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**Vulnerable within the Vulnerable: Protection of Orphaned
Children Heading Households in Tanzania**

By Helen Kijo-Bisimba

**A thesis submitted in partial fulfillment of the requirement for the Degree of
Philosophy in Law**

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Faculty of Social Sciences

School of Law

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Dedication

This work is dedicated to:

My Father William Manase Kijo and to the deceased members of my family

My mother Janeth Mcharo (1937-2006)

My grandmother Eliachi Maeda (1914-1984)

My Husband Emil Clemence Bisimba (1952-1994)

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*Ebenezer*¹

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¹ The word 'Ebenezer' comes from Hebrew, literally, a 'Stone of Help' or a reminder of God's... Divine aid, an Ebenezer can be nearly anything that reminds us of God's presence and help (Dr. Gregory S. Neal, What's An Ebenezer? [Online] <http://www.revneal.org/Writings/whatsan.htm> (Accessed 12/10/2011). All the people and institutions mentioned in my acknowledgement are my Ebenezers according to Dr Neal. From Scripture (1 Samuel 7:12-14 *NRSV*) 'Then Samuel took a stone and set it up between Mizpah and Jeshanah, and named it Ebenezer; for he said, 'Thus far the LORD has helped us'.

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Declaration

I, Helen Kijo-Bisimba declare that the work presented in this thesis is my own and it has never been submitted for a degree course in any other university. Where information has been obtained from other sources, I verify that this has been revealed.

The Map of Tanzania

Figure 1: The Map of Tanzania with field research sites in Stars



Source: Maps of the World (www.mapsofworld.com)

Note*: Yellow Star: Makete



Red Star: Karagwe



Abbreviations

ACH&PR	African Charter on Human and People’s Rights
ACHR	American Convention on Human rights
ACRWC	African Charter on the Rights and Welfare of the Child
ADP	Area Development Programme
AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
CBO	Community Based Organisation
CDP	Child Development Policy
CEDAW	Convention on the Elimination of all Discrimination against Women
CHH	Child Headed Household
CHRGG	Commission for Human Rights and Good Governance
CJF	Community Justice Facilitator
CRC	Convention on the Rights of the Child
CTN	Coastal Television Network (Tanzania Private Television)
DSM	Dar es Salaam
DSWO	District Social Welfare Officer
DTV	Dar es Salaam Television (Tanzania Private Television)
ELCT	Evangelical Lutheran Church of Tanzania
EU	European Union
F/OCHH	Former Orphaned Child Headed Household
FAO	Food and Agriculture Organisation of the United Nations
FBO	Faith Based Organisation
FGD	Focus Group Discussion

FGM	Female Genital Mutilation
FHI	Family Health International
GMC	Global Movement for Children
GN	Government Notice
HBS	Household Budget Survey
HIC	Health Insurance Cards
HIV	Human Immune Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
IYC	International Year of the Child
IYDC	Iringa Development of Youth, Disabled and Children Care
JALA	Judicature and Application of Laws Act (Tanzania)
JALO	Judicature and Application of Laws Ordinance (Tanzania)
KARADEA	Karagwe Development Association
KZAP	Kagera Zone AIDS Project
LHRC	Legal and Human Rights Centre
LMA	Law of Marriage Act (Tanzania)
MASUPHA	Makete Support for People Living with HIV/AIDS
MCDWC	Ministry for Community Development Women and Children Affairs
MCGC	Ministry for Community Development Gender and Children
MM	Mama Mkubwa (Maternal Aunt)

MVC	Most Vulnerable Child
MVCC	Most Vulnerable Child Committee
NACP	National HIV/AIDS Program
NACP-MVC	National Costed Plan of Action for Most Vulnerable Children
NBS	National Bureau of Statistics
NGO	Non Governmental Organisation
OAS	Organisation of American States
OAU	Organisation of African Unity
OC	Orphaned child
OCD	Official Commandant of District (Police)
OCHH	Orphaned Child Heading Household/Orphaned children headed household/s
OHCHR	Office of the High Commissioner for Human Rights
PEDP	Primary Education Development Plan
PEPFAR	President Emergency Plan for AIDS Relief (USA)
PHDR	Poverty and Human Development Report
REPOA	Research on Poverty Alleviation
SAP	Structural Adjustment Programme
SAWAKA	Saidia Wazee Karagwe (Help Age Karagwe)
SEDP	Secondary Education Development Plan
SOSPA	Sexual Offences Special Provisions Act (Tanzania)
SUMASESU	Support Makete to Self Support
SWAAT	Society for Women against Aids Tanzania
TACAIDS	Tanzania Commission for AIDS
TAHEA	Tanzania Home Economics Association

