THE STATE OF LEGAL PROTECTION FOR CHILDREN IN INFORMAL FOSTER CARE

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Informal care

- "…any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body" (p. 29 b(i)), UN Guidelines on Alternative Care)

Children in Informal Care

Countries	Number in informal care
Zambia	710,000 children, or 33% of orphans and 12% of non-orphaned children, are being raised by grandparents.
Malawi	20% of households are looking after orphans, 49% are headed by females
South Africa	41% of 421,000 foster care cases with grandmother, 30% with aunts, 12% with other relatives and 12% with non-relatives
Swaziland	47,000 children stay with grandmothers or alone

Types of informal care

- Kin (older sibling, grandparent, aunt/uncle, etc., often circulate among relatives).
- Informal foster care by non-kin
- Religious organizations
- 'Children's Villages' e.g. SOS
- Child-headed households and community care
- Family-setting institutions with no governmental regulation
- Job-related ("restaveks," domestic servitude, boarding factories, etc.)

Legal Protection for Children: Model Framework

- Prevention/Reunification
- Birth registration / Identification card
- Succession Planning
- Guardianship/Adoption=look to stability & permanency
- Provide assistance for wellbeing of child
- Government/authorized NGO oversight of care providers (registration, especially non-relatives)
- Protection from abuse, neglect, child labor and exploitation
- Freedom of speech, religion, identity and language

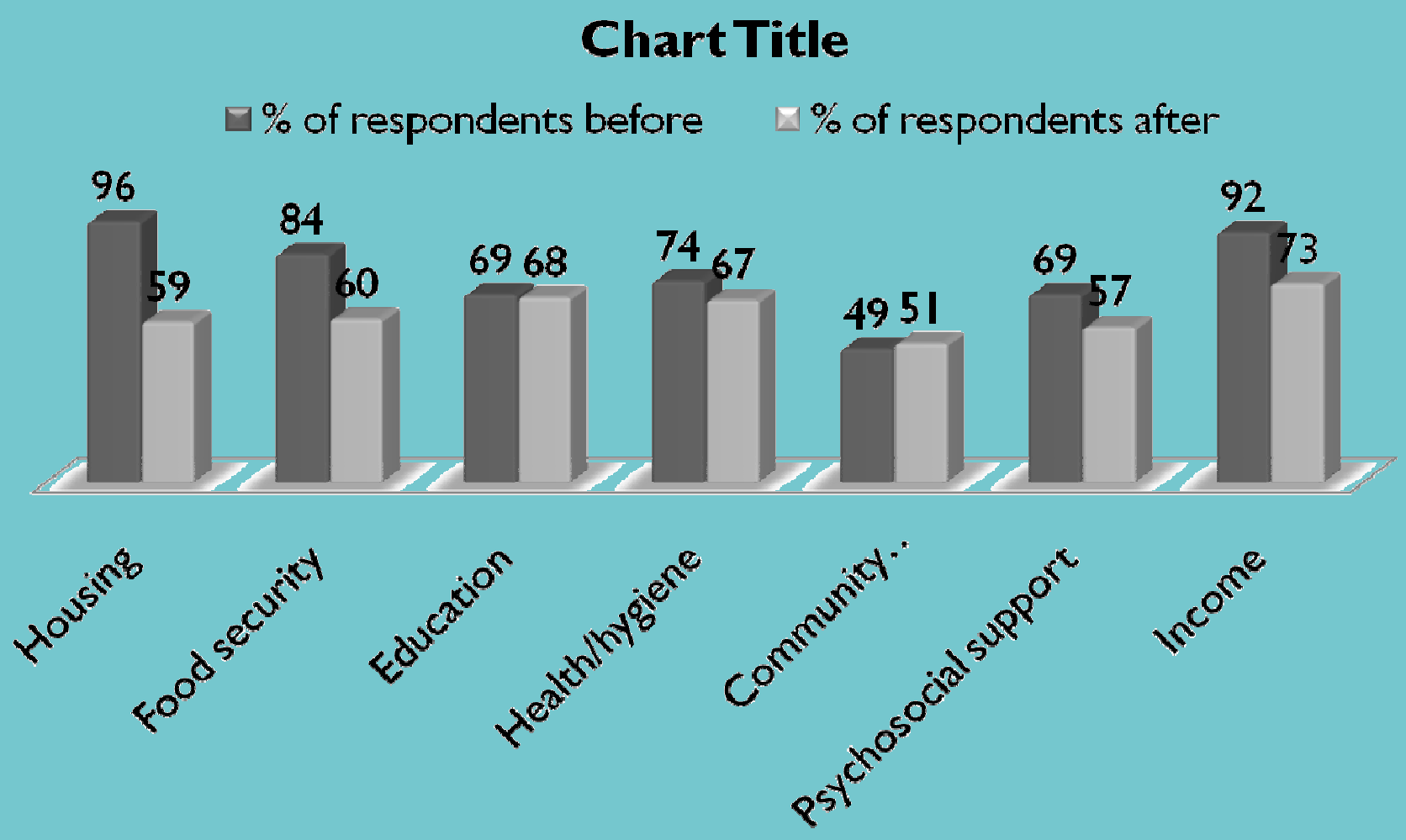
Prevention/Reunification

- CRC provides
  - Right to grow up in a family environment (pmbl)
  - Preferably with his/her parents (Art. 9)
  - If separated, right to family tracing & reunification
  - Right to stay in contact with family
- UN Guidelines (A/RES/64/142)
  - Preventing the need for alternative care
    - Promote parental care
    - Social services, parenting courses, home visits
  - Preventing family separation
    - Exhaust other efforts, counseling, healthcare for HIV parents

Case Study on Prevention (Family Preservation)

- Research in Uganda: Families at Risk of Disintegration:
  - Roby & Shaw (2008) effects of a family preservation program, 315/331 families participated.
  - 8 indicators of wellbeing: food security, housing, sanitation, children in school, health access (and updated immunization), community participation, psychosocial support, income generation training and assistance, mentoring (pre- and post results shown next slide)
  - 94% of children and 92% of caregivers confident they would remain together until children reach 18. (older kin worried about their own health). Some children believed that they would 'cycle' to another kin.

