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MGK

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**GLOSSARY OF TERMS**

Watoto wa mitaani	Street children
Watoto walioko katika mazingira ya mitaa	Children in street situations
makapurwa	Vagabonds
chokoraa	Dirty/destitute

## TABLE OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CO	Concluding Observations
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
CSS	Children in Street Situations
ECPAT	End Child Prostitution, Child Pornography & Trafficking of Children for Sexual Purposes
GC	General Comment
HRC	Human Rights Council
IACHR	Inter-American Charter on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMTC	Inter-Ministerial Technical Committee
LCA	Law of the Child Act
MCDGC	Ministry Of Community Development Gender And Children
MDGs	Millennium Development Goals
NGO	Non-Governmental Organisation
NNOC	National Network of Organisations working with Children
NPRS	National Poverty Reduction Scheme
NSGRP	National Strategy For Growth And Reduction Of Poverty
OAU	Organisation of African Unity
OHCHR	Office of the High Commissioner for Human Rights
PCA	Penal Code Act
UNGA	United Nations General Assembly
UNICEF	United Nations Children Fund
VCLT	Vienna Convention on the Law of Treaties

MERCY-GRACE LAMECK KISINZA

KSNMER001

An evaluation of the Law and Practice in Tanzania in realising the rights of  
vulnerable Children in street situations

## **CHAPTER ONE: INTRODUCTION AND OVERVIEW OF DISSERTATION**

Mitaa haizai watoto, sisi tunawazaa

(Streets do not give birth to children, we do)

### 1.1 INTRODUCTION

Actual numbers of Children in Street Situations remain unknown. However, research has shown that the numbers of these children are increasing.<sup>1</sup> Some causal factors for this increase include rapid urbanisation, poverty and family breakdown, HIV/AIDS and harmful practices. The challenges that Children in Street Situations face are many and varied.<sup>2</sup>

Children in Street Situations can be clustered into various categories. These categories include children living on the streets, that is, they are permanently on the streets and have no other home to go to.<sup>3</sup> There are also those children who go to the streets during the day to find means of survival by doing odd jobs or to play. These children have a home to return to at night at night. Lastly, there are children who have the streets as their central place; that is where even if they are not permanently there.<sup>4</sup> The life these children lead, leaves them exposed and at risk of violence,

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<sup>1</sup> UNGA, HRC 19<sup>TH</sup> Session, Report of the United Nations High Commissioner for Human Rights on the protection and promotion of the rights of children working and/or living on the street, (11 January 2012) UN Doc A/HRC/19/35 GA, (OHCHR Report 19/35) para 12. <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-35\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-35_en.pdf)>

<sup>2</sup> Ibid, paras 16-19.

<sup>3</sup> Ibid, para 11.

<sup>4</sup> Ibid.

sexual exploitation, drug abuse, HIV infections, lack of education and healthcare, and many other violations of their rights.<sup>5</sup>

This dissertation examines the plight of children in street situations in Tanzania. It also examines the obligations the State owes to children in street situations, what it has done to fulfil those obligations. It analyses the effectiveness and impact of the steps and actions undertaken to fulfil the obligations towards children in street situations.

Many names have been used to describe and identify these vulnerable children, including ‘Street Connected Children’, ‘Children in Street Situations’ and most commonly ‘Street Children’. While all these names refer to the same group of children, some such as ‘street child’ are considered derogatory and contribute to increasing the stigmatisation of children.<sup>6</sup> This dissertation will use the term ‘children in street situations’ to refer to these vulnerable children, as is used in many UN documents and by many authors.<sup>7</sup>

The Committee on the Rights of Children (CRC Committee) urges states to have a gendered response to the phenomenon of children in street situations since there are different risks, challenges and vulnerabilities that are faced by females and males.<sup>8</sup> This dissertation aims to also address the gendered experiences of girls in street situations and analyse the state response towards this specific category.

Tanzania has a high number of children in street situations. As a result, she has been urged by the international community to institute policies and take steps

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<sup>5</sup> UNGA HRC 16<sup>TH</sup> Session, Resolution 16/12 on the Rights Of The Child: A Holistic Approach To The Protection And Promotion Of The Rights Of Children Working And/or Living On The Street (12 April 2011) UN Doc A/HRC/RES/16/12 GA (HRC Resolution 16/12), preamble <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/126/92/PDF/G1112692.pdf?OpenElement>>.

<sup>6</sup> OHCHR Report 13/95 (note 1 above) para 10-12. See also Mkombozi Centre for Street Children, ‘Police Round-ups of Street Children in Arusha are Unjust, Unconstitutional and Undermine the United Republic of Tanzania Constitution and the Rule of Law’ (2005) <[http://www.mkombozi.org/publications/research\\_report/2005\\_10\\_research\\_report\\_arusha\\_roundups\\_legal\\_analysis.pdf](http://www.mkombozi.org/publications/research_report/2005_10_research_report_arusha_roundups_legal_analysis.pdf)>

<sup>7</sup> OHCHR Report 13/95 (note 1 above) Para 12.

<sup>8</sup> HRC Resolution 16/12 (note 5 above), Para 2.

intended to protect and alleviate the conditions of children in street situations.<sup>9</sup> However, instead of protecting these vulnerable children, the state and its organs have been involved in violating their rights through violence, unwarranted prosecutions, lack of alternative care, lack of education, poor housing, jobs and lack of security.<sup>10</sup>

## 1.2 RESEARCH QUESTION

How effective is the legislation and practice in Tanzania in realising the rights to life, survival and development by the children in street situations? Does the law and practice take into account the gendered experience and the specific challenges, problems and dangers of the girl child in street situations?

## 1.3 HYPOTHESIS

The law in Tanzania relating to children does not provide comprehensive protection for children living and working in the streets. The measures incorporated in the law to address the vulnerabilities of these children do not measure up to international standards nor and are inadequate to ensure the realisation of their rights to life, survival and development. The law and practice of the State does not address the specific challenges, danger and problems faced by the girl child in street situations. Tanzania passed the Law of the Child Act 2009(LCA)<sup>11</sup> as part of the fulfilment of her international obligations, but the practice of the state in protecting children is insufficient.

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<sup>9</sup> Committee on the Rights of the Child, Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention-Concluding observations: United Republic of Tanzania. (21 June 2006) CRC/C/TZA/CO/2 < <http://www.refworld.org/pdfid/45377ee80.pdf>>.

<sup>10</sup> Save the Children, Children Situation in Tanzania, (2013) <<http://resourcecentre.savethechildren.se/start/countries/tanzania>>.

<sup>11</sup> Law of the Child Act No 21 of 2009, (LCA).

## 1.4 PROBLEM STATEMENT

The physical and mental immaturity of children means that children need special measures for their protection and growth.<sup>12</sup> These measures safe guard the rights of children and create an environment that supports their growth and development. Four principles that govern these measures and rights of the child are: the best interests of the child; the principle of non-discrimination; the right to participate; and the right to life, survival and development.<sup>13</sup> These four principles are reflected most of the international instruments governing the rights of the child. International law also recognises that there are categories of children who are more susceptible to violation of their rights than others. These vulnerable children include children with disabilities; unaccompanied children; refugee children; children of imprisoned mothers and children facing discrimination.<sup>14</sup> Children living and working on the streets also fall in this category of vulnerable children as they lack basic needs and/or parental care and are more susceptible to violation of rights.<sup>15</sup>

Tanzania has endeavoured to domesticate international children's their rights in her national legislation through the LCA.<sup>16</sup> The LCA recognises the need to be accorded special protection to specific categories of children.<sup>17</sup> However, the law does not clearly articulate the responsibility of the state in providing for these

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<sup>12</sup> UNGA Resolution 1386 (XIV), 14th Session, Declaration of the Rights of the Child, (1959 Declaration) (1959) UN Doc A/RES/14/1386, preamble.

<sup>13</sup> P Mahery 'The United Nations Convention on the Right of the Child: Maintaining its Values in International and South African Child Law' in T Boezaart (ed) *Child Law in South Africa* (2009) 309-339. See also UN Committee on the Rights of the Child *General Comment No. 7: Implementing Child Rights in Early Childhood*, (CRC General Comment No 7) (2006) CRC/C/GC/7/Rev.1, <<http://www.refworld.org/docid/460bc5a62.html>>

<sup>14</sup> Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, (ACRWC) (1990), CAB/LEG/24.9/49, <<http://www.refworld.org/docid/3ae6b38c18.html>> arts 13,22,23,26 and 30.

<sup>15</sup> See also UNGA HRC, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Summary of the full-day meeting on the rights of the child, (2011) UN Doc A/HRC/17/46 (OHCHR Annual Report)

<sup>16</sup> LCA (note 11 above), Long Title.

<sup>17</sup> Ibid, s 8(6) and 94(4).

children housing, education, and security of person, health care and protection from violence in terms of their right to life, survival and development.

Tanzania is a dualist country; therefore international law is only applicable when it is domesticated by national legislation.<sup>18</sup> Therefore before any international instruments ratified by Tanzania apply as law in Tanzania, they have to be enacted as national legislation by Parliament. The Law of the Child Act, 2009 seeks to incorporate international instruments that Tanzania has ratified on the rights of the child. However, this law does not fully address the special needs of vulnerable children but only prescribes institutionalising them.<sup>19</sup> Finally, the Law of the Child Act does not adopt the clear provisions and measures for the girl child in street situations laid out in the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol).

In order to realise the right of the child to life, survival and development, the state is required to safeguard measures to protect, realise and guarantee the right to life, and ensure that the children in street situations have access to food, shelter, education, health care and are protected from sexual violence and abuse. These measures are comprehensive and affirmative state actions crucial for the realisation of children's rights.<sup>20</sup> The State therefore is mandated to have these measures reflected in its national legislation and also put in practice.

This dissertation will interrogate the law and practice of Tanzania and their effectiveness in realising the rights of children in street situations with specific attention given to the rights of the girl child to protection.

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<sup>18</sup> JG Starke 'Monism and Dualism in the Theory of International Law' (1936) 17 *Brit. Y.B. Int'l L.* 66.

<sup>19</sup> LCA (note 11 above) Section 3, 16(g).

<sup>20</sup> R Hodgkin & P Newell 'Children's right to life and maximum survival and development' in R Hodgkin et al (ed) *Implementation handbook for the Convention on the Rights of the Child* (2007) (Hodgkin & Newell) 83.

## 1.5. METHODOLOGY

The methodology used in this dissertation is desktop research based on secondary materials. This dissertation is not based on empirical research but some of the literature used is based on empirical work. The primary sources of information are international instruments, most of which Tanzania has ratified. Tanzania's national legislation and the laws of other jurisdictions on children in street situations and also judicial decisions of different jurisdictions are explored. An examination of State reports to treaty bodies is undertaken in order to analyse the practice of the state in regard to children in street situations. National policies, strategies and guidelines developed by the State on children and youths are also interrogated to analyse whether the state has the will to implement its international obligations and in order to progressively realise the rights of children.

Other secondary sources used include reports and research documents of non-governmental organisation (NGOs), other relevant organisations, including international and intergovernmental organisations. These will be used to provide data on children in street situations. Journal articles and books on children's rights are referred to in this dissertation and are used to substantiate arguments and provide a critical analysis of the law and practice of the state.

## 1.6. STRUCTURE OF THE DISSERTATION

In addition to this chapter, there are four other chapters.

### **1.6.1. Chapter 2: Introduction and Overview of Children in Street Situations Globally**

This Chapter aims sets a foundation for the dissertation by defining relevant terms and analysing the causes and consequences of children in street situations.<sup>21</sup> The chapter provides an overview of the situation of children in street situations globally. It also addresses issues such as the commencement and end of childhood

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<sup>21</sup> UNGA, Convention on the Rights of the Child, (CRC) (1989), U.N.T.S Vol. 1577, p. 3, art 1; ACRWC(note 14 above), art 2.

under international and regional law regimes, and also the definitions applicable. The term ‘street-child’ has been defined by UNICEF as ‘...any girl or boy... for whom the street (in the widest sense of the word, including unoccupied dwellings, wasteland, etc.) has become his or her habitual abode and/or source of livelihood; and who is inadequately protected, supervised, or directed by responsible adults’.<sup>22</sup>

The definition above will be critiqued by looking at the works of other authors and their conception of who a child in street situations is and whether the label of ‘street child’ in itself exacerbates the vulnerabilities of these children. An overview of the rights accorded to the child will also be explored briefly, focusing on the right to life, survival and development.<sup>23</sup> The rights falling within this broad category of rights will also be expounded on and explained in this chapter. This chapter will also explore the specific vulnerabilities of girl children in street situations and research that indicates the magnitude of this problem. This chapter aims to answer the research problem by highlighting the causal factors and consequences as regards children entering into street situations as argued by various authors.<sup>24</sup> Children in street situations face many challenges and these will be briefly looked into with a special emphasis on the girl child on the street.

### **1.6.2. Chapter 3: An Analysis Of the Law On Children In Street Situations**

A country is only bound to those treaties that she has assented to by ratification, signature, accession and other methods laid down in international law governing treaties.<sup>25</sup> The rights stipulated in international and regional instruments have given rise to obligations imposed on states to ensure their realisation.<sup>26</sup> States are required to abide by their international obligations once they ratify any

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<sup>22</sup> S Thomas de Benitez and T Hiddleston , Research Paper on the promotion and protection of the rights of children working and/or living on the street, (2011) OHCHR Global Study.

<sup>23</sup> See CRC (note 21 above), arts 2, 6, 18, 24, 25, 27, 28, 29, 31 and 37(a); Hodgkin & Newell (note 20 above) pp 83-94.

<sup>24</sup> See also OHCHR Annual Report (note 15 above).

<sup>25</sup> UN, Vienna Convention on the Law of Treaties (VCLT) (1969) U.N.T.S, vol. 1155, p. 331, arts 12-17.

<sup>26</sup> UNGA, Universal Declaration of Human Rights (UDHR) (1948) 217 A (III), Preamble.

international instrument, and to do this in good faith.<sup>27</sup> Tanzania has ratified several international and regional instruments that are of interest to the child in street situations.<sup>28</sup> Such instruments form the normative framework for the rights of the child. International law has evolved in matters concerning the rights of the child.<sup>29</sup> For example, the Convention on the Rights of the Child, 1989 lays out the rights of the child and although there is no specific mention of the term ‘street children’, the rights of vulnerable children and those without parental care are outlined.<sup>30</sup> Tanzania is not only party to the Convention on the Rights of the Child; she is also party to the African Charter on the Rights and Welfare of the Child.<sup>31</sup> This Chapter analyses the right to life, survival and development of children in situations laid out in these instruments.

Chapter three will also examine the national legislative framework governing the rights of children in street situations. Tanzania ratified the Convention on the Rights of the Child (CRC) in 1991<sup>32</sup> and the African Charter on the Rights and Welfare of Children (ACRWC) in 2003. Eighteen years after ratification of the CRC and six years after the ACRWC, Tanzania enacted the Law of the Child Act in

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<sup>27</sup> VCLT (note 25 above) art 26, 31. See also UN Committee on the Rights of the Child, General comment no. 5 General measures of implementation of the Convention on the Rights of the Child, (CRC General Comment No 5) (2003) CRC/GC/2003/5  
<<http://www.refworld.org/docid/4538834f11.html>>

<sup>28</sup> Including UNGA, International Covenant on Civil and Political Rights, (ICCPR) (1966) U.N.T.S vol. 999, p. 171 (Acceded 11 Jun 1976); UN GA, International Covenant on Economic, Social and Cultural Rights, (ICESCR) (1966), U.N.T.S vol. 993, p 3 (acceded 11 Jun 1976); CRC (note 21 above) (ratified 10 Jun 1991), UN GA Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW) (1979) U.N.T.S Vol. 1249, p. 13 (ratified 20 Aug 1985); International Labour Organization (ILO), Worst Forms of Child Labour Convention, (1999) C182 (Ratified 12 Sep 2001), UN GA, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, (2000) A/RES/54/263 (Acceded 11 Nov 2004), OAU, African Charter on Human and Peoples' Rights (ACHPR) (1981) CAB/LEG/67/3 rev. 5, (ratified 18 Feb 1984) and ACRWC (note 14 above) (Ratified 16 Mar 2003).

<sup>29</sup> League of Nations, Geneva Declaration of the Rights of the Child (1924), 1959 Declaration (note 12 above) See also UNICEF, The evolution of international standards on child rights  
<<http://www.unicef.org/rightsite/sowc/pdfs/panels/SOWC%20all%20panels.pdf>>

<sup>30</sup> CRC (note 21 above) arts 20, 27.