TBC	Tanzania Broadcasting Company
TDHS	Tanzania Demographic and Health Survey
TLCA	Tanzania Law of the Child Act 2009
Tshs	Tanzania Shillings
TUKI	Taasisi ya Kiswahili-Swahili Institute
TUNAJALI	An organisation named in Swahili meaning ‘We Care’
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United National Children Fund
URT	United Republic of Tanzania
USA	United States of America
USAID	United States Agency for International Development
VEO	Village Executive Officer
VHA	Village Health Attendant
WEO	Ward Executive Officer
WHO	World Health Organisation
WOMEDA	Women Emancipation and Development Agency
WTM	Ward Tribunal Makete
WVI	World Vision International
WVT	World Vision Tanzania

Glossary

<i>Ad hoc</i>	not planned in advance
<i>Baba Mdogo</i>	Younger paternal uncle
<i>Baba Mkubwa</i>	Older paternal uncle
<i>Baraza</i>	Council
<i>Bibi</i>	Grandmother
<i>de facto</i>	Existing as a fact
<i>doli incapax</i>	Incapable of crime
<i>Empangale</i>	An adolescent girl (Kinyambo)
<i>Enkelemeke</i>	Infant (Kinyambo)
<i>Entabwa</i>	An orphan (Kinyambo)
<i>Enfuzi</i>	An orphan (Kinyambo)
<i>Hatarishi</i>	Endanger (Kiswahili)
<i>Ikidimi</i>	A male infant (Kikinga)
<i>Ikihinza</i>	A female infant (Kikinga)
<i>Ikiswele</i>	An infant (Kikinga)
<i>Kikinga</i>	The language of Wakinga of Makete Tanzania
<i>Kilimo cha Kufa na Kupona</i>	Agriculture a matter of life or death (policy Tanzania)
<i>Kinyambo</i>	The language of Nyambo/Wanyambo of Karagwe Tanzania
<i>Kitongoji</i>	Hamlet (Kiswahili)
<i>Mahari</i>	Bride Price (Kiswahili)
<i>Mama Mkubwa</i>	Older maternal aunt
<i>Mazingira</i>	Environment

<i>Mazingira Hatarishi</i>	Endangering Environment
<i>Mkiwa</i>	A bereaved person, desolate, abandoned or orphan
<i>Mpina</i>	An orphan (Kikinga)
<i>Mtoto anayejilea mwenyewe</i>	A child fending for her/himself (Kiswahili)
<i>Mtoto mkuu wa kaya</i>	A child head of a household (Kiswahili)
<i>Mtoto mwenye majukumu</i>	A child with responsibilities (Kiswahili)
<i>Mtoto wa mgongoni</i>	An infant in the stage of being nursed (Kiswahili)
<i>Mwana</i>	A child (Kikinga/Swahili)
<i>Mwana/omwana</i>	A child (Kikinga/Kinyambo)
<i>Mzungu</i>	A European (Kiswahili)
<i>Nahudihili</i>	An adolescent child (Kikinga)
<i>Ndio Baba Lao</i>	He is great, Father to all (Kiswahili)
<i>Ndugu</i>	A relative (Kiswahili)
<i>Nyambo/Wanyambo</i>	An ethnic and linguistic group based in Karagwe Tanzania
<i>Omusigazi</i>	An adolescent boy (Kinyambo)
<i>Omwana</i>	A child (Kinyambo)
<i>Omwisiki</i>	An adolescent girl (Kinyambo)
<i>Parens patriae</i>	Legal doctrine of the duty of the State to act as guardian to protect the interest of a child who cannot take care of her/himself
<i>Siasa ni Kilimo</i>	Politics is Agriculture (Agricultural policy Tanzania)

