the foster child. Foster families have the obligations to protect children from difficult tasks, exploitation, loneliness, discrimination and family strife that can affect the child's emotional development.

Current situation

So far, Rwanda has set a draft policy on the integration of separated children in families and designed guidelines governing foster care in Rwanda. Those guidelines include sensitization, evaluation, preparation of children and families, endorsement of the fostering agreement and follow up.

With sensitization, the aim is to inform families on the conditions of children in centers and the importance of placing the child with no care in the family environment in accordance with the United Nations Child Rights Commission and the Rwandan culture.

In this first stage, the community animation is initiated. Causes underpinning children's life out of the family environment are explained to members of the community so that there may be potential families to

receive them. It is explained that there are criteria, and an evaluation process. Interested families register with the head of the grassroots level and a copy of the list is sent to the centre. It is said that the child, under the responsibility of the director of the centre, must be prepared to leave the centre. To this end, prospective families visit the child in the centre. An agreement of engagement is then signed by the foster family, the local authorities, and the manager of the centre.

The second step in the reintegration process of vulnerable children without family care involves the interested families to register with the grassroots leaders. These authorities testify whether any family fulfils the requirements to foster the child or not. Here are the requirements relied upon to determine the ability of the family:

- Individuals who want to receive a child must do it voluntarily and freely;
- All family members must agree with the decision to foster a child;

- The foster family must be self-sufficient, and capable of supporting the child;
- The foster family must exhibit good morality;
- The family must accept that the child agrees to be fostered;
- Siblings should be fostered in the same family, as far as possible
- The foster family must agree to let the child join his/her family (including the extended family) when it is found;
- Single individuals are not accepted as foster families;
- Foster families must accept the religious beliefs of the child;
- Foster families must hold Rwandan nationality.

In this investigative process, local authorities and managers of the centers visit prospective families to conduct a social inquiry (individual interviews with each member of the family and neighbors) that determine if the family is eligible to receive a child. At this point a meeting with chosen foster families is organized to explain the fostering agreement.

The third step is the preparation of the child and the family. In this stage, children get explanations showing them the advantages of living in the family compared to living in a center or else place other than the family. They are told that foster parents are looking forward to receiving them. Once a foster family and some children have been identified, contacts can begin. Considering certain preferences of the family; some criteria should also be followed. The family should be informed of the health status of the child, food, sleeping habits and behavior. If the child is old enough to understand, she/he should be informed on the place where he/she will go, and the number of foster brothers or sisters. The child should be assured that there will be a follow-up.

One of the biggest setbacks in this stage is that some families seeking children to foster may bring the discriminative aspect and shun away children with disabilities and children who live with HIV/AIDS for example. Thus this restricts children to enjoy the right and social protection of living in a family. Therefore, children with disabilities are placed in specialized centers. Sensitization and education should be

offered in regard to separated children with HIV, and it should not appear as a criterion for choice.

The fourth step consists of the endorsement of the fostering agreement that is held in the centre where authorities are invited. The family signs the fostering agreement together with the district mayor or the representative from the district level.

The last step is Follow-up. The objective of follow-up is to ensure that families are able to provide a good standard of care and to avoid the necessity of returning children to the centre. During follow-up, the representative should ensure that the material conditions are sufficient; the child eats, is clean, healthy, and participates in the domestic activities. School performance is monitored, and it is ascertained that a foster child lives in the same conditions as the other children in the family. During the first three months, it is recommended that monthly visits be conducted. During the second three months, two visits are recommended and during the third three months, one visit is recommended. After that, visits vary depending on the conditions of the child and the family. Other

Government ministries are also responsible for follow-up – e.g. health and education. Information collected after visits are registered in the child's file. Training for foster families is another way to support foster families. Topics are: nutrition, hygiene, health, child development, income-generation activities, and other subjects identified by foster families.

Legal protection of foster children

The UN General Assembly of 20th November 2009 set the internal guidelines on alternative care for children without parental care. The Assembly approved that children who are deprived of their family environment have the right to alternative care, and special protection and assistance. Governments have social and legal obligations to provide appropriate and adequate measures to enable children enjoy the full range of rights even if they lack parental and family care. Providing support and protection to those children is not a charitable action but a legal obligation. (UN, 2004)

As highlighted in the declaration on social and legal principles relating to the protection

and welfare of children with special reference to foster placement and adoption, children need to grow up in the care and under the responsibility of their own parents and in “an atmosphere of affection, of moral and material security”. (Preamble of 1986 UN declaration on foster care and adoption) This is in line with article 9 of the Convention of the Rights of Children, which states that children should not be separated from their parents unless such separation is in the best interests of the child. It is only when parental care is unavailable or inappropriate, that foster care, adoption or, if necessary, care in institutions should be considered.