<sup>31</sup> African Charter On The Rights And Welfare Of The Child was ratified on 2014,  
<<http://www.achpr.org/instruments/child/ratification/>>

<sup>32</sup> NGO Group for the CRC/ Liaison Unit, State Party Examination of Tanzania's Second Periodic Report. Session 42 of the Committee on the Rights of the Child  
<[www.mcdgc.go.tz/data/CRC42\\_Tanzania.doc](http://www.mcdgc.go.tz/data/CRC42_Tanzania.doc)>

2009.<sup>33</sup> The LCA adopts the international and regional obligations that Tanzania assented to by ratifying the various international instruments.<sup>34</sup>

This chapter will highlight the standard and quality of protections afforded to children in street situations in international instruments ratified by Tanzania. It will then highlight the state of the law concerning the children in street situations prior to the enacting of the LCA highlighting the changes it introduced, the protections it offers to children in street situations. It examines whether these protections and safeguards are in consonance with international law and Tanzania's obligations under the international instruments it has ratified.

The Law of the Child Act, 2009 prescribes a solution for children in street situations, including that they are to be institutionalised in 'approved homes' or be placed in foster homes.<sup>35</sup> This Chapter will analyse whether this provision is in consonance with international law concerning the best interest of the child, including the option of alternative care for children.<sup>36</sup>

### **1.6.3. Chapter 4: Factual analysis of the practice of Tanzania in realising the rights of children in street situations**

This chapter focuses the reality facing Tanzania's children in street situations prevailing in Tanzania regarding children in street situations and the steps, actions and practices of the state in implementing the laws that address or touch upon the plight of these children and especially in the realisation of the right of life, survival and development of children in street situations.

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<sup>33</sup> LCA (note 11 above).

<sup>34</sup> Ibid, Long Title: 'An Act to provide for reform and consolidation of laws relating to children, to stipulate rights of the child and to promote, protect and maintain the welfare of a child with a view to giving effect to international and regional conventions on the rights of the child; to provide for affiliation, foster care, adoption and custody of the child; to further regulate employment and apprenticeship; to make provisions with respect to a child in conflict with law and to provide for related matters.' (Emphasis mine)

<sup>35</sup> LCA (note 11 above) Ss 16, 18.

<sup>36</sup> OHCHR, The Rights of the Child, (March 1997), Fact Sheet No. 10 (Rev.1).

This Chapter includes a brief overview of the statistics available on the plight of children in street situations. In response to the concluding remarks of the Committee on the Rights of the Child addressed to Tanzania on 21 June 2006. These remarks recommended that Tanzania have stronger measures in order to meet and realise the rights of children in street situations.<sup>37</sup>

The question of whether the rights of the child are a priority will be analysed by looking at the Tanzanian government policies and budget and its obligation towards progressive realisation of rights.<sup>38</sup> The chapter analyses the State's reliance on civil society and non-governmental organisations on matters concerning children in street situations.<sup>39</sup> This analysis will be contrasted with the obligation that the State has towards vulnerable children.

This chapter explores the extent to which the gendered experiences of children in street situations play a role in shaping policies, provision of aid and realisation of rights. It includes an in-depth look at the girl child as facing specific challenges as a child in street situations and the measures that have been taken to address these challenges. This will be done by having due regard to the reports submitted by NGOs and civil society on the actions of the State.

#### **1.6.4. Chapter 5: Conclusion and Recommendations**

This final chapter reiterates the analysis in the previous chapters. It provides an overview of the position of the law and practice in Tanzania relating to the right to life, survival and development of children in street situations. It highlights the gap between fulfilment of the international and regional law obligations to create

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<sup>37</sup> Committee On The Rights Of The Child, 42nd Session; Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention-Concluding Observations: United Republic Of Tanzania (2006) CRC/TZA/CO/2.

<sup>38</sup> CRC (note 21 above) art 4, ACRWC (note 14 above) art 5 (2) enunciates the principle of progressive realization of the Right to Life, Survival and Maximum Development. See also UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), (CESCR, General Comment No. 3) (1990), E/1991/23. < <http://www.refworld.org/docid/4538838e10.html>>

<sup>39</sup> Non-Governmental Organisations include Mkombozi Centre, COET (Caretakers of the Environment Tanzania), Msamaria Centre for Street Children & Kili Centre.

legislation pertaining to the rights of children and the actual realisation of these rights. Finally this chapter makes recommendations that would enhance the law and make the rights of children in street situations to life, survival and maximum development a reality.

## CHAPTER TWO: OVERVIEW OF CHILDREN IN STREET SITUATIONS GLOBALLY

### 2.1. INTRODUCTION

The statistics on the number of children in street situations has been contested over time. In the mid-1990s UNICEF suggested there were 100 million children in street situations.<sup>40</sup> However these statistics have, on many occasions, been called into question. It is therefore difficult to find reliable numbers or estimates of children in street situations globally. Different countries have, however, produced their own statistics.

In Brazil, for instance, it was found that there were 23,973 children working or sleeping on the streets of 75 Brazilian cities.<sup>41</sup> There are between 30,000 and 40,000 children in street situations in Morocco.<sup>42</sup> In India it is estimated that there are more than 11 million street children.<sup>43</sup> Children in street situations are not only a phenomenon of developing countries but also in developed nations such as European countries<sup>44</sup> and United States of America.<sup>45</sup>

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<sup>40</sup> UN Habitat facts & figures, Enhancing Urban Safety and Security: Crime and Violence (2007) <[http://cn.unhabitat.org/downloads/docs/5202\\_7063\\_Bk%201.pdf](http://cn.unhabitat.org/downloads/docs/5202_7063_Bk%201.pdf)>.

<sup>41</sup> Consortium for Street Children, Street children in Brazil, Briefing to the IPU (2012) <<http://www.streetchildrenresources.org/wp-content/uploads/2013/01/ipu-briefing-street-children-brazil.pdf>>.

<sup>42</sup> HRC Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural, Including The Right To Development ‘ Report of the Special Rapporteur on the right to education, ‘ (2006) A/HRC/8/10/Add.2.

<sup>43</sup> Consortium for Street Children, Children-at-risk: Facts and Figures SGM Lifeworlds. Pavement Project <<http://www.sgmlifeworlds.com/downloads/documents/pdf/pavementproject/facts-and-figures.pdf>> .

<sup>44</sup> U U Ewelukwat ‘Litigating the Rights of Street Children in Regional or International Fora: Trends, Options, Barriers and Breakthroughs’ (2006) 9 *Yale Hum. Rts. & Dev. L.J.* 85. Only three countries in Europe reported a total lack of children in street situations.

<sup>45</sup> In 1996, the United States had 5.5 million children living in extreme poverty, approximately one million of whom were on the streets. Kanth et al ‘Street Children and Homelessness’ (2004) 68 *CYC-Net* (Kanth) <<http://www.cyc-net.org/cyc-online/cycol-0904-Homelessness.html>>. Also see Bassuk & Friedman, ‘Facts on Trauma and Homeless Children, National Child Traumatic Stress Network Homelessness and Extreme Poverty’ (2005) <[http://www.nctsn.org/nctsn\\_assets/pdfs/promising\\_practices/Facts\\_on\\_Trauma\\_and\\_Homeless\\_Children.pdf](http://www.nctsn.org/nctsn_assets/pdfs/promising_practices/Facts_on_Trauma_and_Homeless_Children.pdf)>

The existence and continuing increase in the number of children in street situations signifies the disintegration of the family unit and a lack of adequate government investment in services for children.<sup>46</sup> This is clearer in Tanzania where the phenomenon of street children has been on a steep increase.<sup>47</sup> This chapter discusses the definition of the term children in street situations, the causes that lead them to be in the streets and the challenges that they face once on the streets. It looks at the specific challenges faced by the girl child in these situations.

## 2.2. DEFINITION OF THE CHILD

Article 1 of the Convention on the Rights of the Child (CRC) defines a child as a person below the age of 18. The CRC however allows room for state parties to legislate an age of majority below 18 years and therefore in some jurisdictions the age of majority may be attained earlier.<sup>48</sup> The African Charter on Rights and Welfare of the Child (ACRWC) also defines a child as a person under the age of 18 years.<sup>49</sup> The definition of a child in Tanzania through its Law of the Child Act, 2009 (LCA), is in consonance with the CRC and ACRWC.<sup>50</sup> Despite this, there are different ages of ‘majority’ that apply in different circumstances in Tanzania.<sup>51</sup> This dissertation however will be concerned with the internationally accepted position that childhood ends at eighteen years.

There is no international consensus on the commencement of childhood among State parties to the CRC and ACRWC. States such as Kenya,<sup>52</sup> Argentina and

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<sup>46</sup> OHCHR, Supporting the rights of children living in the street’ (2011).

<<http://www.ohchr.org/EN/NewsEvents/Pages/Supportingrightschildrenlivingstreet.aspx>>

<sup>47</sup> T Kisslinger, Mkombozi Centre for Street Children. Press Release National population statistics beg an urgent question: is Tanzania caring for its children? (2007) ([www.mkombozi.org](http://www.mkombozi.org))

<sup>48</sup> CRC (note 21 above) art 1.

<sup>49</sup> ACRWC (note 14 above) art 2.

<sup>50</sup> LCA (note 11 above), s 4(1).

<sup>51</sup> Age of entering hostilities, direct hostilities, labour, sexual consent, criminal responsibility.

<sup>52</sup> Constitution of the Republic of Kenya 2010, art 26 (1).

the Holy See<sup>53</sup> recognise that childhood begins at conception while others clearly state that childhood begins at birth.

Under Tanzania's Penal Code Act,<sup>54</sup> abortion is considered a criminal offence and is referred to as 'child destruction'. The only exceptions allowed are if abortion is carried out to preserve the life of the mother or to prevent mental illness.<sup>55</sup> This dissertation refers to childhood as commencing at conception.

### 2.3. DEFINITION OF CHILDREN IN STREET SITUATIONS

UNICEF defines 'a street child or street youth [as] any minor for whom the street (in the widest sense of the word including unoccupied dwellings, waste land) has become his or her habitual abode, and who is without adequate protection.'<sup>56</sup> From this definition, UNICEF developed two widely accepted categories of children in street situations:<sup>57</sup> children *on* the streets and children *of* the streets.<sup>58</sup> The former category includes those who work during day and return home during the night or periodically (street working children) and the latter being those who live permanently on the streets (street living children).<sup>59</sup>

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<sup>53</sup> Argentina and the Holy See recognize a child even before birth. See also Committee on the Rights of the Child, 'Reservations, Declarations, and Objections relating to the Convention on the Rights of the Child' (1999) CRC/C/2/Rev.8, Para 13, 24.

<sup>54</sup> Penal Code Act, (PCA) Chapter 16 Revised Edition 2002.

<sup>55</sup> Ibid ss 219, 230.

<sup>56</sup> On the streets, (1999), 94 *Amnesty Int'l Campaign Journal UK*, at 5 quoted in P M Correa 'Poverty as a violation of human rights: the case of street children in Guatemala and Brazil' (2013) 10. No 2. *Brazil Journal of International Law*.

<sup>57</sup> Kids Report, Street Children Have Rights Too! 'Problems faced by street children globally and in the Philippines, and why their rights need protection' (KidsReport) (2012) <http://media.leidenuniv.nl/legacy/kidsreport-street-children-have-rights-too.pdf> See also P A Kopoka The Problem Of Street Children In Africa: An Ignored Tragedy (2000). Paper presented to an International Conference on Street Children and Street Children's Health in East Africa, <<http://www.homelesshub.ca/sites/default/files/zp3bjdvl.pdf>>.

<sup>58</sup> H J L V Rajesh Bhat, 'Children without childhood' (2006) <<http://www.streetchildrenresources.org/wp-content/uploads/2013/02/children-without-childhood.pdf>>.

<sup>59</sup> S Khan et al, 'A Situational Analysis of the Street Child Phenomenon in Pakistan: A Literature Review' (2013) *Institute of Child Health Centre for International Health and Development* <<http://www.streetchildrenresources.org/wp-content/uploads/2013/01/situational-analysis-street-children-pakistan.pdf>>

The definition and categorisation of children in street situations by UNICEF has been critiqued and expanded by other authors and agencies. For example, Amnesty International refers to street children as those who have severed family bonds whether partially or completely and engage in survival activities.<sup>60</sup> Other definitions have evolved to embrace a wide range of children who find themselves in street situations and despite their varied experiences and forms, have the street as a common denominator.<sup>61</sup>

The categories of children in street situations have also been expanded to include a wide range of children in vulnerable circumstances. A third category includes children that are part of street families.<sup>62</sup> The United States Agency for International Development (US AID) also added a fourth category of children i.e. children who are in institutionalised care.<sup>63</sup> Critiques of the UNICEF categories include, that they do not cover a child who is in the streets, accompanied by a parent and who may or may not live permanently in the streets - normally for purposes of begging for alms<sup>64</sup> or the children who are born and raised in the streets.<sup>65</sup>

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<sup>60</sup> Urban Management Programme, *Street children and Gangs in African Cities: Guidelines for Local Authorities*, (2000) Working Paper Series 18 <[http://www.ucl.ac.uk/dpu-projects/drivers\\_urb\\_change/urb\\_society/pdf\\_social\\_emancip/HABITAT\\_UMP\\_Ochola\\_Street\\_children\\_Gangs\\_African\\_Cities.pdf](http://www.ucl.ac.uk/dpu-projects/drivers_urb_change/urb_society/pdf_social_emancip/HABITAT_UMP_Ochola_Street_children_Gangs_African_Cities.pdf)>

<sup>61</sup> OHCHR Expert meeting on promoting and protecting the rights of children living and/or working on the street, statement by N M Majid, Special Rapporteur on sale of children, child prostitution and child pornography <<http://www.ohchr.org/EN/Issues/Children/Study/Pages/ExpertConsultation.aspx>>

<sup>62</sup> Save the Children, *Surviving The Streets A census of street children in Delhi* by the Institute for Human Development and Save the Children, (2011) <<http://resourcecentre.savethechildren.se/sites/default/files/documents/5332.pdf>>.

<sup>63</sup> Kanth et al (note 45 above).

<sup>64</sup> E E. Obioha, 'Becoming a Street Child in Poverty Ridden Society: A Descriptive Case of Kaduna Metropolis, Nigeria Kamla-Raj' (2009) 19(1) *J Soc Sci*, 41-49 <<http://www.krepublishers.com/02-Journals/JSS/JSS-19-0-000-09-Web/JSS-19-1-000-09-Abst-PDF/JSS-19-1-041-2009-648-Obioha-E-E-Tt.pdf>>.

<sup>65</sup> WERK for SNV/Kenya and GTZ 'The Story Of Children Living And Working On The Streets Of Nairobi Ordinary Just Like Any Other Person', (2002) (Nairobi children) <[http://www.ismo-online.de/logicio/client/ismo/file/downloads/street\\_children\\_nairobi\\_report.pdf](http://www.ismo-online.de/logicio/client/ismo/file/downloads/street_children_nairobi_report.pdf)>.

### 2.3.1. Terminology used

Wargan et al criticised the term ‘street children’ as having negative connotations and being derogatory in nature.<sup>66</sup> They argued that the negative connotations and derogatory term ‘street child’ contributes and sustains the social stigmatisation that children in street situations suffer.<sup>67</sup> This term can also be said to signify the attitude of the government towards children in street situations.

In a bid to address the criticism of the term ‘street children’ the Human Rights Council uses the term ‘children living and/or working on the streets’ in its resolutions.<sup>68</sup> This term includes a large number of children who do not live but only work on the streets.<sup>69</sup> The use of the phrase ‘children living and/or working on the streets’ however, excludes children who are on the streets for a large amount of time for play and recreation.

S T Benitez uses another term - ‘street-connected children’ - to refer to children who have the street as a central point.<sup>70</sup> On the other hand, the UN Committee on the Rights of the Child refers to these children as ‘children in street situations’.<sup>71</sup> The UN Committee on the Rights of the Child coined the term ‘children in street situations’ to signify two things, first, the uniqueness of each child

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<sup>66</sup> K Wargan & L Dershem ‘Don’t Call Me a Street Child, Estimation and Characteristics of Urban Street Children in Georgia,’ (2009) USAID, UNICEF, Save the Children ACT Research <<http://www.streetchildrenresources.org/wp-content/uploads/2013/01/dont-call-me-a-street-child.pdf>>.

<sup>67</sup> Ibid.

<sup>68</sup> HRC Resolution 16/12 (note 5 above).