<i>Ubuntu</i>	African philosophy, humanness, people are not only individuals but a community to share and care
<i>Udimi</i>	A male child who is post infant but pre-adolescent (Kikinga)
<i>Ujamaa</i>	Socialism or family ties/relationship (Kiswahili)
<i>Ujamaa na Kujitegemea</i>	Socialism and self reliance (Kiswahili)
<i>Ujamaa ni Utu</i>	Socialism is humanity (Kiswahili)
<i>Ujombani</i>	Maternal uncle's side (Kiswahili)
<i>Unginza</i>	A female child who is post infant but pre-adolescent (Kikinga)
<i>Upatu</i>	An arrangement for contributing money to group members in turn (Group lending) (Kiswahili)
<i>Uyatima</i>	Orphan hood (Kiswahili)
<i>Vapina</i>	Orphans (<i>Kikinga</i>)
<i>Wakinga</i>	An ethnic group based in Makete District in Tanzania
<i>Wanawake na Maendeleo</i>	Women and Development (A name of an organisation)
<i>Wote wako hivyo hivyo</i>	They are all the same
<i>Watoto</i>	Children (Kiswahili)
<i>Yakikukuta hakuna jinsi</i>	You have no choice when you are caught in difficulties (Kiswahili)

Yatima hadeki

An orphan has no chance to give her/himself
airs. She has no one to spoil her/him.

ABSTRACT

The adoption and ratification of the Convention on the Rights of the Child (CRC) 1989 came as a promise to the improvement of children's well-being and status throughout the globe. The African Charter on the Rights and Welfare of the African Child (ACRWC) sparked more hope for the African Child. A number of initiatives by governments and Non Governmental Organisations (NGOs) have been undertaken to enforce the rights of the child; yet children continue to suffer from various injustices.

In Tanzania orphaned children heading households (OCHH) suffer even more as they struggle between adult and children roles. This thesis reveals a disconnection between the perspectives of the OCHH and those of the different governance institutions supposed to protect the children at the local, national and global levels.

In a socio-legal study this thesis uses ethnographic techniques to focus on the OCHH themselves and their perspectives. It explores their understandings and the role played by the multitude of governance institutions around them, which do not seem to address the injustices facing them. The thesis uses governance, law and ethic of care approaches to analyse the children's position. It argues that although OCHH suffer, they are not 'suffering bodies' instead they are 'political persons' claiming their agency.

CHAPTER ONE

Background to the Problem

We stand at the beginning of twenty-first century, a time filled with great promise and yet great misery for our children².

1.1 Introduction

This study concerns orphaned children who head households in Tanzania. First, the study seeks to establish that the children in this situation suffer injustice in a society that prides itself on the sanctity of human values and is party to a range of the human rights instruments³. Secondly, by taking the orphaned children heading households (OCHH) as ‘political persons’ not “suffering bodies’ (Goodale and Merry, 2007) the theme of the study looks at governance of children from the OCHH’s perspectives. The aim is to learn from the OCHH on how they understand, perceive and relate to the different governance institutions that are supposed to take responsibility for them. In this study the term governance is understood broadly as ‘a plurality of governing institutions beyond the state...conceived of networks or partnerships’ (Prozorov, 2004:273) as will be elaborated further in chapter three.

² Machel, Graça (2003) ‘Tangible Care,’ in Asmal, K. *et al.* (Eds.) (2003) *Nelson Mandela in His Own Words: From Freedom to the Future*, South Africa: Jonathan Ball Publishers (Pty) Ltd. pp. 412.

³ Tanzania is a party to most of the international human rights conventions without reservations. It has acceded /ratified the International Covenant on Civil and Political Rights 1966(ICPR); the International Covenant on Economic Social and Cultural Rights 1966(ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD); the Convention on the Elimination of all Forms of Discrimination against Women, 1979(CEDAW); the Convention on the Rights of the Child, 1989 (CRC) and the Optional Protocols to the Covenant; and many other international treaties.

Children and childhood are understood within the networks and partnerships in variety of ways. One conception is that of the vulnerable child who, due to the status of immaturity and dependence, needs nurture and care to grow to adulthood (Preamble, CRC, 1989). Another conception, mainly within the African context, is of children as resources or assets (Rwezaura, 1998 (b):258), while a third dimension conceptualises children as possessors of rights, as autonomous individuals with ‘agency’ (Holt, 1974:19). All three perspectives portray children governance approaches in relation to how children can be provided a chance to grow into adulthood, by adults providing care and taking responsibility. However there are children who do not enjoy care from adults but are subjected to living in the streets (Ennew, 2000:169) and others taking care of themselves in their households, mostly in very difficult conditions (UNICEF, 2007). This is a situation of children governance by children themselves. This chapter focuses on the context of the OCHH within a specified socio-economic situation of a country in a globalised world. It introduces the four perspectives through which the issue of Orphaned Children Heading Households (OCHH) are approached, namely; the children, the local, national and international settings. There is an interaction between the socio economic context of OCHH and constructions of childhood. The existence of OCHH does not accord with the ideal conceptualisation of children and childhood in Tanzania. While it is not possible to separate these aspects entirely, this chapter discusses the socio economic data while the next chapter focuses more on the way in which constructions of childhood interact with these contexts.