Degree of need of services before and after



Best Practice example: Tabitha in Cambodia

- A micro saving and micro enterprise model of self-sufficiency
  - Training for cottage business, farm production, sewing, etc.
  - Savings matched, on-going support
  - In 6-7 years family is completely self sufficient
  - This is in Cambodia with poverty rate of 35%
- Also education, sanitation, housing, health, indigenous mentoring, small farm production.
  - 64,000 families assisted to date
  - http://www.tabithafoundationaustralia.com/cms/tabitha-cambodia.html

Birth registration/Identification card

- [CRC, 7.1] "The child *shall* be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."
- UN Guidelines (A/RES/64/142) "policies should…ensure right to birth registration"

Birth registration/Identification card

- Best Practices
  - Reduced cost (waiver, hospital bill tie-in)
  - Local registrars
  - Health fairs
  - Database infrastructure
  - Media campaign

Adoption/ Guardianship

- UN Guidelines (A/RES/64/142)
  - No child should be without the support and protection of a legal guardian or other recognized responsible adult or competent public body at any time.
  - CHHs: Support and services should be available to siblings who have lost their parents or caregivers and choose to remain together in their household, to the extent that the eldest sibling is both willing and deemed capable of acting as the household head.
  - Special attention should be given to ensuring that the head of such a household retains all rights inherent to his/her child status…in addition to his/her rights as a household head.

Adoption/Guardianship

- Case Study
  - Cambodia: proposed changes to child welfare law
    - Legal services to turn informal kin and foster care to guardianship or adoption
    - Promote deinstitutionalization and domestic permanency
- Best Practices
  - Free and reduced fee legal services for domestic adoption and guardianship
  - "Customary adoptions" formalized without court procedure—New Zealand, Australia.

Government oversight of community care providers/NGOs

- UN Guidelines
  - (77) Competent authorities should, where appropriate, encourage informal carers to notify the care arrangement and should seek to ensure their access to all available services and benefits likely to assist them in discharging their duty to care for and protect the child.
  - (78) The State should recognize the de facto responsibility of informal carers for the child.
- CRC
  - (Art. 5). Further, the State has a responsibility to respect the rights and duties of those caring for the child

Government oversight of community care providers/NGOs

- Best Practices
  - Registration of community care providers
  - "Supportive Monitoring" by community members, focus on the child's wellbeing
  - Shift resources from gov't care-taking to supporting community in that role (Uganda, PLAN)
  - Separation between care providers and those screening for care situations to avoid "recruitment" (making decisions regarding placement)

Succession Planning

- UN Guidelines
  - (16) Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, … protection of property and inheritance rights.
  - (37)Support and services should be available…that such households benefit from supervision and support on the part of the local community and its competent services, such as social workers, with *particular concern for … inheritance rights*.

Succession Planning

- Case Studies
  - Uganda (Horizons)
    - Participant control group
    - Health, school and vocation support for orphans
    - Will writing
    - Discussions about HIV status disclosure
    - Guardian appointment
  - South Asia (Bhutan, Indonesia)
    - Personal tax numbers, land registration

Succession Planning

- Best Practices
  - Memory books/wills
    - Tape recorded will – seen as more difficult to forge
    - Secure storage in church/mosque
    - Allow slow transition process per "bad luck" taboo
  - Requiring guardians to register as trustees for orphans' property, as precondition to receiving aid and support for orphans (Kenya, McPherson)
  - Strategic law reform
  - Targeted litigation; challenge constitution vs. practice
  - Focus on local leaders

Protection from abuse, neglect, child labor and exploitation

- UN Guidelines
  - States should devise special and appropriate measures designed to protect children in informal care from abuse, neglect, child labor and all other forms of exploitation, with particular attention to 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.
- CRC
  - Such children are entitled to care that is appropriate to their needs (Art. 20)…and are entitled to protection from abuse, neglect and exploitation while in that setting (Art. 19).

Protection from abuse, neglect, child labor and exploitation

- Case Study
  - Haiti – restavek
- Best Practices
  - Domestic legislation (defining and punishing child labor, abuse, neglect and exploitation)
    - South Africa New Children's Act 2008 (mandatory reporting, children's courts, offender registry)
  - Keeping children in pairs
  - Effective response team: trained law enforcement, victim counselors, SANE nurses
  - Schools as centers of care and support
  - Media campaigns, e.g. "Belize should lobby for the introduction of the "Red Card to Child Labour"

Other rights of protection and choice for children in informal care

- UN Guidelines
  - (16) Attention must be paid to promoting and safeguarding all *other* rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion or belief [and] language.
- CRC: various articles address each of these items

Freedom of speech, religion, identity and language

- Best Practices
  - Empower children to plan and care for themselves – identify needs (Uganda/PLAN)
  - Reduce discrimination and barriers between orphans and non-orphan children with “children centers” ((Malawi, Ngozo)

Critique: Reality vs. Framework

- Few States offer law or policy regarding children in informal care
- Limited resources, problems correlated with chronic poverty
- Fear that formal aspects to informal care will "undermine" the personal nature of informal care: not unjustified when looking at experience in the US. (kin not willing unless paid)
- Strong cultural resistance to gov't oversight where carers are financially motivated or strong social stratification system persists—e.g. restaveks of Haiti; untouchable children of India