<sup>69</sup> HV Beers, ‘A Plea for a Child-Centred Approach in Research with Street Children’ (1996) 3, *Childhood* 195-01 <<http://www.streetchildrenresources.org/wp-content/uploads/2013/01/plea-for-child-centred-approach.pdf>> See also D Nte et al ‘Street Children and the Challenges of National security: Evidence from Nigeria Ngboawaji’ <<http://www.bangladeshsociology.org/Street%20Children%20and%20the%20Challenges%20of%20National%20security.pdf>>

<sup>70</sup> This definition is drawn from S Thomas de Benitez ‘Global Research Paper on street children’ that informed the OHCHR Report 19/35 (note 1 above) as available in Consortium for Street Children November ‘Submission to the UN Office of the High Commissioner for Human Rights’ report on the right of the child to birth registration’ (2013) <<http://www.ohchr.org/Documents/Issues/Children/BirthRegistration/CSCsubmission.pdf>>.

<sup>71</sup> A L Meincke, ‘Nothing about us, without us’ OHCHR study on The Promotion and Protection of the Rights of Children Working and/or Living on the Street Children’s Voices Paper (2011) <<http://www.ohchr.org/Documents/Issues/Children/Study/Consultation/ChildrensVoicespaper.pdf>>

on the streets and second, that the problem does not lie with the child but the situation he or she finds him/herself in.<sup>72</sup> As it may be apparent, the term children in street situations is used in this dissertation. The term Children in Street Situations is preferred because it is the most inclusive of the terminologies and encompasses more categories of children in street situations than any other term.

#### 2.4. SPECIFIC VULNERABILITIES OF THE GIRL CHILD

The experiences of children in street situations are gendered experiences. In most countries, including Tanzania, the number of girls on the streets is fewer than boys.<sup>73</sup> However the situations of girl children in the streets create a specific set of vulnerabilities linked to their sex and gender. These vulnerabilities make the experiences of the girl child in street situations especially traumatic. They are often the objects of sexual attacks, abuse and exploitation; they suffer early pregnancies and become mothers at an early age to children who will most likely be children in street situations.<sup>74</sup>

Girls are raped by civilians and also by the boys in street situations.<sup>75</sup> The sexual abuse is also perpetrated by people in power such as the police and the

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<sup>72</sup> Terre des Hommes, Children in Street Situations Sectoral policy (2010) <<http://resourcecentre.savethechildren.se/sites/default/files/documents/4984.pdf>> See also <<http://www.ohchr.org/Documents/Issues/Children/Study/Consultation/JeanZermattenCRC.pdf>> p.3-4

<sup>73</sup>S Thomas de Benitez 'State of the World's Street Children Report: Research'. *Consortium for Street Children Page 12*, See also D Hansson "'Strolling" as a Gendered Experience: A Feminist Analysis of Young Females in Cape Town Children,' (2003) 13: 1 *Youth and Environments* <<http://www.streetchildrenresources.org/wp-content/uploads/2013/02/analysis-young-females-cape-town.pdf>>.

<sup>74</sup> C Anicama, 'Child Protection Systems: Roles and responsibilities in the promotion and protection of children living and/or working on the street' (2011) Office of the Special Representative of the Secretary General on Violence against Children <[http://www.ohchr.org/Documents/Issues/Children/Study/Consultation/CeciliaAnicama\\_OfficeSRSG\\_Violence\\_against\\_Children.pdf](http://www.ohchr.org/Documents/Issues/Children/Study/Consultation/CeciliaAnicama_OfficeSRSG_Violence_against_Children.pdf)>.

<sup>75</sup> A Boakye-Boaten, 'Street Children: Experiences from the Streets of Accra' (2008)8 *Research Journal of International Studies* <<http://adamfoghana.com/data/documents/Experiences-from-the-streets.pdf>>.

military.<sup>76</sup> Below is a testimony given by one of the girls on the streets of Nairobi, Kenya:

The police are always calling us names, threatening us, saying we're whores, trash, homeless, and beating us. Sexual abuse happens too. It happened to me once, here in Jeevanjee [Gardens, a public park]. Four policemen came and arrested me near City Market. They started taking me to the Central Police Station, and brought me to the park. One of them hit me and I fell down, and he came down on top of me. Another held me down while the policeman raped me. After he raped me, they walked me over to central police station, and just let me go. (Pamela, Interviewed by Human Rights Watch and quoted in their publication 1997: 27)<sup>77</sup>

Girls in street situations are also forced to trade sexual favours for food and protection.<sup>78</sup> As a consequence of the sexual abuse on the girls in street situations, the rate of infant mortality and abortion is also very high.<sup>79</sup> Since little is being done to protect the girls in Street Situation from sexual exploitation and abuse and are not taught or sensitised about safe sexual relations, girls in street situations are at risk of contracting sexually transmitted diseases.<sup>80</sup>

## 2.5. RIGHTS ACCRUING TO CHILDREN IN STREET SITUATIONS

Children are endowed with human rights which are indivisible and interdependent. The CRC and the ACRWC are key documents in laying the foundation to the rights accruing to children. However, as human beings, children

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<sup>76</sup> Abuses against Street Children (2006) *Human Rights Watch* 18: 2(A) V <<http://www.streetchildrenresources.org/wp-content/uploads/2013/02/abuses-against-street-children.pdf>>.

<sup>77</sup> Nairobi Children (note 65 above).

<sup>78</sup> Ibid.

<sup>79</sup> M Lemba 'Rapid Assessment of Street Children in Lusaka' (2002) *Project Concern International Zambia & UNICEF* <[http://www.unicef.org/evaldatabase/files/ZAM\\_01-009.pdf](http://www.unicef.org/evaldatabase/files/ZAM_01-009.pdf)>.

<sup>80</sup> WHO 'Understanding Sexual and Reproductive Health including HIV/AIDS and STDs among Street Children' Module 4 WHO/MSD/MDP/00.14 World Health Organization Mental Health Determinants and Populations Department of Mental Health and Substance Dependence <[http://www.unodc.org/pdf/youthnet/who\\_street\\_children\\_module4.PDF](http://www.unodc.org/pdf/youthnet/who_street_children_module4.PDF)>.

have a wide array of rights found in other international instruments ratifying states are to observe.

Child rights are set out in four main principles: right to life, survival and development; right to non-discrimination; the principle of the best interest of the child; and, the right to participation.<sup>81</sup> States are enjoined to respect, protect and fulfil these rights. International law also places an emphasis on the importance of the family as the central unit of society.<sup>82</sup> Parents are the primary caretakers of children. However, should the parents not be present, the state is obligated to fill this lacuna.<sup>83</sup> The state has the primary duty to realise the rights of vulnerable children.<sup>84</sup> This responsibility entails not only negative but also positive obligations.<sup>85</sup>

States have recognised that children in vulnerable circumstances need special attention and action from their governments.<sup>86</sup> While children in street situations are not explicitly mentioned in the international instruments, the violation of rights (sexual abuse, physical violence and discrimination) and the challenges they face (lack of parental care, lack of food, shelter, clothing and other basic needs) as a consequence of their presence on the streets, they fall under the category of vulnerable children.<sup>87</sup>

As stated previously, this dissertation explores the right to life, survival and development as it accrues to the child in street situations. The right to life, survival and development is found in Article 6 of the CRC. It is a holistic right<sup>88</sup> which

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<sup>81</sup> DM Chirwa, 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' *The Int J of Children's Rights* (2002)10; 157–177.

<sup>82</sup> CRC (note 21 above), ACRWC (note 14 above).

<sup>83</sup> R Hodgkin & P Newell 'Parent's joint responsibility assisted by the state' in Hodgkin & Newell (note 20 above) 231-247.

<sup>84</sup> CRC (note 21 above), art 19.

<sup>85</sup> KidsReport (note 57 above).

<sup>86</sup> Guidelines for initial reports of state parties to the African Charter on the Rights and Welfare of the Child, 17 to 21 February 2003. Committee/ACRWC/2 II Rev 2 (2003) 3 *Afr. Hum. Rts. L.J.* 347.

<sup>87</sup> UNICEF 'Excluded and invisible' (2006)  
<[http://www.unicef.org/sowc06/pdfs/sowc06\\_fullreport.pdf](http://www.unicef.org/sowc06/pdfs/sowc06_fullreport.pdf)>

<sup>88</sup> R Hodgkin & P Newell 'Children's right to life and maximum survival and development' in Hodgkin & Newell (note 20 above) 83–94

encompasses rights such as; protection from violence and exploitation,<sup>89</sup> the right to health, an adequate standard of living, education and leisure and play,<sup>90</sup> development of the child's personality, talents and mental and physical abilities to their fullest potential.<sup>91</sup>

Children in street situations encounter violations of their rights in almost every sphere. They lack parental guidance and protection; they are not afforded suitable alternative care and consequently they live on the streets, resulting in failure to develop their potential. The lack of education, and the violence and exploitation<sup>92</sup> that they suffer show how little effort is put into realising their rights. The right to food, shelter and clothing is in direct consonance with the right to life, survival and development. However, it is one which is blatantly violated. Begging on the streets, sleeping in less than optimum conditions, and depending on the generosity of strangers to meet their basic needs does not render the fulfilment of their rights feasible.<sup>93</sup>

Any government that has assented to the CRC, ACRWC and CEDAW<sup>94</sup> is bound by those international instruments to create policies, laws and to take steps intended to ensure the realisation of the rights of the vulnerable child. This also means that the girl child's particular vulnerabilities ought to be addressed. The international and regional obligations of States will be addressed in detail in the following chapter.

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<sup>89</sup> CRC (note 21 above), arts 19, 32-39.

<sup>90</sup> CRC (note 21 above), arts 24, 27, 28, 29, 31.

<sup>91</sup> Ibid art 29.

<sup>92</sup> Five Years On: A report from the NGO Advisory Council for follow-up to the UN Secretary-General's Study on Violence Against Children A global update on violence against children (2011) A report from the NGO Advisory Council for follow-up to the UN Secretary-General's Study on Violence Against Children < <http://www.streetchildrenresources.org/wp-content/uploads/2013/01/global-update-on-violence-against-children.pdf>>

<sup>93</sup> N Schimmel 'Freedom and Autonomy of Street Children' (2006) 14 *Int'l J. Child. Rts.* 211, 211.

<sup>94</sup> UNGA Convention on the Elimination of All forms of Discrimination Against Women (1979), U.N.T.S vol 1249, p13.

## 2.6. CAUSAL FACTORS TO CHILDREN BEING IN STREET SITUATIONS

In order to fully address the phenomenon of children in street situations, one has to analyse the factors that cause children to be in these vulnerable circumstances. These causal factors have been divided into push and pull factors.<sup>95</sup> The ‘pull’ causes are the reasons a child left his/her home and entered the streets whilst the ‘push’ factors are the reasons that draw a child to the streets.

Poverty is one of the most cited push causes that drive children from home and onto the street. However, poverty is not in itself a direct cause but the foundation that most of the other causes stem from. It is therefore the consequences of poverty that cause children to leave their homes and seek a living elsewhere. Poverty characterised by a lack of food causes children to have no option but to fend for themselves in the streets.<sup>96</sup> In some poor families, children are sent to the streets by, or accompany their caregivers, to beg.<sup>97</sup> L Aptekar in his research *Street Children in the Developing World: A Review of Their Condition*<sup>98</sup> found that most of the children in Brazil who left home and went out on the street to beg, contributed what they earned to their families.

Family breakdown is also one of the primary causes of the phenomenon of children in street situations. This breakdown can also be as a result of poverty.<sup>99</sup> In most African societies when a child loses his/her immediate family or there was turmoil that rendered living in the family difficult, the extended family and the clan stepped in to care for the child.<sup>100</sup> With urbanisation and modernisation, this sense of family and of community responsibility for children has disintegrated.<sup>101</sup> The

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<sup>95</sup> See OHCHR Report 19/35(note 1 above); Nairobi Children (note 65 above).

<sup>96</sup> Rapid Assessment in Lusaka (note 79 above).

<sup>97</sup> KidsReport, (note 57 above).

<sup>98</sup> L Aptekar ‘Street Children in the Developing World: A Review of Their Condition’ *San Jose State University* < <http://www.sjsu.edu/faculty/laptekar/download/crossculturalresearch.pdf>>.

<sup>99</sup> PM Correa (note 56 above).

<sup>100</sup> ADV Breda ‘The Phenomenon and Concerns of Child-Headed Households in Africa’ (2010) <[http://www.adrian.vanbreda.org/pubs/46\\_CHH\\_in\\_Africa.pdf](http://www.adrian.vanbreda.org/pubs/46_CHH_in_Africa.pdf)>.

<sup>101</sup> M Pare ‘Why Have Street Children Disappeared?’ (2003-4) 11 *Int'l J. Child. Rts.* 1.

phenomenon of children in street situations is further exacerbated with the many causes of death of caretakers: parents dying due to the HIV/AIDS epidemic,<sup>102</sup> war<sup>103</sup> and other conflicts leaving the children orphaned and without any support from the extended family. Children who find themselves in these situations have limited options of survival and most find their only way to survive is to be on the streets.<sup>104</sup>

Domestic violence,<sup>105</sup> child abuse and neglect, natural disasters and harmful cultural practices<sup>106</sup> are some of other causal factors driving children to leave their homes and live on the streets. Children with disabilities are stigmatised and often chased away from their homes by the caregivers/parents who are not willing to care for them.<sup>107</sup> However, Kopoka et al are firm in their research findings that the underlying reason for children in street situations has been poor policies and efforts by governments to tackle root causes<sup>108</sup> and economic inequalities.<sup>109</sup>

Push factors and pull factors are intertwined and it is often difficult to identify which category is responsible for putting children in the streets. The pull factors are those that highlight the ‘glamour’ of the streets. Streets represent freedom, lack of supervision, big cities, opportunities, money and others. Children leave their homes in order to seek out and enjoy the sensation of the cities, following friends or under peer pressure<sup>110</sup> or even following siblings who have been in the streets and find it to be a better place than their home.<sup>111</sup> Despite this appeal, many

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<sup>102</sup> Kanth et al (note 45 above).

<sup>103</sup> P Mufune ‘Street Youth in Southern Africa’ (2000) UNESCO  
<<http://www.streetchildrenresources.org/wp-content/uploads/2013/01/street-youth-southern-africa.pdf>>

<sup>104</sup> UNICEF, Africa’s orphaned Generations  
<[http://www.unicef.org/sowc06/pdfs/africas\\_orphans.pdf](http://www.unicef.org/sowc06/pdfs/africas_orphans.pdf)>

<sup>105</sup> B Rwezaura ‘The Value Of A Child: Marginal Children And The Law In Contemporary Tanzania’ (2000)14 *Int’l J.L. Pol’y & Fam.* 326, 326.

<sup>106</sup> OHCHR Expert meeting on promoting and protecting the rights of children living and/or working on the street Summary report statement by Director, Human Rights Treaties Division, I Salama  
<<http://www.ohchr.org/EN/Issues/Children/Study/Pages/ExpertConsultation.aspx>>

<sup>107</sup> KidsReport, (note 57 above).

<sup>108</sup> Ibid.

<sup>109</sup> Terre des Hommes (note 72 above).

<sup>110</sup> Rapid Assessment in Lusaka (note 79 above).

<sup>111</sup> Rapid Situation Assessment Street Children Of Cairo & Alexandria,  
<[http://www.unodc.org/pdf/youthnet/egypt\\_street\\_children\\_report.pdf](http://www.unodc.org/pdf/youthnet/egypt_street_children_report.pdf)>

children find the street life difficult; and are thus introduced to a life of violence and struggle.<sup>112</sup>

## 2.7. PROBLEMS/CHALLENGES FACED

Children on the streets do not enjoy the protection the family often gives and neither do they enjoy the protection of the state. The lack of care, whether from family or the State, coupled with difficult, violent, restless life often characterised by poor nutrition stunts their development. The violence, poor nutrition, and abuse, threatens their lives and violates their rights.

As already noted, the girl child in street situations is constantly exposed to sexual exploitation. The girls often engage in sexual activity in exchange for protection, food and shelter. Boys are also sexually abused by other boys in street situations and sometimes by adults. For example, ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) International in its research in Cambodia, found that it is unacceptable for a child to say no to an adult - a factor that ECPAT International believes has made sexual exploitation of children all the more easier, both by locals and foreigners.<sup>113</sup> Human Rights Watch research also shows that boys entering the streets are sexually abused in street initiation ceremonies.<sup>114</sup>

All street children are to varying degrees traumatized.<sup>115</sup> Children in these circumstances have 'low self-esteem, apathy, and fatalism.'<sup>116</sup> Due to lack of guidance and the circumstances in which they live and grow up, children in street

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<sup>112</sup> Kopoka (note 57 above).