The OCHH are caught up in a double role as adults and as children and in most cases they are responsible for other children (younger than themselves) in the household they head. They represent a new category of children in Tanzania, also found in

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some other countries in Sub-Saharan Africa (Foster et al., 1997:155). This category of children is said to increase in areas where HIV/AIDS is prevalent (UNICEF, 2007). For this group of children there is no adequate intervention so this study seeks to understand their agency, perceptions and challenges.

Normally, children are not expected to be left without a guardian or to perform adult roles such as heading a household and taking care of themselves or their siblings. Ideally within the international, national and customary legal systems, where parents and society have failed, the State/community is obliged to take up the responsibility. The OCHH is an unknown legal concept and thus lacks the envisaged protection. Since the ideal world has disappeared from the OCHH, the context in which they find themselves has given rise to a response where they exercise their “agency” through coping strategies. While they see a need to be protected they also call for greater autonomy to exert their “agency”. The study aims to explore the obvious dilemma in which these children find themselves: They need protection yet they also need to be autonomous individuals with power to conduct their lives as they wish. The solution to this dilemma might be provided through learning from the children and how they are positioned, in order to consider what might be best for them from their point of view. This entails examining the many governance institutions and the legal framework at all levels (community, national and international) from the perceptions of the OCHH. The framework in which the above contentions are examined is within the literature on governance, children’s rights as a justice issue and the debates related to protection of children and protection of their rights. An analysis of the ethic of care is undertaken to assess its contribution in redressing the situation as will further be discussed under section 3.6 in chapter three.

This thesis is a qualitative socio-legal study which employs ethnographic techniques. A six months field work was undertaken, mainly in two rural districts of Tanzania (Makete and Karagwe) and was combined with a library research. In my field work I encountered sixty three children, but my analysis focuses on eight OCHH⁴ as the core subjects of the study. The perspectives of the eight OCHH are corroborated by the fifty five other children who are defined in other categories, namely: former OCHH, children living in the OCHH, orphan children with guardians and those who live with adults but who support themselves and the adults. Another category is that of children with parents but the children head households in the absence of their parents (CHH). (For the children categories and their numbers see table 4 in chapter four.) The governance institutions which the OCHH may encounter have also been studied in the field and through library research.

1.2. The Orphaned Children Heading Households: Eclipse of the Paragon Childhood

I met Kili, a sixteen year old boy, when I was introduced to him by the Village Executive Officer (VEO). He looks shy but I walked with him to his home. It is a two room house made of red bricks and roofed with corrugated iron. He opened the door and I was confronted with an almost bare room. There are three stones in the middle used as the cooker. One bucket with water and a small plastic container are the only assets around, with an old grinding machine in one corner of the room. Kili asked some children who

⁴ I have given the 8 OCHH pseudonyms for anonymity purposes. They are Kahoo, Kacia, Kashighwa, Kechee, Kedi, Kevona Kili and Kimako. Profile for each child is on Appendix 6 and I introduce each one in Chapter two.

were playing outside his house to borrow a chair from a neighbour for me to sit on. Both of Kili's parents died in 2005 when he was twelve years old. He, being the older son, was left to look after his three siblings and himself. Kili and his younger sister who was nine years then, were old enough to work to maintain the household. He could not continue with school but he ensured his two siblings who were of school age going continued with school. For three years he had been working in all sort of manual work to maintain the household. The third year his siblings were taken away to be 'helped.' He did not know where they were, it was a year and a half since they were taken he had not heard anything about them. He did not want them to be taken but he was not the one to make that decision. In all his discussion the issue of the siblings being taken away clouded all the other issues he was trying to explain (lack of education, property being grabbed from him, food insecurity) (For more about Kili see Appendix 6).