Another important feature to mention from this declaration in its 16 article is that fostering is subject to a regular monitoring and evaluation on which basis the placement can be revoked.

The UN Guidelines for the Alternative care of children recognize the importance of the informal care as a form of alternative care placement. The UN requires the de facto responsibility of informal parents for the child. Under its paragraph 78, states are obliged to put at place special and

appropriate measures to protect children in informal care, especially children in informal care provided by non-relatives, or by relatives previously unknown to the children or living far from the children’s habitual place of residence.

The government of Rwanda value the children’s rights more especially children under alternative care. The government fully understands that a child has the right to grow up in an atmosphere of happiness, love and understanding. They also embrace the rights of child to express an opinion and support them to have opportunities for attachment and for reasonably continuous relationships with parental figures as core fundamental right to their development, especially in the early years. The right of leisure, play and recreational activities appropriate to the age of the child. Stimulation is vital for the development of motor skills, intellectual capacity and social skills. Deprivation can have profound and long-term effects.

It is therefore that during the fostering process, emphasis is put on ensuring that the child is fully prepared to live an individual life in society. This is done for those parents wanting to reintegrate children from centers.

The foster parent has to commit themselves of offering the right of protection from all forms of abuse and neglect and from sexual exploitation to the foster child. The Rwandan law put an emphasis on “the right to assistance to enable the child to fully assume his or her responsibilities within the community”.

Fostering in Rwanda, though not clearly defined in the Rwandan laws, the government of Rwanda has introduced guidelines that govern it. Those guidelines have helped to unify practices in relation to selection of foster parents and matching children with them. However, in those guidelines, children living in centers are the ones that are referred to while talking about fostering in Rwanda. Children in kinship care who are facing various challenges including exploitation and mistreatment are not taken into consideration by these guidelines.

The efforts to establish these guidelines were made by the ministry of gender and family promotion that has sought to regularize fostering and ensure its good functioning. The documents used to design the draft proposed law that would govern

fostering include the article 20 of the convention on the rights of the child, the law of the Rwandan Republic and from the Rwandan culture. The proposed law is divided in two parts, the first on the general conditions according to which a child can be fostered and the second on necessary conditions for fostering a child. The first part contains two articles, the first on having valid reasons for fostering a child and the second on the characteristics of a child to be fostered (young and without a family or somebody to look after him/her).

The second part of that proposed law states that fostering must be voluntary. Interested individuals must request in writing their wish to foster a child. The family will be accepted if the parent has reached majority age, is Rwandan, married or widow. Only after serious consideration, single or divorced individuals and those who are older than 60 years of age can be granted to foster a child from the center. In the last case, only one child will be placed and he/she will be at least 12 years old. The family must be economically able to support the child, and morally respected. Both spouses and children who have attained the majority age will be consulted. Siblings should be

fostered in the same family or in families living in the same area. Before accepting foster parents, the child, according to his/her level of understanding should give his/her opinion.

The same law states that:

- A. Fostering begins on the day the contract is signed.
- B. The foster child has the same rights and duties as those of natural children.
- C. The child remains with his/her name but the foster family may add a name and for those children who do not have a name, it may be given at the time of the ceremony.
- D. The foster child has the right to maintain his/her religion; foster parents will register a child's property, if any, and they will manage it as a parent would.
- E. Foster parents represent the child in relation to others; a child can only be fostered by one family and the first contract must be annulled for a second family to foster a child.
- F. The foster parents and siblings will have a relationship to the foster child similar to that of a natural family.
- G. In case of death of the foster parent who has authority, parental authority goes to the

spouse and then to the child who has attained the majority age. (K.Tolfree, 2003)

Part five describes the termination of fostering, and states that fostering ends when the child becomes an adult (majority age or acknowledgement that he/she is adult), or when the child dies, when his/her parents are found, or when the child is adopted.

Up to now the law has not been enforced in Rwandan legislation. It appears a provisional care arrangement; hence some of the children fostered undergo a number of difficulties related to the violence of their rights.

Although the Government Guidelines stress the importance of follow-up after the child is placed within the foster care, some foster children still experience difficulties. However, follow-up can encompass psycho-social support by social workers and also consider some form of material assistance. In reinforcing follow up foster children, there is a need to hold meetings with foster families and also to involve the community so that share the responsibility in the upbringing of foster children. In addition to

psychosocial support, there is need to ensure fostered children's rights on property respected. In addition, in the follow up process, children who may have one or two parents have to be granted the right to maintain contact with them on a regular basis. Children should be granted the right to preserve their identity and to family reunification.

Factors affecting fostering in Rwanda

One of the biggest factors affecting fostering in Rwanda is that it is a new concept and which is not clearly different from guardianship and adoption. Thus, children become victims when they are deprived of the full right to education, health, and social protection. These rights are withheld due to the poverty that has characterized some families in Rwanda following the genocide against Tutsi and war that destroyed the social-economic planes of the country.