<sup>113</sup> ECPAT International 'Exploitation of children in prostitution, A contribution of ECPAT to the World Congress III', (2008)

<[http://www.ohchr.org/Documents/Issues/Children/Study/ECPAT\\_International.pdf](http://www.ohchr.org/Documents/Issues/Children/Study/ECPAT_International.pdf)>

<sup>114</sup> Human Rights Watch, Abuses Against Street Children, Vol. 18 No. 2(A) V

<<http://www.streetchildrenresources.org/wp-content/uploads/2013/02/abuses-against-street-children.pdf>>

<sup>115</sup> B. Hewitt, Speech for UN OHCHR Expert Consultation on Street Children Experts: (2011)

<[www.ohchr.org/Documents/Issues/Children/Study/Consultation/Bulelwa%20Ngantweni-Hewitt\\_UmthomboStreetChildren\\_SouthAfrica.docx](http://www.ohchr.org/Documents/Issues/Children/Study/Consultation/Bulelwa%20Ngantweni-Hewitt_UmthomboStreetChildren_SouthAfrica.docx)>

<sup>116</sup> Schimmel (note 93 above).

situations are more likely to mature into adult criminals.<sup>117</sup> As a result of their traumatic experiences and the need to find a coping mechanism, children in street situations have a higher risk, and often tendency, to use harmful substances such as drugs and alcohol.<sup>118</sup>

Some children are pushed out of their homes and on to the streets to escape domestic abuse and physical violence only to face the harsher conditions in the streets.<sup>119</sup> The harsher conditions sometimes occur at the hands of the authorities who are meant to protect and foster their rights. The Committee on the Rights of the Child in its concluding observations on Tanzania noted that police brutality is a common problem faced by children in street situations.<sup>120</sup>

This brutality ranges from whipping children, hosing down children on cold days to teach them a lesson and even murder.<sup>121</sup> Children are forced to hand over the little money or goods they have to police or are forced to steal and loot for them. Other actions of police brutality towards these children include ‘being kicked, tear-gassed, set upon by police dogs, thrown into lakes even though they cannot swim, and being forced to drink alcohol or smoke glue and then being beaten for drunkenness.’<sup>122</sup> This is done not only by the civilian police but also the military.<sup>123</sup>

Another form of police brutality of rounding up children was done in South Africa just prior to the 2010 FIFA world cup,<sup>124</sup> Tanzania,<sup>125</sup> Guatemala<sup>126</sup> and

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<sup>117</sup> Kopoka (note 57 above); Consortium for Street Children, ‘The, non-governmental organizations in special consultative status’ (2014) A/HRC/25/NGO/X <[http://www.streetchildrenresources.org/wp-content/uploads/gravity\\_forms/1-07fc61ac163e50acc82d83eee9ebb5c2/2014/02/CSC-UNHRC-25th-session-written-statement.pdf](http://www.streetchildrenresources.org/wp-content/uploads/gravity_forms/1-07fc61ac163e50acc82d83eee9ebb5c2/2014/02/CSC-UNHRC-25th-session-written-statement.pdf)> See also OHCHR Report 19/35 (note 1 above).

<sup>118</sup> Nairobi Children (note 65 above).

<sup>119</sup> KidsReport, (note 57 above).

<sup>120</sup> Committee on the Rights of the Child, Concluding Observations- Tanzania U.N. Doc. CRC/C/15/Add.156 (2001). < [www1.umn.edu/humanrts/crc/tanzania2001.html](http://www1.umn.edu/humanrts/crc/tanzania2001.html)>. See also TEN/MET ‘State of Child Protection in Tanzania’. Position Paper (2008) <[http://www.tenmet.org/public\\_html/TENMET\\_PositionPaperChildProtection.pdf](http://www.tenmet.org/public_html/TENMET_PositionPaperChildProtection.pdf)>

<sup>121</sup> B Hewitt (note 115 above).

<sup>122</sup> J Le Roux & C Smith, Public Perceptions of, and Reactions to Street Children (1998) *Adolescence* 33 (132), 901-913, 902

<sup>123</sup> Human Rights Watch (note 76 above).

<sup>124</sup> B Hewitt (note 115 above).

<sup>125</sup> Mkombozi Center, police round ups (note 6 above).

DRC.<sup>127</sup> The arrests are conducted under a guise of stopping or curbing the growing number of street children.<sup>128</sup> Many of these children are not charged or even brought before a court and while in the police cells the children are often put with adults<sup>129</sup> and often the children suffer further violence at the hands of the adult cellmates.

If and when they are charged, the offences preferred include loitering and vagrancy. These offences are usually vague, and because of the nature of the life of children in street situations, they are often optimum suspects for round ups.<sup>130</sup> Murder at the hands of the police is also not uncommon<sup>131</sup> and is often seen as a form of 'social cleansing'.<sup>132</sup> The fact that the children in street situations are often poorly fed and clothed renders them vulnerable to further victimisation.<sup>133</sup> This abuse is not only carried out by public servants, but also by other similarly situated children. .<sup>134</sup>

The failure by the State to act constitutes a violation of the rights of these vulnerable children. States often act only after violations of rights have occurred. In some instances, these violations have occurred on enormous scales. In 2000, Javed Iqbal was found guilty of murdering 100 children in Pakistan.<sup>135</sup> These were also children in street situations. Although such extreme incidences do not occur very often, the litany of abuses that the children in street situations suffer, and the

<sup>126</sup> Ewelukwat (note 44 above).

<sup>127</sup> On Friday, November 4, 2005, the police rounded up some 430 adults and children in Kinshasa who were congregating around the city's main market—reportedly the police had been ordered to arrest all vagrants in the area because of growing crime there. Over 180 were boys and girls; the youngest child was nine years old.

<sup>128</sup> Human Rights Watch (note 76 above).

<sup>129</sup> J Phiri, *The Plight of Street Children in Zambia* (1996), *Africa Insight* 26(3), 276-281

<sup>130</sup> Ewelukwat (note 44 above).

<sup>131</sup> Human Rights Watch, *Children's Rights: Street Children*, <<http://www.hrw.org/children/street.htm>>; *see also* Human Rights Watch, 'Children's Rights Project, Juvenile Injustice: Police Abuse And Detention Of Street Children In Kenya' (1997), <<http://www.hrw.org/reports/1997/kenya/>>

<sup>132</sup> Ewelukwat (note 44 above).

<sup>133</sup> Amnesty Int'l, *Brazil: Child victims of killing and cruelty*, (1990) XX, 9 *Amnesty Int'l Newsletter* 3 quoted in P M Correa (note 56 above).

<sup>134</sup> Human Rights Watch (note 76 above).

<sup>135</sup> S Khan (note 59 above).

response of the state to the abuses, shows little attention of the state in the protection of their rights.

The children in street situations also frequently suffer stigmatisation and negative perceptions at the hands of the society surrounding them.<sup>136</sup> In Tanzania they are called ‘watoto wa mitaani’ (street children)<sup>137</sup> or ‘chokoraa’ (the dirty/unkempt ones)<sup>138</sup> and other terms which are derogatory. These terms alienate the children in street situations, reinforcing their sense of worthlessness and an inability to belong. Research indicates that the children are not only shunned but also actively discriminated by the general public, and they are subjects of scorn and fear.

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Some of the worst forms of child labour are found on the streets. Since children in street situations engage in informal manual work to survive, the work varies from selling food and transporting goods to mining, selling drugs and prostitution. Most of the work done by the children is beyond their ability or not suited to their life and growth situation, and it is sometimes illegal. Their working conditions are sometimes slave-like. This endangers their health and life and curtails their right to life, survival and development.<sup>140</sup> Moreover, children in street situations are abused and exploited by politicians who manipulate them and use them for demonstrations and wreaking havoc.<sup>141</sup> In other places, children in street situations are rounded up and either sold to farmers or sent into indebted servitude.<sup>142</sup>

## 2.8. CONCLUSION

Children are driven and pulled to the streets for various reasons, most not of their making. Many of these reasons are caused by situations in their homes and the

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<sup>136</sup> Strategy and Guidelines for Children living and working in the streets  
<file:///C:/Users/Student/Downloads/Strategy\_and\_Guidelines\_Children\_Living\_Working\_inthe\_Streets.pdf >

<sup>137</sup> A Swahili term used to refer to children living and/or working in the streets in Tanzania.

<sup>138</sup> Nte et al (note 69 above).

<sup>139</sup> Strategy and Guidelines for Children (note 92 above).

<sup>140</sup> Human Rights Watch (note 70 above).

<sup>141</sup> Human Rights Watch (note 70 above).

<sup>142</sup> L Aptekar (note 98 above).

lure of the cities. Some children live on the streets, some stay temporarily on the streets in search of a better life. On the streets however, they suffer violence, sexual abuse, discrimination, stigmatisation among others on the streets - often by people and authorities that ought to protect them. The girl child is especially disadvantaged on the basis of her gender and faces many challenges. The next chapter considers the international instrument in place to address or deal with the situation and the challenges faced by children in street situations.

## CHAPTER THREE: AN ANALYSIS OF THE LAW ON CHILDREN IN STREET SITUATIONS

### 3.1. INTRODUCTION

The existence of a growing number of children in street situations often reflects a breakdown in families, giving rise to the challenges and problems these children face at the hands of the state and other agents. This situation provokes an analysis of the frameworks that are in place internationally, regionally and locally to protect children in street situations and foster the realisation of their rights. This chapter addresses that need: it analyses the international, regional and national legal frameworks available to children in street situations. The chapter discusses the question of whether the law as it currently is on these three levels is sufficient to address the challenges faced by children in street situations and to hold states to account.

The African regional system largely mirrors the international framework for children's human rights, but with some differences. However, neither the international human rights system nor the African regional system has either recognised or addressed the issue of children in street situations.

The family is the central unit of society.<sup>143</sup> International and regional instruments repeatedly acknowledge the importance of raising a child in a family environment.<sup>144</sup> However there are many factors that cause the disintegration of the family unit and which therefore place the child in life-threatening situations.<sup>145</sup> The state is then obligated to provide alternative care and other forms of protection for children in vulnerable situations.

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<sup>143</sup> E Okon 'Towards defining the "right to a family" for the African child' (2002) 2 *African Human Rights Law Journal* 12, < <http://www.ahrlj.up.ac.za/okon-e>>. See also Cantwell & Holzscheiter *Children Deprived of their Family Environment: A commentary on the United Nations Convention on the Rights of the Child* (2008) 16, 17.

<sup>144</sup> CRC (note 21 above) preamble, art 10 which relate to rights of 'family reunification' and the right to alternative care. See also ACRWC (note 14 above) arts 18 and 19.

<sup>145</sup> ADV Breda (note 100 above).

Although international and regional instruments fail to mention children in street situations specifically, the rights of these children are obvious. In spite of this failure, there are several provisions in these instruments that have a significant bearing on the rights and realities of children in street situations. Since states parties to these instruments are mandated to realise the rights enshrined in international instruments they have ratified, it is important to highlight these international obligations.<sup>146</sup>

### 3.2. INTERNATIONAL LAW

International law on children has evolved over many years. Traditionally, children were not viewed as rights holders but ‘subjects’ to be protected and guarded until they became adults.<sup>147</sup> The Convention on the Rights of the Child (hereinafter referred to as ‘CRC’) was hailed as a revolutionary document in that it recognises children as bearers of rights rather than mere recipients of the goodwill of adults.<sup>148</sup> As with all rights, children’s rights are indivisibly intertwined with all other rights.<sup>149</sup>

In 1924 the League of Nations adopted the Declaration of the Rights of the Child. This declaration marked the first international recognition of the rights of children in street situations by referring to them as ‘waifs’. Collins Dictionary defines ‘waif’ as ‘a person, especially a child, who is homeless, friendless, or neglected’.<sup>150</sup> The Declaration stated:

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<sup>146</sup> VCLT (note 25 above) art 26.

<[https://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII~1&chapter=23&Temp=mtdsg3&lang=en)>.

<sup>147</sup> M Freeman ‘Taking children’s rights more seriously’ in P Alston et al (eds) *Children, Rights and the Law* (1992).

<sup>148</sup> Chirwa (note 81above).

<sup>149</sup> UN Committee on the Rights of the Child. General comment No. 1, Article 29 (1), The aims of education, (2001), CRC/GC/2001/1, para 7. <<http://www.refworld.org/docid/4538834d2.html>>

<sup>150</sup> Collins English Dictionary (2015), <<http://www.collinsdictionary.com/dictionary/english/waif>>.

The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured.<sup>151</sup>

The Declaration of the Rights of the Child was the first legal instrument to recognise the responsibility of the state towards children who do not have primary parental care. With the dissolution of the League of Nations and the formation of the United Nations, the Declaration of the Rights of the Child was adopted in 1959.<sup>152</sup>

The Universal Declaration of Human Rights (UDHR) recognises every person's right to an adequate standard of living, which includes food, clothing, housing, social services and medical care. The UDHR recognises a child's right to enjoy social protection.<sup>153</sup> This specific mention of children highlights their special circumstances and casts an obligation upon states to protect and foster their rights. Article 6 of the Declaration requires that states have a duty to extend care to children without a family and those without adequate means of support. Article 4 of the UDHR recognises the child's right to adequate nutrition, housing, recreation and medical services.

Article 10(3) of the International Covenant on Economic, Social and Cultural Rights (1966) enjoins state parties to protect children against exploitation.<sup>154</sup> It also enjoins state parties to progressively take steps and institute policies to ensure the realisation of the rights using the maximum of their available resources.<sup>155</sup> This can be interpreted as an obligation on a state not to take retrogressive steps, but to take positive measures to realise the rights.<sup>156</sup>

The International Covenant on Civil and Political Rights provides for safeguards in administering justice to young offenders.<sup>157</sup> It also provides for the

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<sup>151</sup> 1924 Geneva Declaration (note 29 above).

<sup>152</sup> 1959 Declaration (note 12 above).

<sup>153</sup> UDHR, (note 26 above) 1948, art 25.

<sup>154</sup> ICESCR (note 28 above), art 10(3)..

<sup>155</sup> Ibid, UN Committee on Economic, Social and Cultural Rights (CESCR), No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), (1991), E/1992/23, <<http://www.refworld.org/docid/47a7079a1.html>>.

<sup>156</sup> Ibid.

<sup>157</sup> ICCPR (note 28 above) arts 6, 10 and 14.

principle of non-discrimination.<sup>158</sup> The Covenant acknowledges that the family is the natural and fundamental unit of society and is entitled to protection by society and the state.<sup>159</sup>

The CRC deals with four general principles: non-discrimination,<sup>160</sup> best interests of the child,<sup>161</sup> right to life, survival and development<sup>162</sup> and respect for the views of the child.<sup>163</sup> All these principles are of great significance in the implementation of the rights in the CRC, especially those affecting children in street situations.

### 3.2.1. International Law on Rights of Children in Street Situations

In its General Comments, the Committee of the Rights of the Child includes children ‘in street situations’ in its list of children in ‘potentially vulnerable situations’:

not living with their biological parents;... *in street situations*...; who have already experienced violence; ...in low socio-economic urban environments, where guns, weapons, drugs and alcohol may be easily available...affected by HIV/AIDS or who are themselves HIV infected; who are malnourished; looked after by other children; who are themselves carers and heads of households; born to parents who are themselves still under 18<sup>164</sup>

Article 2 of the CRC enjoins states to respect, protect and fulfil the rights in the CRC without discrimination to all children regardless of a child’s, or her parent’s, social origin, property or other status.<sup>165</sup> This is a fundamental principle forming a basis for other rights in the CRC. The Committee on the Rights of a Child observed that this article obligates state parties to enshrine the principle of non-

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<sup>158</sup> ICCPR (note 28 above), art 24.

<sup>159</sup> Ibid, art 23

<sup>160</sup> CRC (note 21 above) art 2.

<sup>161</sup> Ibid, art 3.

<sup>162</sup> Ibid, art 6.

<sup>163</sup> Ibid, art 12.

<sup>164</sup> Emphasis added; UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence* (2011) CRC/C/GC/13, <<http://www.refworld.org/docid/4e6da4922.html>>.