Each of the eight OCHH has a unique story as will be revealed in the study. Seven are double orphaned as both parents are dead. Six of them take care of siblings as well. All of them have relatives but they live on their own. Six of them combine school, work and managing households of different sizes (between two and seven people). All the children involved mentioned the word 'suffering' in describing their struggles and coping techniques.

The way children seem to be valued in many societies might lead to the assumption that everything possible is done to ensure they do not experience unwarranted

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* suffering. At the international level; the adoption and the near universal ratification of the Convention on the Rights of the Child 1989(CRC), the International Global Summit for Children (1990) and the United Nations Special Session for Children (2002) have been taken to mean that the international community takes the responsibility for children seriously (Kofi Annan, foreword in UNICEF, 2002:6).

At the national level, Tanzanian society is among those African societies where children are valued and seem to be highly prized (Rwezaura, 2000:326). This is demonstrated in the Tanzania Child Development Policy (CDP) 2008, which regulates the situation of children in the country and implements the CRC (URT, MCDGC, 2008: Section 1). The CDP states that children are in principle a ‘valued resource’ as they are entrusted with “society morals”, character, knowledge and expectations (URT, MCDGC, 2008)⁵. The policy further states that children are a very important section of society since they are the hope for the sustainability of any nation (URT, MCDGC, 2008:1).

At the local level, it is commonly claimed that people value children as they are taken to be a source of joy and a resource. However, in the same society, children have been found to suffer at the hands of those who purport to value them. Among the vast problems suffered by children in Tanzania is the way they are often abused, exploited, neglected and abandoned (LHRC 1997, CHRGG 2007). Abandonment may be by their parents or by communities if their parents die. Some children in such circumstances move to the streets (Rwezaura, 2000: 332), while others stay with relatives. Others however, remain in their homes and become heads of their

⁵ The objective of the Policy is to ensure the well being and quality of life for all the children of Tanzania through provision of children’s rights which are the right to life, development, protection, participation and non discrimination (CDP) (paragraph 40) (Literal translation from Kiswahili).

households. While street children are a well known phenomenon (Ennew, 2000:174) the orphaned children heading households (OCHH), the subject of this thesis, is a new manifestation first observed in Tanzania and Uganda in the late 1980's (Foster et al., 1997:155). Using the OCHH perspectives this thesis evaluates orphanhood as conceptualised in the different local governance institutions and within the international, national and local interventions.

This thesis further establishes that institutions in place, which are expected to take the responsibility to provide care and protect orphaned children, do not seem to function, even at family level. This reality differs from a study carried out in rural Tanzania in 1997 (Urassa *et al.*), which concluded at that time that, even with an increase of 40% orphaned children, as a result of AIDS prevalence, the extended family would be in a position to cope with the care of those children. Studies in Uganda and Zimbabwe at about the same time came to similar conclusions indicating that the African extended family was still the most reliable safety net for orphaned children on the continent (Kimali *et al.*, 1996 and Foster *et al.* 1995, cited by Urassa *et al.* 1997: 142). This assertion may still hold true, although recently it has been noted that the African extended family seems to be under severe pressure. With its meagre resources it is being over stretched by the additional obligation imposed by the number of orphans (Bequele, 2007: 4). This pressure seems to be among the reasons for the existence of child headed households (CHH⁶) and specifically OCHH.

⁶ There are CHH which have adults who are incapable of providing for the family due to old age or sickness or irresponsibility arising out of heavy drinking. In such households the child heads the house but there is an adult around who may be a parent or a grandparent. Another type of CHH is of children who have parents but the parents are not living with the children due to work or the children having moved to live near a school. So such children might be looking after themselves on a day to day basis but the parents might be providing for them by sending what they need from time to time. There also are CHH where the children have been abandoned although the parents are

1.3. Orphaned Children Heading Households in Tanzania: A Myth or a Reality?

Is the concept of an OCHH a myth or a reality? This section introduces the literature on OCHH and the contests in recognition, denial and visibility of the OCHH as illustrated by official definitions, community and media responses. As the case of Kili, and the other seven households studied make very clear, there are orphaned children living in households with no adult person to provide for them or to guide them. These are now commonly referred to as child headed households (CHH) even where they are studied specifically as orphaned children headed households (Francis Chizororo, 2008). They are also referred to as “sibling headed households” “youth-headed households” (Djik and Driel, 2009:919) “adolescent headed households” “child only households” (Foster *et al.*, 1997:158). What is common in all these terms is the fact that the household does not have an adult taking responsibility or care for the children in the household. Those who have termed the households “youth” or “adolescent” try to differentiate the heads from very young children, but it has been argued that removing the concept of “child” may detract from the urgency of the phenomenon (Djik and Driel, 2009:919). In this study “child”, “orphaned” and “heading household” are used to highlight the child’s responsibility for running the household on a day to day basis⁷. The OCHH are differentiated from the children who live in such households who are termed “children in OCHH”. The term OCHH connotes the person (child) who heads the household as well as the household which is headed by such a person (child).