Lack of long term plans for the child's upbringing poses a serious issue for both parents and children when it comes to issues of marriage and inheritance. These issues may serve to create a greater obstacle in fostering boys and girls though other factors

may lie behind this gender imbalance such as greed and exploitation. This situation aggravates for children living in spontaneous fostering care and extended families who are unsure of their longer-term life in foster families.

The lack of a clear legal status on fostering places foster children in an ambiguous position in the event of the death of their foster parents.

Another factor that affects foster care is related to when the child commits a crime. If the foster child becomes bad and commits crimes, there are risks that the foster parents might sell their land to pay the debts.

Another serious issue is sexual exploitation. Young girls have problems in foster families especially when the members of the family, especially boys, want to take advantage of them and rape them.

Another serious issue is that foster parents do not reveal to the children that they are fostered. This raises serious issues in legal and psycho-social terms. Thus, the national guidelines can clearly determine

mechanisms of revealing to the child that it is fostered.

Way forward

So far, the MINALOC and MIGEPROF have put in place the social protection policy that aims at reducing vulnerability in general and the vulnerability of the poor and marginalized people in particular, and to promote a sustainable economic and social development centered on good social risk management and good coordination of savings actions and protection of vulnerable groups. Orphans and other vulnerable children are identified in the policy as categories prone to vulnerability requiring support.

However, the existence of this policy is not sufficient if there are no mechanisms to enforce its implementation and also review it periodically to include some of the missing elements as related to the context and experience of Rwanda's history. Therefore, foster children in spontaneous and extended family care have to be taken into consideration since some of them do not enjoy fully their rights.

Ministries responsible to the children wellbeing should develop legislation,

procedures and regulations in order to assure consistent and child rights focused programs and services in favor of orphans and other vulnerable children, foster children including. In addition to this, the ministries in charge should strengthen the community based support structures for the protection, prevention of separation, follow up and service provision.

There is also a need to strengthen the capacity of staff and organizations involved in service provision to orphans and other vulnerable children. To ensure social protection of foster children, there should also be the establishment of co-ordination mechanisms for all aspects pertaining to them in order to protect foster children's rights.

Still on the ensuring social protection for children, there should be a preventive strategy that can follow these approaches:

- Material support to families, e.g. in the form of loans for micro-enterprise, support to set up work cooperatives etc., possibly coupled with vocational training.

- The provision of day-care facilities – both to promote child development and to enable parents to work.
- The provision of clubs or other facilities for children to receive social, cultural, educational and recreational opportunities.
- Sexual health education and programmes designed to reduce unwanted pregnancies.
- Resources targeting single mothers or other families who are likely to place their children in residential care: programmes might include training in child care, job training, counselling etc.
- Educational support (e.g. the payment of school fees or the provision of school materials) for poor fostering families
- Community awareness-raising and education – for example, in child rights and children’s needs, and specifically in the importance of family- and community-based care.
- Programs to assist and support parents caring for a child with a disability.

- The situation of a child in a foster family should always be closely monitored through a community-based system. Research is needed on what happens to children placed in foster families.

Foster families have to be mobilized on the guidelines about rights of children and their obligations so that they know their roles and responsibilities in the upbringing foster children. A grass-roots level follow-up would have additional benefits such as the elimination or reduction in expectations of assistance, and the higher probability that both spontaneous and organized cases would be monitored.

To improve follow-up, there is a need for community education, training, and meetings among foster families and fostered children. Committees formed by already existing bodies such as social affairs, legal affairs, education have to be aware of the problems of foster children and play a proactive role in solving them. In order to avoid the foster child’s exploitation, the situation of a child in a foster family should therefore always be closely monitored through community-based systems.

The government of Rwanda has to set mechanisms of advocacy and legal support for foster children. It has to be noted that in fostering legal responsibility for the child lies with the birth parents, and not with the fostering parents, hence, they do not have to withhold the fostered child the right on the property of their biological parents even when they may not be alive. Once, it is enforced legally children will have access to education, healthcare services and bright future.

Finally, as the article 10 of 1986 Declaration on Foster care and adoption requires, foster placement of children should be registered by law and states must gradually eliminate informal care by registering spontaneous and extended family foster care so as to monitor and evaluate standards of care. (UN, 1986) It is therefore that the government of Rwanda has to abide with this article and reduce a number of conflicts arising between the foster parent and the children incase some rights are denied to them. It is important that the government of Rwanda strengthens the existing guidelines on fostering placement by boosting it with an effective legislative framework, a trained child welfare workforce, sufficient numbers

of foster carers, and prevention mechanisms for ensuring that children in kinship foster care are not exploited and abused.

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