<sup>165</sup> CRC (note 21 above) art 2.

discrimination in their domestic legislation. In clarifying the extent of the non-discrimination obligation, the Committee on the Rights of a Child stated in its fifth general comment that the non-discrimination obligation requires states to identify children who require special measures in realising their rights.<sup>166</sup> State parties to the CRC are therefore obligated to recognise children in street situations as a vulnerable group of children whose rights need special measure to realise.

The right to life, survival and development is impeded when a child is in street situations.<sup>167</sup> For the child to exercise this right to its fullest, other rights have to be realised. These include the rights to health, a good standard of living, education and others.

The right to health is compromised when a child is on the streets. This right is not only about the provision of health care but also encompasses the holistic development of the child.<sup>168</sup> States have to realise this right according to the child's biological, social, cultural and economic preconditions.<sup>169</sup> States are also obligated to ensure the child has access to health care services and remove all barriers to access these services such as financial, cultural or institutional constraints.<sup>170</sup> Children in street situations are not only disadvantaged because of their poor health and high vulnerability to contract HIV/AIDS and other diseases, but also because of the shunning they experience at health centres they attend.<sup>171</sup> States are enjoined to end this form of discrimination and ensure that children are attended to at all health centres without regard to their social circumstances or financial constraints so that state parties fulfil their international obligations.

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<sup>166</sup> UN Committee on the Rights of the Child, *General comment no. 5 General measures of implementation of the Convention on the Rights of the Child*, (2003), CRC/GC/2003/5, <<http://www.refworld.org/docid/4538834f11.html>>

<sup>167</sup> CRC (note 21 above) art 6(2).

<sup>168</sup> UN Committee on the Rights of the Child, *General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, (2013), CRC/C/GC/15, <<http://www.refworld.org/docid/51ef9e134.html>>

<sup>169</sup> *Ibid*, para 23.

<sup>170</sup> *Ibid*, para 29.

<sup>171</sup> Chapter 2 of this dissertation.

The right to an adequate standard of living is intertwined with the rights to food, shelter and clothing.<sup>172</sup> These rights are not realised for children in street situations. Those who live on the streets are not sheltered in habitable establishments but rather on the sides of the streets and other areas that are not conducive to development.<sup>173</sup> Article 11 of the ICESCR provides for this right.<sup>174</sup> It is also expounded by the Committee on the Rights of the Child in General Comment 12. The state is obligated to realise this right progressively and to take ‘necessary action’ to ensure that these rights are met.<sup>175</sup> Progressive realisation of rights means that a state moves expeditiously and effectively towards realising the goal without taking any retrogressive steps.<sup>176</sup> The right of children in street situations to an adequate standard of living cannot be progressively realised whilst the state is not actively taking positive measures to remedy the situation. Furthermore, purely legislative measures are not sufficient to fulfil the state’s obligations.<sup>177</sup> Measures have to be deliberate, concrete and targeted,<sup>178</sup> and they are to include administrative, financial, educational and social measures.<sup>179</sup>

The rights of children in street situations to protection from exploitation and abuse<sup>180</sup> are actively violated by actions from state and non-state actors. As seen in the previous chapter, children in street situations face physical, psychological, emotional and sexual abuse.<sup>181</sup> Violence is also a gendered experience with girls experiencing more sexual violence than boys.<sup>182</sup> Due to this, states are enjoined to have gender dimensions to address violence against children and all forms of gender

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<sup>172</sup> Hodgkin & Newell (note 20 above) 83–94.

<sup>173</sup> ‘Let the Children Live’, an online guide for street children of Colombia (2010) <<http://www.letthechildrenlive.org/life-on-the-streets/>>.

<sup>174</sup> ICESCR (note 28 above)

<sup>175</sup> ICESCR, (note 28 above) art 11, UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), (1999), para 6 <<http://www.refworld.org/docid/4538838c11.html>>.

<sup>176</sup> Ibid, CESCR, General Comment No 3 (note 38 above).

<sup>177</sup> CESCR, General Comment No 3 (note 38 above), para 4.

<sup>178</sup> Ibid, para 2.

<sup>179</sup> Ibid, para 7.

<sup>180</sup> CRC (note 21 above) art19.

<sup>181</sup> UN Committee on the Rights of the Child, General Comment No 13: The right of the child to freedom from all forms of violence, (2011) para 17

<<http://www.refworld.org/docid/4e6da4922.html>>.

<sup>182</sup> Ibid, para 19.

discrimination and to incorporate such dimensions in their prevention strategies.<sup>183</sup> The state is also obligated to ensure that child exploitation and abuse to children in street situations ends and to bring the perpetrators of such violence to account.

The right to education for a child in street situations is heavily impeded.<sup>184</sup> Children lack access to the basic right of acquiring primary education and their prospect of continuing with further studies is minimal. States are obligated to ensure that children receive education<sup>185</sup> but children living in the streets cannot afford the consequential expenses of school and are not able to attend classes regularly.<sup>186</sup>

It is reported that a 2014 resolution of the Committee on the Rights of the Child stated that there will be a general comment on children in street situations.<sup>187</sup> This is a ground-breaking move that solidifies the assertion that children in street situations are extremely vulnerable and that states need to fulfil their obligations towards realising children's rights. In as much as this progress is commendable, there is yet a lacuna in international law concerning children in street situations because there is no express undertaking for states to address the plight of children in street situations. Neither is there a clear stipulation addressing the sexual abuse suffered by girls in street situations. More so, the general comment should recognise the need for proper reference to these children not as 'street children' but as 'children in street situations'. International law should emphasise each state's responsibility towards children in street situations. Despite this, it must be stated that this normative gap cannot be filled by persuasive documents, but by binding instruments by which states can be held accountable.. Therefore the proposed General Comment is a beginning and should be followed up with a specific treaty or convention addressing the rights of children in street situations and the corresponding obligations of states.

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<sup>183</sup> Ibid, para 72(b).

<sup>184</sup> CRC General Comment 1 (note 149 above).

<sup>185</sup> Ibid.

<sup>186</sup> Refer to Chapter 2 of this dissertation.

<sup>187</sup> <<http://www.theguardian.com/global-development-professionals-network/2014/jun/24/un-street-children-general-comment>>

The realities of the children in street situations were reflected in a 1992 UN General Assembly resolution. This resolution emphasised that these children are vulnerable and ‘have the right to health, shelter, education, adequate standard of living and to freedom from violence and harassment.’<sup>188</sup> It was reiterated that legislation alone without implementation was not enough to address these violations.<sup>189</sup> Governments are required to formulate comprehensive solutions that ensure that children in street situations participate in society.<sup>190</sup> It was restated that a state cannot use resource constraints as a reason for inaction. A state is required to take all comprehensive, strategic and time bound measures to care and protect the child.<sup>191</sup> The Resolution also encourages the formation of a General Comment on ‘street children.’<sup>192</sup>

The CRC has not taken into account specific vulnerabilities of the girl child neither has it directly addressed them.<sup>193</sup> Article 36 is criticised as being too broad to provide protection to the girl child and art 24(3) is too narrow to encompass all forms of gender based violence against girl children.<sup>194</sup> Therefore the rights of the girl child in street situations can be found in the Convention on the Elimination of all forms of Discrimination against Women.

### 3.2.2. International Jurisprudence On Children In Street Situations

The case of *Villagran-Morales et al v. Guatemala* decided by the Inter American Court on Human rights (the court) was the first matter on state

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<sup>188</sup> UNGA ‘The plight of street children’ 92<sup>nd</sup> plenary meeting(UNGA Res 47/126 ) (1992) A/RES/47/126 preamble <<http://www.un.org/documents/ga/res/47/a47r126.htm>>.

<sup>189</sup> Ibid.

<sup>190</sup> UNGA Res 47/126 (note 188 above) para 2.

<sup>191</sup> CRC General Comment No 13(note 181 above) para 73.

<sup>192</sup> UNGA Res 47/126 (note 188 above), para 7.

<sup>193</sup> L Askari ‘Girls’ rights under international law: an argument for establishing gender equality as a *Jus Cogens*’ (1998) 8 *Southern California Review of Law and Women’s Studies* 3, 16.

<sup>194</sup> J Amoah, ‘The world on her shoulders: the rights of the girl-child in the context of culture and identity’ 2002 (4) 2 *Essex Human Rights Review* 15.

responsibility towards children in street situations.<sup>195</sup> In this case, four youths in street situations, three of whom were under the age of 18 years,<sup>196</sup> were abducted by armed men. Two of the abductors were members of the police. The children's bodies were later found discarded.<sup>197</sup> Criminal charges were filed against these two policemen however they were acquitted after a delayed court process. A case was brought<sup>198</sup> before the Inter American Commission on Human Rights which found Guatemala in violation of provisions of the Inter American Charter on Human Rights (IACHR). The Commission forwarded the application to the court after Guatemala's lack of response to the recommendations given.<sup>199</sup> The court was then faced with the question of whether the Guatemalan government had violated articles 1, 4, 5, 7, 9 and 25 of the IACHR.<sup>200</sup>

The court defined the right to life relating to children in street situations as *jus cogen*. The state had the duty to take positive measures to realise this right and also to refrain from arbitrarily depriving its citizens of it. The court also underscored that violations against children in street situations included 'threats, harassment, torture and murder.' The state had had many opportunities to address these violations through investigations, prosecutions and punishment but had failed and instead had granted impunity to the perpetrators, which therefore violated the right to life of children in street situations.<sup>201</sup> The court emphasised the duty of the state to protect children within its jurisdiction. The lack of this protection and the action of state actors in actively violating children's rights meant that children were being subjected to 'double aggression.'<sup>202</sup>

Of particular note is the analysis of the court concerning the right of the child to the protection found in art 19 of the IACHR:

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<sup>195</sup> *Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala*, Inter-American Court of Human Rights (IACHR), 19 November 1999, (Villagran Morelles) <<http://www.refworld.org/docid/4b17bc442.html>>

<sup>196</sup> Villagran Morelles (note 195 above) para 77.

<sup>197</sup> Ibid.

<sup>198</sup> Casa *Alianza* and the Center for Justice and International law.

<sup>199</sup> Ewelukwat (note 44 above) 97.

<sup>200</sup> Villagran Morelles (note 195) paras 2–3.

<sup>201</sup> Ibid, para 139 referring to the Commission's findings.

<sup>202</sup> Ibid, para 146.

In the light of Article 19 of the American Convention [IACHR], the Court wishes to record the particular gravity of the fact that a State Party to this Convention can be charged with having applied or tolerated a systematic practice of violence against at-risk children in its territory. When States violate the rights of at-risk children, such as ‘street children’, in this way, it makes them victims of a double aggression. First, such States do not prevent them from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the ‘full and harmonious development of their personality’ *[footnote omitted]* even though every child has the right to harbour a project of life that should be tended and encouraged by the public authorities so that it may develop this project for its personal benefit and that of the society to which it belongs. Second, they violate their physical, mental and moral integrity and even their lives.<sup>203</sup>

A child’s rights are not only violated by the violence and abuse that he or she faces on the streets but also by the failure of the state to remove the conditions that cause children to move to the streets in the first place. The court also affirmed the fact that children in street situations were categorised as vulnerable children in need of special protection from the state. The court delineated articles of the CRC that were relevant to children in street situations as including art 2 (non-discrimination), art 3(2), art 6 (life, survival and development), arts 20(1), (2) (a child deprived of a family environment), art 27(1), (3) (adequate standard of living) and art 37 (prohibition of torture, arbitrary deprivation of liberty).<sup>204</sup> The case was also of great importance as it placed the rights of the child in the greater sphere of the human rights normative framework and not merely within the ambit of child rights’ violations.

The section below outlines the African regional normative framework governing children in street situations.

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<sup>203</sup> Villagran Morelles (note 195), para 191

<sup>204</sup> Ibid, para 195.

### 3.3. REGIONAL LAW

#### 3.3.1. African Charter On Human And Peoples Rights

The African system of human rights is governed by the African Charter on Human and Peoples Rights (ACHPR) which restates fundamental human rights. Article 4 refers to the right to life and imposes a positive obligation on States to respect life. This right is violated when children in street situations are beaten, raped, maimed and otherwise abused. This right is intertwined with the right to enjoy the best attainable state of physical and mental health.<sup>205</sup> The ACHPR provides for the rights of the child in its art 18(3) that: ‘The State shall ensure the elimination of ... discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.’

This provision is criticised as providing for the rights of children by interlinking them with women and not as stand-alone rights.<sup>206</sup> However, the fact that all international declarations and conventions on child rights are applicable in Africa is a progressive step towards having an all-inclusive child rights normative system in Africa. This in turn ensures that states are held accountable for all violations of rights not spelt out in the instrument itself. It is also a positive step since it can be construed and used by courts in Africa to interpret and apply children’s rights widely and in a broader perspective.

#### 3.3.2. African Charter On The Rights And Welfare Of The Child

Even with the CRC in place, African states have determined that the particularities of the African context are not adequately reflected in the CRC.<sup>207</sup> This is because the CRC was not drafted by African States and several crucial contextual matters such as female circumcision were not addressed. Thus the creation of the African Charter on the Rights and Welfare of the Child (ACRWC) came eight

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<sup>205</sup> ACHPR (note 28 above), art 16.

<sup>206</sup> Chirwa (note 81 above).

<sup>207</sup> G Bekker, ‘The African Committee of Experts on the Rights and Welfare of the child’ in Manisuli Ssenyonjo (ed) *The African Human Rights System: 30 Years of the African Charter* (2012) 259, 251.

months after the CRC.<sup>208</sup> The ACRWC was meant to be complementary to the existing United Nations provision in order to promote child rights in Africa.<sup>209</sup> The ACRWC enhances child rights by adopting a ‘holistic approach to issues relating to the rights and welfare of the child by affirming the principle that rights are indivisible and interdependent’.<sup>210</sup>

The ACRWC provides the rights of children; however it does not specifically mention vulnerable children or children in street situations. However, it provides for the inherent right to life and how it is to be protected by law. This is significant to children in street situations because the right to life is not a stand-alone right but is interconnected with many other rights.<sup>211</sup>

The ACRWC places a higher obligation than the CRC<sup>212</sup> on state parties to assist parents and guardians in providing material assistance to children with regard to health, education, clothing and housing.<sup>213</sup> This provision is of importance specifically to children in street situations as it relates to the underlying reasons why children leave their homes. States have an obligation to ensure that children in vulnerable situations continue to receive food, shelter and healthcare.

### **3.3.3. African Committee Of Experts On The Rights And Welfare Of The Child**

The body monitoring the implementation of the ACRWC is the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). This body receives state reports, issues recommendations, writes General Comments and hears communications from state parties, individuals and organisations. Although there has not been a clear mention of children in street situations by the ACERWC in its work, it has expounded on the rights in the ACRWC as seen below.

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<sup>208</sup> G Bekker (note 207 above) 250.

<sup>209</sup> Draft Resolution on the Signature and Ratification of the African Charter on the Rights and Welfare of the Child, CM/Draft/Res.13 (LXIII) Rev.1.

<sup>210</sup> Chirwa (note 81 above). at 157.

<sup>211</sup> ACRWC (note 14 above), art 5(1).

<sup>212</sup> B Mezmur ‘The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero-sum game?’ (2008) 23 *SAPR/PL* 13.

<sup>213</sup> ACRWC (note 14 above) art 20 (2)(a).

To date the ACERWC has issued one General Comment concerning children of incarcerated parents.<sup>214</sup> In this General Comment, the right to life, survival and development was explained. The ACERWC has stated that the use of the word ‘inherent’ in the ACRWC connoted that the right exists automatically and was not bestowed; therefore society has an obligation to protect it by law.<sup>215</sup> The state is also obligated ‘to ensure that appropriate measures are taken to prolong the child’s life, to realise his or her right to survival by using comprehensive policies and others to ensure the right to development is also realised’.<sup>216</sup> The right to life of children in street situations, and their right to survival and development cannot be realised when the state does not realise the children’s right to health, food, shelter, education and adequate standard of living.<sup>217</sup>

The ACERWC has heard and decided on one communication concerning the rights of the child in the ACRWC. This was the ‘Decision on the Communication Submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (On Behalf of Children of Nubian Descent in Kenya) against the Government of Kenya’ (the *Nubian* case).<sup>218</sup> The *Nubian* case primarily discussed the right to a name and a nationality. It also expounded on the right to health. In this it quoted the African Commission jurisprudence in the *Purohit* case, which stated that the right to health is inclusive of the right to health facilities and that services are to be given to all without discrimination.<sup>219</sup> The ACERWC in the *Nubian* case therefore held that ‘access to health facilities, a lower level of contact with health promoting measures and medical assistance, and a lack of provision of primary and therapeutic health resources and programs is inconsistent with respect

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<sup>214</sup> ACERWC General Comment 1 on art 30 of the African Charter on the Rights and Welfare of the Child on ‘Children of incarcerated parents and primary caregivers’ (2013) ACERWC/GC/01.