alive. These might not be very different from those who are orphaned and they are sometimes termed social orphans. The difference for the CHH is that the parents might reappear but for the OCHH there is no such possibility.

⁷ The category which is OCHH is differentiated from the CHH which is of children head of households who might not be orphaned and the household might have adults who are either sick/infirm or irresponsible.

1.3.1. Denial of the Existence of OCHH

Although there have been media reports on OCHH still there is some sort of a denial that such children exist in the country. For example an official with UNICEF in Dar es Salaam [Interview 6: Appendix 7.3. 8/01/2010] was not sure if such a category really existed irrespective of the fact that there are reports on such children. He was of the view that although reports indicate the existence of CHH when one goes to the field those children are not visible. He wanted to know what my field experience was. There are also Tanzanians who are not convinced that there are children who are staying with no adult at all in their households. This might be explained in different ways. First, in towns such children might not be visible as people are not so much concerned with other people's lives. An example in the situations in town can be explained by a household in the Kurasini area of Dar-es-salaam, which was not known to people in the same area. This was also manifested in one of the villages in Karagwe district (the village is earmarked to be a small town) where the village chairperson was not aware (or so he claimed) of a child headed household which was about two hundred meters away from his house. The teachers where these children go to school were also not aware that the children were on their own with a 14 year old girl heading such a household. Secondly, the assumption may be that since these children have relatives all matters concerning their welfare can be addressed by the relatives, so they cannot be said to be heading a household.

1.3.2. OCHH Invisibility and the Media

In places where the media have been undertaking investigative journalism, such categories of children have been reported and have thus attracted the attention of the

authorities. In Makete District for example, after a documentary by one television station (Channel 10, 2005)⁸ was shown of very young children working to support their families, NGOS with specific programmes supporting such children increased. An OCHH documentary broadcasted on 9/11/2009 and repeated on 14/12/2009 by the Tanzania Broadcasting Corporation (TBC 1) gave the life story of a 16 year old orphan who had been living with her young sister for more than three years after the death of her parents in Arusha city. The documentary revealed the plight of these orphans at the time when there was a plan of action for the support of most vulnerable children (MVC) in the country. These orphaned children had not been identified as required; they had no support from the family members or government initiatives. The invisibility of the children has led to continued suffering for the children as they live in such households with no appropriate support by relatives, NGOs or the government institutions. Some have grown up without receiving the care of an adult. My field study in Makete and Karagwe revealed similar findings.

1.3.3. The Orphaned Children Heading Households: An Uncertain Category

Although OCHH are a reality, as an unrecognised category, their numbers are not known. The numbers known so far is of orphaned children generally as shown by the table on page 106 of the thesis for Makete and Karagwe, while countrywide the percentage of orphaned children is more than 10% of all the children below 14 years

⁸ The documentary and news about Makete was an outcome of a 'media expedition' organised by an international NGO PACT-Tanzania in August 2005 where many media houses were organised and visited Makete to see the situation of Orphaned children. After that expedition Channel Ten did not only report on the news and documentary but they also had special programmes: 22/08/2005 Jenerali on Monday, 28/08/2005 A special programme on Makete ,10/10/2005 A special programme appealing for support to the Makete Orphaned Children, 17/10/2005 A second special appeal to the society which brought many material assistance and two lorries full of staff were taken to Makete.(Interview (Online) 26/05/2011, Hamza Kasongo, Director of Operation, Africa Media Group, the owners of Channel Ten, Dar-es-salaam Television (DTV), Costal Television Network (CTN), C2C Magic FM and Classic Radio).