<sup>215</sup> *Ibid.*, para 25.

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*, para 26.

<sup>218</sup> Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (On Behalf of Children of Nubian Descent in Kenya) against the Government of Kenya; No 002/Com/002/2009. (*Nubian* case)

<sup>219</sup> *Purohit and Moore v. The Gambia*, African Commission on Human and People’s Rights, Communication 241/2001, para 80.

for the child's right to the highest attainable standard of health'.<sup>220</sup> Moreover, ACERWC stated that health service programs have to include the most vulnerable.<sup>221</sup> Children in street situations are vulnerable and the state is obligated to realize this right to health. This entails providing health facilities and indiscriminate health care to children in street situations. Furthermore, failure to provide children with electricity, drinking water and medicine also amounts to violation of the right to health.<sup>222</sup>

### 3.4. TANZANIA'S NORMATIVE FRAMEWORK ON CHILDREN IN STREET SITUATIONS

Tanzania ratified the ICCPR, ICESCR, the CRC, ACHPR, CEDAW, and the ACRWC with little or no reservations.<sup>223</sup> By her ratification, Tanzania is bound by the principle of *pacta sunt servanda*<sup>224</sup> to fulfil her obligations in good faith. Tanzania has since then incorporated international law into her domestic legislation with the promulgation of the Law of the Child Act of 2009 (LCA). Together with this law, there is other legislation in the broader legal framework that impacts on children's rights and forms part of the normative regulatory framework regarding children. This legislation includes the Constitution of the United Republic of Tanzania (1977), Law of Marriage Act (1971) and the Penal Code Act Cap 16 (1981). Subsidiary legislation has also proven to be fundamental in further expounding of the law. A pertinent illustration is the Juvenile Court Rules recently passed to elucidate on the principles of the LCA.

#### 3.4.1. Law Of The Child Act

As seen in chapter 2 above, children in street situations are forced onto the streets due to many circumstances including family breakdown and economic

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<sup>220</sup> The *Nubian* case (note 218) para 59.

<sup>221</sup> Ibid, para 61.

<sup>222</sup> *Free Legal Assistance Group and Others v Zaire*, African Commission on Human and People's Rights, Communications No 25/89, 47/90, 56/91, 100/93.

<sup>223</sup> See note 28 above.

<sup>224</sup> VCLT (note 25 above) art 26.

hardship. All these situations compel a child to leave home and seek refuge in the streets, whether temporarily or on a permanent basis. However, on the streets they become more vulnerable to the violation of their rights by state and non-state actors. Tanzania does not have an adequate structure to address this problem, nor to provide social services and alternative care.

The Law of the Child Act (the Act) states that the child has the right to protection from torture, cruel, inhuman punishment or degrading treatment.<sup>225</sup> The Act further states that ‘the term “degrading treatment”... means an act done to a child with the intention of humiliating or lowering his dignity.’<sup>226</sup> This treatment includes being beaten, maimed, raped, arbitrarily arrested and detained, and hosed down with cold water in winter. This provision echoes other international instruments<sup>227</sup> and therefore all such actions done by state and non-state actors towards children in street situations are in violation of children’s rights.

There is a prohibition of any person from employing or engaging a child in any activity that may be harmful to his health, education, mental, physical or moral development.<sup>228</sup> This is supported by the International Labour Organisation Conventions Number 182 and 139. Children in street situations are however forced to beg for alms, do other menial jobs, children’s rights to education, and to play and recreation are severely hindered. This work also considerably stunts the child’s health, education, moral, mental and physical development.

The Law of the Child Act provides for the due process for violation of children’s rights. Any violation that has been categorised as an ‘offence’ results to a fine of five million Tanzanian shillings and/or six months imprisonment.<sup>229</sup> In Tanzania, all criminal proceedings are run by the state. This means that the police investigate crimes while state attorneys prosecute. It is challenging for children in street situations to lay charges in order to gain access to the criminal justice system for their matters to be heard, therefore many of these violations go unpunished.

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<sup>225</sup> LCA (note 11 above), s13.

<sup>226</sup> Ibid.

<sup>227</sup> ICCPR (note 28 above) (Acceded 11 Jun 1976); , UN GA, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1984), U.N.T.S, vol. 1465, p. 85..

<sup>228</sup> LCA (note 11 above), s 12.

<sup>229</sup> Ibid, s 14.

The Act mirrors the African Charter on the Rights and Welfare of the Child in stipulating duties and responsibilities for children with several alterations:

15. Notwithstanding any provisions of this Act, a child shall have a duty and responsibility to

- (a) Work for the cohesion of the family;
- (b) Respect his parents, guardians, superiors and elders at all times and assist them in case of need;
- (c) Serve his community and nation by placing his physical and intellectual abilities at its service in accordance with his age and ability;
- (d) Preserve and strengthen social and national cohesion; and
- (e) Preserve and strengthen the positive cultural values of his community and the nation in general in relation to other members of the community or the nation

The first and most important difference between the ACRWC and the Act is that the duties of the child in the Act are paramount to all other provisions in the Act. The use of the word ‘notwithstanding’ implies the supremacy of the provisions that follow as compared to the provisions throughout the Act. Giving a child in street situations the onerous obligation to ‘respect’ all superiors and elders at all times is an indefinable duty. This together with the duty to serve, preserve, work, strengthen and respect, can be construed as an attempt to culturally define the child’s role in Tanzania. This can be used by state actors and other non-state actors to take advantage of children in vulnerable situations under this guise of demanding respect. Most especially for children in street situations, the Act lists the duties that the children ought to fulfil towards the community and adults. These can be misconstrued so as to contribute to the abuse of these children leading to assault, exploitation and sexual, physical and psychological abuse.

Section 16 of the Act provides for a child in need of care and protection. The Act includes several categories of children who form part of the population of children in street situations. A child is defined as needing care and protection if he or she:

- (a) is an orphan or is abandoned by his relatives;
- (b) has been neglected or ill-treated by the person who has the care and custody of the child or by his guardian or parents;
- (c) has a parent or guardian who does not exercise proper guardianship;

- (d) is a destitute;
- (e) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child;
- (f) is wandering and has no home or settled place of abode;
- (g) is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises or place for the purpose of begging or receiving alms;
- (h) accompanies any person when that person is begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise;
- (i) is under a care of a destitute parent;
- (j) frequents the company of any reputed criminal or prostitute;
- (n) is below the age of criminal responsibility and is involved in an offence other than a minor criminal matter;
- (o) is otherwise exposed to moral or physical danger.

Orphans are defined under the Act as children who have lost both or one parent through death.<sup>230</sup> Children in street situations fall into many of the categories mentioned above. Many are orphans, have fled their homes due to neglect and or ill-treatment, are destitute, wander in the streets, beg and receive alms, accompany people who beg and receive alms, are children of destitute parents, ‘frequent the company of criminals’, and are in moral, physical and emotional danger. Children in street situations are amply canvassed by this section. By stating that any child exposed to moral or physical danger, the Act went further than international law in recognising vulnerable children who face danger and in that way addresses children in street situations.

The Act provides four placement options for children who have been removed from situations of harm and are in need of protection and care.<sup>231</sup> These are: placement in an approved residential home, in the care of a fit person, with an

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<sup>230</sup> LCA (note 11 above), s 3.

<sup>231</sup> LCA (note 11 above), s 18(2).

approved foster parent and at the home of a parent, guardian or relative.<sup>232</sup> This ‘care order’ is given by the court to which a social welfare officer has applied. The order lasts for a maximum three years or until such time as the child reaches 18 years of age, whichever period arrives first.<sup>233</sup> The Act does not envisage different forms of placement for children in vulnerable situations such as child headed households as a form of alternative care. In this way, it inadvertently favours institutionalisation for children in street situations.

The drafting and content of the Act has been criticised. The wording of the Act limits the basic rights of children: they read as duties of the adult caretaker rather than independent rights that the child can claim against the state. The rights to food, shelter, clothing, medical care, education, liberty, play and leisure, special care for disabled children are grouped under a section entitled ‘Duty to maintain a child’. By this provision, the law mandates the parent to be the one to realise such rights. However, the state itself is not held responsible.<sup>234</sup> Children in street situations who do not have direct adult supervision or any person ‘having custody’ of them are then disadvantaged. This is because they do not have a person from whom they can claim direct enforcement of the prescribed rights. Moreover, since the law only imposes a duty on the carer and not the state itself the child in street situations is not empowered to have his or her right realised.

This outlook is also reflected in s 9 which commences with the right of the child ‘to life, dignity, respect, leisure, liberty, health, education and shelter from his parents.’<sup>235</sup> The realisation of this right diminishes when the law states that the parent is the bearer of responsibility and therefore does not give children autonomous rights. In the absence of the parent, the law provides that ‘parental responsibility may be passed on to a relative of either parent or a custodian by way of court order of any traditional arrangement.’<sup>236</sup> This again further precludes the child in a street situation from seeking a remedy from the state.

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<sup>232</sup> Ibid, s 18(3).

<sup>233</sup> Ibid, s 18(4).

<sup>234</sup> Ibid, s 8(1).

<sup>235</sup> Ibid, s 9(1).

<sup>236</sup> LCA (note 11 above), s 9(4).

The Act is significant as it consolidates the laws relating to children into one statute. It has merged international laws relating to child justice, welfare and other Acts to form one instrument which is internationally compliant.

### **3.4.2. Subsidiary Legislation Impacting On The Rights Of Children In Street Situations**

The 2014 Juvenile Court Rules provide for the treatment of minors in the exercise of their rights under the Act through the courts, and prior to their incarceration. Since many children in street situations are taken by police officers and incarcerated, these rules are particularly applicable to them. Rule 3 mentions children in street situations. This rule interprets a 'fit institution' to mean 'an approved residential institution for socially deprived children and street children or an institution that has care and control of children and it excludes any retention home or approved school'. The object of the rules is to ensure the rights stipulated in the law of the Child Act are implemented. The rules also recognise that children in street situations need special treatment.

In its rule 90, the Juvenile Court Rules state that a child mentioned in s 16 of the Act shall be regarded as suffering significant harm and in need of care and protection. After this identification, the social worker then approaches the court to determine whether the child can be placed either with his or her parents, other guardians or a fit institution.<sup>237</sup> Such an application is called an application for a care order in order to place a child in safety.<sup>238</sup>

A care order is also made where the harm is caused by the lack of care by the parent<sup>239</sup> or the child is 'beyond parental control.'<sup>240</sup> There is no further explanation given for this clause. This decision is made in the best interests of the child<sup>241</sup> and

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<sup>237</sup> Juvenile Court Rules 2014, rule 91, 92.

<sup>238</sup> Ibid, rule 94(2).

<sup>239</sup> Juvenile Court Rules (note 237 above), rule 100(b)(i).

<sup>240</sup> Ibid, rule 100(b)(ii).

<sup>241</sup> Ibid, rule 100(c).

with the child's participation.<sup>242</sup> These care orders are made in the best interests of the child.<sup>243</sup> However for a child in street situations who cannot be returned back to the parents or guardians, the only option provided in the Act and the rules is placement in an institution. The rules do not envisage any other form of care order that can be given to these children which is a great disadvantage to children in street situations. More so, the law does not provide for a provision of rehabilitation to accompany the care order. The rules do not provide for the participation of the child in choosing the method of assistance or 'care order'. The time frame for such a care order is not specified, and the court which can decide care orders is not specified.

Moreover, the entire body of rules does not show a gendered approach to children. Apart from the mention of children being held in separate facilities during incarceration, the rules do not specifically obligate adjudicators to respond or treat the girl child differently due to her special and more vulnerable state. This lack of recognition of the abuse that the girl child faces is in effect discriminating against the girl child. The rules also do not provide for means in which the girl child will be catered for should she have a child or be pregnant. This omission is detrimental to the girl child and signifies that the law does not take into account the realities faced by girls on the streets.

### **3.4.3. Other Laws Affecting Children In Street Situations In Tanzania**

The Constitution of the Republic of Tanzania of 1977 contains a Bill of Rights that protects all human beings. It states that all human beings are free, equal and are entitled to respect of their dignity.<sup>244</sup> This includes children. The Constitution also provides for the prohibition of discrimination<sup>245</sup> and one of the grounds of discrimination that are proscribed includes 'station in life'. Although age is not mentioned categorically, it can be inferred from this category is included in the discrimination prohibitions. This is relevant to children who because of their 'station

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<sup>242</sup> Ibid, rule 97.

<sup>243</sup> LCA (note 11 above), s 4.

<sup>244</sup> Constitution, art12.

<sup>245</sup> Constitution, art 13

in life<sup>246</sup> find themselves in street situations and are subjected to a greater degree of discrimination and abuse.

Of all the other laws that relate to children, the Penal Code Act<sup>247</sup> provides for offences to do with children. Desertion<sup>248</sup> and neglect<sup>249</sup> of children by their parents are crimes in the Penal Code. When children are neglected and deserted they try to survive on the streets in urban areas. Other such acts that cause children to go to streets are acts of cruelty to children. These include ill-treatment of children, female genital mutilation and injury.<sup>250</sup> However, despite criminal sanctions, these various forms of ill-treatment and abuse still continue and a growing number of children resort to the streets to find survival.

The Penal Code Act also provides for crimes such as defilement which is any sexual act done to a child below the age of 14 years.<sup>251</sup> The law proscribes that below that age, a child cannot consent to any form of sexual relations. Therefore the sentence for such a crime, if found guilty, is a minimum of 30 years. Children in street situations, especially girls in street situations, face these violations regularly. It is incumbent on the state to ensure that the perpetrators of such crimes are brought to court and legal action be instituted against them. Failure of the state to do so is tantamount to complicity and denotes failure in fulfilling her international obligations. The same Penal Code Act provides for assault and battery and other crimes 'to the person'.<sup>252</sup> The sentence attached to the crime of common assault is a maximum of one year.<sup>253</sup> Children in street situations do not have the capability to report the harm they experience to the police since the latter could also be the perpetrators. The violations experienced by the children are the embodiment of torture, cruel, inhuman and degrading treatment. The impracticality that the children

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<sup>246</sup> See chapter 2 above on poverty as a push factor causing children to move to the streets.

<sup>247</sup> PCA (note 54 above)

<sup>248</sup> Ibid, s166.

<sup>249</sup> Ibid, s 167.

<sup>250</sup> Ibid s 169A.

<sup>251</sup> PCA (note 54 above) s 136.

<sup>252</sup> Ibid s240.

<sup>253</sup> Ibid.

face of having recourse is proof of the derogation of the State in her international, regional and national obligations.

Another offence relating to children in street situations is in section 176 of the Penal Code stating that ‘every person wandering or placing himself in any public place to beg or gather alms or causing or procuring or encouraging any child or children to do so... shall be deemed idle and disorderly persons, and shall be liable to a fine not exceeding five hundred shillings or to imprisonment for a period not exceeding three months or to both such fine and imprisonment’.<sup>254</sup> Should that person be convicted before, the person is deemed a rogue and vagabond and shall be guilty of a misdemeanour and shall be liable for the first offence to imprisonment for three months and for every subsequent offence to imprisonment for one year.<sup>255</sup> For a child in street situations, this law punishes them for poverty and for the unfortunate circumstances that led to them being in street situations. It also increases their likelihood of incarceration for long periods of time which is in itself a great disadvantage and causes the possibility of rehabilitation to dwindle. Tanzania is currently going through a constitutional amendment process. In the 2013 draft, in Chapter two, the draft Constitution provides for the fundamental objectives of the State. These include the prohibition of discrimination against peoples on basis of a person’s race, tribe, religion, affinity or *status*.<sup>256</sup> More so, the State is to ensure that assistance and social protection is provided to ‘... children.’<sup>257</sup> This places an unprecedented obligation directly to the State to ensure that children are provided with social protection and assistance. Although this obligation is narrow in nature, it is expounded in Article 42 where the rights of the child are outlined. These rights include education and play,<sup>258</sup> and to care and protection from his parents, guardians or an authority of the land.<sup>259</sup> This clause expands the current position in the Law of the Child in signifying that where the child has no parents or guardians, the

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<sup>254</sup> Ibid s 176 (2).

<sup>255</sup> Ibid s 177.

<sup>256</sup> Constitution, art 11 (c) (ii)

<sup>257</sup> Constitution, art 11 (c) (iv)

<sup>258</sup> Constitution, art 42 (1) (c)

<sup>259</sup> Constitution, art 42 (1) (g)

‘authority of the land’ will be responsible for his or her care and protection. This clearly means that the State recognises its obligation in being the primary care giver for a child with no parents or guardians. This is especially true for children in street situations.

#### 3.4. CONCLUSION

There is a crucial need for improvement in the international, regional and national normative framework governing the rights of children in street situations, and more specifically, for female children. This has to begin with the explicit recognition of children in street situations in binding international instruments. It is necessary to institute measures that are realistic and achievable, and have a monitoring mechanism that ensures the realisation of those measures. The national normative framework on children in street situations has endeavoured to incorporate child rights and the need of the vulnerable child to be protected. However, it has several limitations and also has not considered the special position of the girl child.

## **CHAPTER FOUR: FACTUAL ANALYSIS OF THE PRACTICE OF TANZANIA IN REALISING THE RIGHTS OF CHILDREN IN STREET SITUATIONS**

### 4.1. INTRODUCTION

The above chapters dealt with the global situation of children in street situations and the normative framework that Tanzania has in place to address the problems assailing children in street situations. The current chapter addresses the implementation of the laws in Tanzania by using reports that Tanzania submits to the Committee on the Rights of the Child (CRC Committee) and the shadow reports by NGOs working in the field. At the outset, the chapter describes the commendable actions taken by the state, including policies and strategies the state has set in place, to regulate and deal with children in streets situations. The chapter goes on to reveal areas in which the state has failed to realise the rights of these children. Finally, the chapter ends with concluding remarks about the state's obligation towards children in street situations in Tanzania.

### 4.2 COMMENDABLE ACTIONS BY THE STATE

Tanzania has several policies that positively impact on children in street situations. These policies stem from the laws that form the basis of the state's implementation of its policies. The policies themselves can be seen as a commendable first step taken by the state to realise the rights of children in street situations. The most important policy documents include *Tanzania Development Vision (2025)* and *Poverty Reduction Strategy Program (2005)* which aim to improve the standard of living of all children.<sup>260</sup>

The National Strategy for Growth and Reduction of Poverty (NSGRP)) recognises that urban poverty is evident and is characterised by children on the

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<sup>260</sup> Committee On The Rights Of The Child, 'Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention, Concluding Observations Of The Committee On The Rights Of The Child, United Republic Of Tanzania' (2001) CRC/C/15/Add.156, para 4.

streets.<sup>261</sup> It also emphasises that development must be sustainable and must not adversely affect the development needs of future generations.<sup>262</sup> Two major goals guiding the poverty reduction strategy are ‘improved quality of life ... (for) ... vulnerable groups’ and ‘reduced inequalities across ... age, gender and vulnerable groups.’<sup>263</sup>

Through the NSGRP, the state recognises that children become sexually active at an early age. This is of great import to children in street situations who need to be provided with reproductive and contraceptive training and facilities since they are especially vulnerable to sexual abuse.<sup>264</sup> The NSGRP provides plans to improve education and increase the level of literacy throughout the country and especially education for girls.<sup>265</sup> The NSGRP envisages an increase in social protection for vulnerable children by the year 2010 and reduced violence against women. One of the goals in the NSGRP is to: ‘ensure all (boys and girls) children, including those with disabilities, orphans and other most vulnerable children (e.g. child labourers, street children) are able to effectively access and complete high quality, child friendly and gender sensitive primary education’.<sup>266</sup>

The NSGRP involves ‘awareness creation’ and ‘review of education policy to reflect on inclusive education practices’ as a way to demonstrate the need to address the lack of education.<sup>267</sup> The need to prioritise the development, funding and implementation of strategies relating to vulnerable children is also delineated and a strategy for building shelters is identified.<sup>268</sup> This strategy is also linked to the broader Millennium Development Goals (MDGs) which are a guiding

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<sup>261</sup> The United Republic Of Tanzania, National Strategy For Growth And Reduction Of Poverty (NSGRP) (2005) Vice President’s Office, para 2.2.3.

<sup>262</sup> Ibid, para 4.2.8.

<sup>263</sup> Ibid, para 5.3.2.

<sup>264</sup> Ibid, para 5.3.2.1.

<sup>265</sup> Ibid, para 5.3.2.1.

<sup>266</sup> National Network of Organisations working with Children (NNOC) ‘NGO’s Report on the Implementation of the United Nations Convention on the Rights of the Child in Tanzania’ (2005) 32.

<sup>267</sup> NSGRP (note 261 above) Annex Cluster 2, Goal 1 at 14.

<sup>268</sup> Ibid.

factor in Tanzania's poverty reduction scheme which consequently impact on children in street situations.

The NSGRP acknowledges the role of civil societies which are formally included and valued for their provision of monitoring and evaluation activity, and for many other activities.<sup>269</sup> Together with the NSGRP, the community-based strategic plan, which was cited by the government as one of the ways to control and address the issues facing children in street situations, has not been adopted by the Inter Ministerial Technical Committee (IMTC).<sup>270</sup> Unlike Rwanda, Tanzania has not publicised its strategic plan for children in street situations.<sup>271</sup>

Tanzania Development Vision 2025 was drafted in 1995.<sup>272</sup> It aims at attaining self-reliance in satisfying the basic needs of all people, children included. However, many of the problems that lead to poverty still assail Tanzania to date: donor dependency, weak economic management, failure in organisation of production; and ineffective implementation. Together with having a direct impact on children in street situations, these problems are some of the factors that lead children to resort to living on the streets. Moreover, they also explain why the response to addressing the challenges faced by children in street situations is slow. The aims of *Vision 2025* include access to quality primary health care for all, universal primary education and access to quality reproductive health services for all individuals of appropriate ages.<sup>273</sup> These aims and goals are yet to be realised for children in street situations. *Vision 2025* has not provided for the care needed by vulnerable groups. Although the vision in itself is a commendable document, the challenge of implementation still remains.

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<sup>269</sup> Ibid at para 6.3.2.

<sup>270</sup> Civil Society Organisations (CSO) 'Report on Tanzania's Implementation of the Convention on the Rights of the Child' (2007–2012) at 29 para 9.1(b); CRC Committee 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Third to Fifth Periodic Reports of States Parties due in 2012 United Republic of Tanzania' CRC/C/TZA/3-5 (2013) at para 256.

<sup>271</sup> Republic Of Rwanda, Minister In The Prime Minister's Office In Charge Of Family Promotion And Gender Strategic Plan For Street Children, (2005) P 15.

<sup>272</sup> United Republic of Tanzania, Planning Commission, Tanzania Development Vision (Tanzania Development Vision) 2025 <[www.tzonline.org/pdf/theTanzaniadevelopmentvision.pdf](http://www.tzonline.org/pdf/theTanzaniadevelopmentvision.pdf)>

<sup>273</sup> Tanzania Development Vision (note 272 above) at 12.

As part of her international obligations, Tanzania reports to the CRC Committee about actions taken to realise children's rights. In her 2005 Report, Tanzania reported that she introduced human rights training in police curricula so as to prevent police brutality.<sup>274</sup> This statement was an attempt to address the recommendation by the CRC Committee.<sup>275</sup>

More recently in 2013, the process of adoption of a new Constitution<sup>276</sup> has also been recognised as a positive measure that the state has taken which will further promote children's rights. The CRC Committee recognised that the process of making the right to education a guaranteed right in the Constitution is a positive step. However, the disjuncture between the law and its implementation is still evident.<sup>277</sup>

Children in street situations are subjected to torture or other cruel, inhuman and degrading treatments of punishment. This includes corporal punishment. In order to curb this treatment, the government states that it plans to introduce a desk for guidance and counselling in all schools as one of the alternative forms of discipline. Children in street situations are further discouraged from going to schools for fear of corporal punishment. The removal of this punishment would act as an incentive for children in street situations to pursue formal education.

The government in its reply to the CRC Committee at the 2006 meeting stated that one of the measures instituted was the empowerment of the Commission for Human Rights and Governance (CHRGG) 'to receive, investigate and enquire into complaints regarding the violation of human rights and principles of good governance'. The public is encouraged to submit their complaints without

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<sup>274</sup> CRC Committee 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties due in 2004, United Republic of Tanzania' (2005) CRC/C/70/Add.26, para 125.

<sup>275</sup> CRC Committee, 86<sup>th</sup> session, 'Item 4 of the Provisional Agenda, List of Issues in Relation to the Combined Third and Fifth Periodic Reports of The United Republic of Tanzania' (2014) CRC/C/TZA/Q/3-5, para 3.

<sup>276</sup> United Republic of Tanzania, Draft Constitution (2013) <[www.constitutionnet.org/.../tanzania\\_draft\\_constitution\\_2013-english.pdf](http://www.constitutionnet.org/.../tanzania_draft_constitution_2013-english.pdf)>.

<sup>277</sup> (CRC/C/TZA/Q/3-5 note 275 above), para 16.

discrimination to the CRC Commission.<sup>278</sup> In complying with the recommendation of the CRC Committee, Tanzania has established a special desk for children in the CRC Commission. The CRC Commission requires it to act as a children's ombudsman and to advocate for their rights.

In 2008, Tanzania created a multi-sector task force in response to violence against children. This task force collected data from around the country. It highlighted the sexual, physical and other violence that children face. The task force recommended a comprehensive response to violence against children. This response involves five entities/departments: the community; legal and justice; social welfare; public health system; and education.<sup>279</sup> This is a commendable action since it increased the data available on children in street situations.

An important action that the State took was to conduct surveys to establish the number of children in street situations in collaboration with Non-Governmental Organisations and discovered that in the year 2009, there were 2 288 children in street situations of which 538 were girls.<sup>280</sup> The survey distinguished between 'full-time' and 'part-time' children and found that 88.7% were 'full-time' while 11.3% were 'part-time'. These terms were defined according to the residence of the children in street situations. 'Full-time' children in street situations were those who spent nights on the streets while 'part-time' CSSs were those who spent days in the streets and at night returned home.<sup>281</sup> This survey is important because it leads to determination of how best children in street situations can be assisted.

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<sup>278</sup> The United Republic of Tanzania, Ministry of Community Development Gender and Children, 'Consideration of the Second CRC Periodic Report 1998–2003, Answers to Questions Raised for Additional and Updated Information to be Considered in Connection to Second CRC Report during the UN CRC Committee Session' (2006) 27 para 3.

<sup>279</sup> Multi Sector Task Force 'A National Response to Violence Against Children' (2010) 8 <[http://www.mcdgc.go.tz/data/National\\_Response\\_to\\_Violence\\_Against\\_Children.pdf](http://www.mcdgc.go.tz/data/National_Response_to_Violence_Against_Children.pdf)>.

<sup>280</sup> (CRC/C/TZA/Q/3-5 note 275 above), para 255.

<sup>281</sup> Ibid.

In 2013, the Gender and Children's desk was instituted and situated at police stations popularly known as 'dawati'.<sup>282</sup> The desks are staffed by female police officers and are meant to encourage women and children to report any form of gender-based violence and child abuse. This positive move identifies the causes of vulnerability and addresses them in such a way that it curtails influx of children onto the streets of towns and cities. However it is yet to be seen how this impacts and alleviates the situations faced by children already in street situations.

In 2009, a study done by UNICEF and the government of Tanzania on violence against children revealed that the three out of any ten females, and one out of every seven males, reported at least one experience of sexual violence prior to the age of 18.<sup>283</sup> Tanzania has also created three 'One Stop centres' in three districts. These One Stop centres are based at a hospital where there is a police officer on duty as well as a counsellor and provision for legal help and medical care for child victims of sexual abuse.<sup>284</sup> This is a pilot project in mainland Tanzania and is in theory a great initiative to address the problem of sexual violence against children. More preventive measures should also be emphasised.<sup>285</sup>

Tanzania stated that programs and services for abandoned children include:

*Dropping (sic)* in centres so as to provide shelter, education and vocational skills for abandoned children including street children, before reintegration to formal schooling and reunification with their families; Temporary care; Reunification/resettlement; and National Guidelines for service to street children, which gives direction on how to provide street children with services and remove them from the streets.<sup>286</sup>

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<sup>282</sup> Consideration of Tanzania's Third to Fifth Periodic Reports (note 270 above), para 268. 'Dawati' is Swahili for desk.

<sup>283</sup> Ibid, para 266.

<sup>284</sup> Ibid para 268.

<sup>285</sup> See chapter 5 below for recommendations.

<sup>286</sup> CRC Committee 'Written Replies by the Government of the United Republic of Tanzania Concerning the List of Issues' (CRC/C/TZA/Q/2) received by the CRC Committee Relating to the Consideration of the Second Periodic Report of Tanzania (2006), (CRC/C/70/Add.26) CRC/C/TZA/Q/2/Add.1 para (h).

Despite the existence of these guidelines and programs, the state has yet to implement these programs.

#### 4.3. AREAS OF IMPROVEMENT

Despite the policies created by the state for addressing the challenges faced by children in street situations, their implementation is still wanting. The lack of financial resources to carry out the programs and policies is one of the major impediments to the realisation of the rights of children in street situations. The scarcity of juvenile courts in the country and lack of implementation of policies form some of the challenges that hinder the state to realise the rights of children in street situations.

The state has a duty to prioritise the allocation of budgetary resources to children to the maximum extent of available resources.<sup>287</sup> Although Tanzania boasted about its favourable allocation of the budget for children in 2010,<sup>288</sup> the Ministry of Community Development, Gender and Children still receives a paltry budget allocation.<sup>289</sup> This indicates that the allocation to children and other vulnerable groups is not a priority. In its first report, Tanzania stated that it was instituting measures to fulfil her obligations including allocation of ‘adequate financial resources’ through the Poverty Reduction Strategy, and the ‘National Technical Committee’. These measures are no different ten years later indicating the lack of progress that the country is undergoing in terms of a large budgetary allocation for children.

Although the state claims that it has established juvenile courts in all regions;<sup>290</sup> there are claims to the contrary. Juvenile courts in many regions are

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<sup>287</sup> Committee on the Rights of the Child, ‘Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child, United Republic Of Tanzania’ (2001) CRC/C/15/Add.156, para 18.

<sup>288</sup> Consideration of Tanzania’s Third to Fifth Reports (note 270 above), para 16.

<sup>289</sup> Question From Hon. Dr. Lucy Sawere Nkya To The Ministry Of Community Development, Gender And Children (2007) Session 9, 3<sup>rd</sup> Sitting, Question No 39-9-2007 <<http://Newpolis.Parliament.Go.Tz/Index.Php?R=Session/Default/Viewans&Id=3266>>.

<sup>290</sup> 2001 Concluding Observations (note 287 above) para 7.

normal courts, with normal court structures.<sup>291</sup> These courts are currently held in ordinary court structures which are intimidating and not child-friendly. Apart from the juvenile court in Dar es Salaam, all other regions in mainland Tanzania do not have juvenile courts.

Tanzania has been urged by the CRC Committee to ‘provide appropriate care and protection to children deprived of a family ... (including) ... children in street situations.’<sup>292</sup> The CRC has urged Tanzania report on concrete measures to deinstitutionalising children,<sup>293</sup> regulation and supervision of alternative care institutions and improving living conditions.<sup>294</sup> In response to this, the state created a code of standards for alternative care.<sup>295</sup> However, this Code is yet to be implemented or disseminated. The state established retention homes and approved schools, which are the holding facilities for juvenile offenders. This is of great import to children in street situations as they frequently face the criminal justice system. The state has established six retention homes for children and one approved school.<sup>296</sup>

The presence of one approved school as a measure to address the numbers of children in street situations is meagre one that does not address the situation adequately. This lack of a specialised juvenile justice system, of personnel to deal with children in conflict with the law, or sufficient personnel to conduct cases in an appropriate manner and a timely fashion constitutes a violation of the rights of the children in street situations.<sup>297</sup> Juvenile offenders may receive up to 12 strokes.<sup>298</sup> This punishment applies to (male) juveniles of 16 years and above.<sup>299</sup> The lack of

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<sup>291</sup> See for example Arusha District.

<sup>292</sup> List of Issues on Third and Fifth Report (note 286 above) para 14

<sup>293</sup> De institutionalising children entails that children who are in need of alternative care are not placed in institutions such as orphanages and instead placed with a foster or adoptive family

<sup>294</sup> Ibid.

<sup>295</sup> 2001 Concluding Observations (note 287 above) paras 40,41.

<sup>296</sup> Consideration of Third to Fifth reports (note 270 above) para 301.

<sup>297</sup> CSO’s report (note 270 above) at 33 para 9.1(g).

<sup>298</sup> Minimum Sentences Act Cap 90 of 1972, art 12.

<sup>299</sup> Ibid, art 98.

prohibition on corporal punishment is one which negatively and disproportionately affects children in street situations.<sup>300</sup>

Albeit that the state asserts that it is addressing police brutality through training, there is no documentation of a matter to show that any child victim was compensated or rehabilitated by the state because of the actions taken by its agents. Neither has there been a matter in which the perpetrators of this violence were brought to court or their actions called to question.<sup>301</sup> Although there is evidence that police conduct round-ups, beatings, and other forms of torture, the lack of remedial procedure confirms the assertion that the responsibility that the state takes for its actions towards children in street situations is negligible.<sup>302</sup>

The state was urged by the CRC Committee to provide statistical data disaggregated by age, sex, geographical location and socio-economic status 'if it was available'.<sup>303</sup> The danger in this availability clause is that it can be construed by the state that the need to provide data and statistics is an optional element and not essential to realising the rights of vulnerable children. This is evidenced by the current lack of proper documentation about the numbers of children in street situations.

An impediment to the realisation of the right of children in street situations to education is the fact that primary education, although principally free, is costly. Children (or their parents) are expected to contribute a minimum of approximately Tanzanian Shillings 5000/= per year for incidental costs to the school. Non-payment may lead the child to be expelled from school. The state has not placed an emphasis on the education of children in street situations. Most of the children interviewed in a

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<sup>300</sup> See also S Owen 'Global Initiative to End All Corporal Punishment of Children 'Briefing on The United Republic of Tanzania for the Committee on the Rights of the Child'' (2014)Pre-sessional Working Group

<sup>301</sup> 2001 Concluding Observations (note 287 above), paras 36, 37.

<sup>302</sup> See chapter 2 above.

<sup>303</sup> 2001 Concluding Observations (note 287 above).

survey done by the government in conjunction with several NGOs were either never enrolled in school or dropped out.<sup>304</sup>

Nearly 60% of adolescents in Tanzania have had sex before the age of 18.<sup>305</sup> This figure is not representative of children in street situations who face sexual violence as a greater threat due to their vulnerable state. Despite these figures, there is an informal age restriction imposed by the providers of condoms, birth control pills and other contraceptive methods.<sup>306</sup> This severely disadvantages girls living in the streets as it makes them vulnerable to HIV/AIDS, other sexually transmitted diseases and unwanted pregnancies.

Children in street situations are disproportionately affected by drug and substance abuse.<sup>307</sup> There are few rehabilitation centres and this severely disadvantages these children. Moreover, many of these centres are run by non-governmental organisations and not the state.<sup>308</sup>

NGOs play a vital role in the realization of the rights of children in street situations. Their actions include counselling, informal classes, vocational training and others.<sup>309</sup> Although this is a positive measure, the state has neglected its obligation as the primary duty-bearer for these children and has relinquished its role to NGOs. The state has an obligation to institute preventive measures and intervene at the community level to ensure that children in dangerous situations receive immediate help.

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<sup>304</sup> Ministry of Health and Social Welfare, Department of Social Welfare, Dogodogo, Kiwuhede & Makini, UNICEF, 'Final Report on the Rapid Assessment on the Situation of Street Children in Dar es Salaam Region,' (2012).

<sup>305</sup> African Medical & Research Foundation 'Giving Young Women a Voice in Rural Tanzania' note 119 <<http://uk.amref.org/where-we-work/our-work-in-tanzania/giving-young-women-a-voice-in-rural-tanzania/>>.

<sup>306</sup> IS Speizer et al 'Do Service Providers in Tanzania Unnecessarily Restrict Clients' Access to Contraceptive Methods?' (2000) 26(1) *Int'l Family Planning Perspectives* 13, 13, 14 <<http://www.guttmacher.org/pubs/journals/2601300.html>>. See also Strategic Plan as cited in TAWLA, Center for Reproductive Rights, 'Letter to CESC, Supplementary Information on the United Republic of Tanzania, Scheduled for Review by the Committee on Economic, Social, and Cultural Rights' (2012).

<sup>307</sup> See Chapter Two of this dissertation.

<sup>308</sup> CSO report (note 270 above) para 9.1. (e).

<sup>309</sup> Second Periodic Report (note 274 above) para 280.

Tanzania established the Department of Children Development within the Ministry of Community Development, Gender and Children (MCDGC) in July 2003.<sup>310</sup> The Minister in charge of MCDGC admitted that a big obstacle to implementing children's rights is the mind-set of adults, economic constraints, customary practices and ignorance.<sup>311</sup> Children in street situations are seen as a problem for society.<sup>312</sup> They are seen as 'hooligans, vagabonds and prone to commit crime.'<sup>313</sup> This negative perception of the children does not facilitate their growth or development. On the contrary, it continues to play a role in their negative behaviour by increasing the likelihood of abuse. This is aggravated by an inadequate public awareness of the rights of the child.<sup>314</sup> There has not been an effective response to address the perceptions towards children in streets situations.

Tanzania has been urged to work towards changing negative attitudes about children in street situations, and provide them with recovery and reintegration services.<sup>315</sup> In addressing these concerns, the state had a day in 2011 to raise public awareness on the problems facing children in street situations.<sup>316</sup> However, sensitisation of the public and changing of negative mind-sets against children in street situations cannot be done in one day. Therefore, the state cannot be said to have fulfilled her obligations by using 'one day of the African Child'.

#### 4.4. CONCLUSION

The actions of the state are mainly taking the form of strategies, plans and policies. Actual implementation and impact on the lives of children in street situations is minimal. The challenges begin with a lack of proper documentation and research concerning children in street situations. NGOs assist the government in providing for vulnerable children but not all the children in street situations are

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<sup>310</sup> NGO Group for the Convention on the Rights of the Child, Liaison Unit, State Party Examination of Tanzania's Second Periodic Report, Session 42 of the CRC Committee at 1.

<sup>311</sup> Final Report on Dar es Salaam Rapid Assessment (note 304 above), at 2.

<sup>312</sup> Final Report on Dar es Salaam Rapid Assessment (note 304 above), Summary.

<sup>313</sup> Ibid.

<sup>314</sup> Ibid.

<sup>315</sup> Consideration of Third to Fifth reports (note 270 above), para 254.

<sup>316</sup> Ibid, para 257.

beneficiaries of such programs. It is the state's obligation to provide for all the members of the community in Tanzania, most especially those who are in vulnerable situations; an obligation which the state of Tanzania is not fulfilling.

## **CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS**

### 5.1. INTRODUCTION

The preceding four chapters have analysed the legal and practical position of children in street situations in Tanzania. At the outset, the analysis commenced with an overview of the problems facing children in street situations globally and nationally. The overview was followed by a critically discussion of the legal framework surrounding the protection of the rights of the child in street situations. The legal framework included international, regional and national conventions and statutes that seek to provide for children in street situations. The dissertation then focused on the situation in Tanzania. The policies and strategies that the state has set in place for children in street situation were critically examined. This critique was aided by comparison with the work carried out by an NGO in order to provide a viable and effective alternative.

### 5.2. CONCLUSIONS

As a result of the analysis and critical examination provided in the first four chapters, the following conclusions have been reached:

#### **5.2.1. The Number Of Children In Street Situations Is Increasing**

These vulnerable children are mainly located in big cities of Tanzania including Arusha, Mwanza and Dar es Salaam. Many of these children are boys. They survive mainly by begging but some run businesses. Children in street situations face much abuse, and many of their human rights are inherently violated by life on the streets. These include the right to health, education, food and shelter, and the right to parental care.

#### **5.2.2. Causal Factors of Entry into the Streets**

The factors leading to children resorting to the streets include family breakdown, abuse at home, poverty and other hardships. Some of the children in street situations have resorted to the streets in order to provide sustenance for their families. Others have resorted to the streets because there was turmoil in the family

due to the difficult living circumstances. Many of the children have been abused at home, physically, sexually and verbally. When they arrive on the streets, the children are subjected to further abuse. This abuse is perpetrated by other children, government officials such as the police and the public, i.e. the community surrounding them. The abuse is usually unprovoked and occurs merely because children in street situations are vulnerable and do not have parental or other forms of support or protection. The right to respect of bodily integrity is severely curtailed in the streets when the police round up children in their attempts to 'clear the streets' when a dignitary enters a city. These children are the first suspects in any criminal activity occurring in the city and therefore their encounter with the criminal justice system is frequent. Girls in street situations face an extra vulnerability. Due to their gender, they are more susceptible to sexual assault and also to unwanted pregnancies. Girls are also more likely to be compelled to become sex workers, resorting to prostitution as a result of the harsh realities of trying to survive on the streets to survive.

### **5.2.3. Health Care**

The harsh reality of survival on the streets also makes children in street situations more susceptible to disease. Their living conditions and limited or no access to free health facilities make them vulnerable to infection. Health care personnel and facilities are not child-friendly and especially to children who live in squalid environment. The health facilities are not welcoming towards children in street situations. Financial constraints also preclude children in street situations from paying consultation fees, paying for medical tests and the costs of medicine from private doctors and pharmacists. A lack of finance is an impediment to accessing healthcare for children in street situations.

### **5.2.4. Education**

Children in street situations do not attend school and drop out of formal education once they resort to the streets. Although primary education is free for all in Tanzania, for children in street situations, completing the seven years of school can be unaffordable. Living or staying temporarily, on the streets also has a negative effect on the psychology and motivation of the child. Here too, the lack of finance is

an impediment to obtaining even a basic education, as the child has to focus on obtaining food, shelter and money to survive.

#### **5.2.5. Public Perception**

The public's perception of children in street situations is negative. These children are described as 'makapurwa' or 'watoto wa mitaani'. Both terms are pejorative and connote people of a lower status who are destitute. The terms do not signify the worth of the children and members of the public do not feel obligated to behave respectfully. The response of the State to this negative public perception has been to conduct a one day celebration of the 'street child'. However, a single day's attention to the problem is insufficient to change public attitudes towards children in these vulnerable situations.

#### **5.2.6. The Law**

The law of the child Act stipulates the rights of the child and provides for alternative care for children with no primary parental care. The Act is also progressive in recognizing that children in street situations are a vulnerable group and require special attention. However there are several drawbacks that curtail the realization of the rights of children in street situations. The rights spelt in the law are set out in the form of duties to the adults, and not as rights that can be claimed as against the state. More so, ambiguous obligations are placed on children, and these can be easily misconstrued and used in justification for the abuse.

The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child enumerate the rights of the child and have influenced the development of domestic legislation in Tanzania namely the Law of the Child Act of 2009. The Law of the Child together with its regulations has spelt out that the 'destitute child' is one who is in need of alternative care. The success of the regulations drafted under the Act is yet to be seen.

Tanzania also continues to maintain laws that criminalise 'loitering and begging'. This negatively affects children in street situations as they are the direct perpetrators of these 'crimes' and therefore are penalised for being the victims of circumstances.

Tanzania has policies and strategies that aim at ensuring that there are no more children in street situations. However the implementation of these policies and strategies is yet to have an impact on the situation. NGOs such as Mkombozi Centre for Street Children have instituted programs that involve government officials in identifying vulnerable children and intervening at an early stage.

The state has yet to fulfil its international obligations to ensure that children in street situations realise their rights.

### 5.3. RECOMMENDATIONS

#### **5.3.1. Training Of Officials Involved With Children In Street Situations**

For children in street situations to receive adequate support from the government, Tanzania needs to train its public officials, including, but not limited to, the police, health workers, and social workers on child rights. These officials will then be involved in identifying children who are at risk before they resort to the streets. Interventions can then be made to assist these children and also those who are already in street situations so as to ensure they realise their rights.

#### **5.3.2. Change in Public Perception**

For there to be a change in public perception towards children in street situations, there must be a change in perception from the state itself. A starting point can be a change of the name used to refer to these vulnerable children. In Tanzania, the name most popularly used by the government and nongovernmental organisations is ‘street children’ or ‘watoto wa mitaani’. A change to ‘children in street situations’ or ‘Watoto walioko katika mazingira ya mitaa’ would hopefully lead to changes in the perception as children who belong on the streets to children who find themselves on the streets, due to various reasons and that they need interventions to assist them. This change in public outlook can also be promoted through the appropriate use of the media. If this is done actively and consistently, not only with the public outlook change but also the larger community would be sensitized to intervene and assist children in street situations, and not wait for assistance from the government or NGOs.

#### **5.3.3. Support of Non-Governmental Organisations**

Since the majority of the ground work done concerning children in street situations is carried out by NGOs, the government should empower and provide support for the work they do. An example of what NGOs are doing is reflected in the intervention scheme by Mkombozi in identifying at-risk children and providing support to them whilst still in their families and also by identifying ‘new-comers’ on the streets. The community and police should be used in identifying young or recently arrived children in street situations so as to prevent their total immersion in the streets and the abuses that will inevitably occur. The state should also provide supervision and direction as to what areas the NGOs should focus on, in providing support so that children in street situations are assisted strategically.

#### **5.3.4. Data Collection**

For there to be an adequate response from the state concerning children in street situations, a survey has to be conducted to find out how many vulnerable children there are, where they stay and the circumstances in which they live. This survey should also involve these children by canvassing their opinions, hearing their experiences and gathering their recommendations in order to find a way forward.

Since many of the children in street situations have been affected by drug usage, the state should institute rehabilitation programs for them.

#### **5.3.5. Reproductive Health Services**

Contraceptives and other birth control measures should be provided to girls in order to prevent sexually transmitted diseases. Girls are more susceptible to sexual abuse. The State should institute early intervention measures to remove vulnerable girl children from the streets, to prevent sexual abuse. The state should also provide mobile HIV counselling, testing, and treatment for girls on the streets. The state should eliminate financial and other barriers to ante-natal and post-natal care for girls in street situations.

#### **5.3.6. Access to Education**

In order for children in street situations to have access to education, schooling should be made more affordable for them, and teaching programs should be modified

to provide for their educational needs. This should be done in both primary schools and also vocational schools.

### **5.3.7. Juvenile Justice System**

Children in street situations often encounter the criminal justice system. If the number of remand homes is increased, and if juvenile courts are set up throughout the country, the children would benefit. Moreover, the state should provide free legal assistance and representation in court.

### **5.3.8. Amendment of Legislation**

The Law of the Child lacks provisions that specifically cater for the rights of the children in street situations. Even more so, the provisions concerning alternative care and procedure in the criminal justice system are not specifically tailored to meet the needs of children in street situations. The guidelines provided for alternative care are not legally binding, and can be changed at the executive level of state, with minimal oversight. It is essential for children in street situations to be recognised as being in vulnerable situations and there should be emphasis placed on realising their rights. Moreover, the Commission of Human Rights and Good Governance can be further enabled to assist children in street situations, if it is empowered to pass subsidiary legislation and other guidelines to assist it to realize its mandate of caring for children in street situations.

### **5.3.9. Training Officials**

The state should train public officials, including the police officers who work with gender issues, on the rights of children. If preventive measures are instituted by the state in identifying and rescuing children in vulnerable situations, the numbers of children in street situations would be reduced. Preventive measures should include community engagement, the implementation of the poverty reduction schemes, and interventions at an early stage when children are identified as at-risk.

### **5.3.10. Free Health Care**

Free medical services to children in vulnerable situations would ensure that the right to health is realised. Liaison between the state and NGOs involved with

children in street situations would also be beneficial to the children. NGOs could be used as a link between the state health facilities and the children. They can be used in supplying health care to children in street situations. This can be done to further access to health care if the NGOs which take care of the children have access to free medical care in behalf of the children. The state should also provide training for health care workers on how to relate to children in these circumstances and encourage them to seek medical attention when they are ill.

### **5.3.11. Arrests and Detentions**

Police round-ups of children in street situations should be completely prohibited and an alternative care system should be in place to better assist the children. The state should not resort to the mere incarceration of children in vulnerable situations in order to deal with them. Remand facilities should aim to reintegrate children into the society, and to treat them humanely. These children should have access to education, to drug rehabilitation facilities and to social care. The penal code should be amended to decriminalize begging and loitering and Tanzania's 1944 Townships (Removal of undesirable persons) Ordinance should be declared unconstitutional since it affects children in street situations negatively by allowing police officers to conduct round-ups and arrests, which place the children in even more vulnerable situations.

A child in the African society is everyone's child and therefore everyone's responsibility. Children in street situations are the responsibility of parents, guardians, the community, public officials and should not be seen as a burden to be borne by NGOs and the government alone.

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