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (Kaare, 2005:1). Where the OCHH are categorised, the identification process is not very reliable [Interview 60: Appendix 7.1. 1/02/2010]. This study is not primarily concerned with numbers of the OCHH; however the study reveals the extent to which the uncertainty in their categorisation affects interventions in place for their support. For example a list of OCHH provided by one ward in Karagwe did not tally with the number of such children in one of the villages in the ward. The number in the ward register was smaller than the actual number of OCHH found in the village. A list received from the district office had OCHH in 16 of the 28 wards while there was evidence on the ground of OCHH in the remaining wards. The district and the wards have plans to support OCHH but with such discrepancies the possibility of any individual OCHH being outside the plans is big. Another example is provided by an organisation which has a project for the support of orphaned children and had mentioned OCHH but could not provide numbers as OCHH is not one of the categories needed in reporting to donors [Interview 60: appendix 7.1. 1/02/2010]. In Makete for example three quarters of the children who were identified as 'Most Vulnerable Children' (MVC) in a hamlet were orphans living in OCHH; this represents a quarter of all the houses with MVC [Interview 21: Appendix 7.2. 9/11/2009] but they are not categorised as such in the village register.

Categorising the OCHH as a group is necessary irrespective of their number. Bequle (2007:2) rightly points out that 'however low or high the figure might be no one can underestimate its brutality and impact on the lives and destiny of children'. Since the category is not very visible there is also a need to further categorise this group so as to identify them properly amongst the MVC. There are unique issues for OCHH different from any other CHH. We need to learn from their experiences.

1.4. Why Orphaned Children Heading Households?

Why are there OCHH in the country after the strong assertion by Urassa *et al.* (1997:142) that the African extended family has the capacity to handle the orphan situation? The assertions made by participants in this study, both children and adults, provide a clue. I begin with the statements provided by individuals under the study which will be substantiated in a later section by the overall socio economic situation of the country. It is important to understand, as earlier noted, that all the children (OCHH) participating in this study have relatives but the relatives have not taken them in for different reasons as explained below.

First, individualism was mentioned. This was associated with changes in life style as people lead individual lives rather than the communal life of the past. Although individualism has other dimensions (such as political-economic), the participants in the study associated it with globalisation and migration. The participants claim that people learn from other cultures through migration, travel, intermarriage, media and foreigners moving in. Different values are therefore adopted, hence the change.

Secondly, the issue of OCHH has been associated with the political changes in the country after the ‘death’ of *Ujamaa*⁹ as an ideology which made people to treat others as ‘*ndugu*’ ‘family hood’ ‘relatives.’ In other African countries this is known

⁹ *Ujamaa* is a guiding philosophy and fundamental principle of the country’s policies which was proclaimed in 1967 as ‘*Ujamaa na Kujitegemea*’ Socialism and self reliance. This is still one of the fundamental principles in the Constitution of the Land Article 9. The word *Ujamaa* literally means ‘family ties’ or relationship. However its use politically means more than family ties but togetherness as a community of people who care for each other. This was expressed in terms such as ‘*Ujamaa ni utu*’ a sense of humanness distinguishing it from animal characteristics of survival of the fittest. Although the principle is still in the Constitution it is not practised due to the practical realities of capitalism which were ushered in by the free market economy.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* as ‘*Ubuntu*’ (Sevenhuijsen, 2003:305). The trend has shifted towards people thinking and acting selfishly.

Thirdly, poverty has increased due to many factors such as the fall in the price for cash crops, and the failure by the government to provide for social services, due to the structural adjustment programmes (elaborated further in section 1.5.1). The difficulty for many poor people in contributing to the health services and education of their children discouraged many from taking in children of a relative. This situation is exacerbated by the importance people have begun to assign to education and the secondary school programme which has been established in almost all wards in the country. Relative’s children are now seen as a burden. This assertion was however disputed by some field work participants who said that the problem is not poverty as ‘we used to share our poverty’ [FGD, MVCC: Appendix 7.4. 4/12/ 2009]. The above assertion would mean that poverty cannot be taken to be the reason for the neglect of children since poverty is not a new phenomenon.

Fourthly, HIV/AIDS has raised the number of adult deaths, leading to an unmanageable number of orphans. This development has overwhelmed society as relatives found themselves having a number of children to take care of, but with a limited capacity to do so [FGD, MVCC: 4/12/2009 and Iwawa WardTribunal: 17/12/2009, Appendix 7.4].

Fifth, there are NGOs and other groups in society trying to support the orphaned children. The way these groups are approaching the problem has been seen as contributing to the increase in OCHH. The orphaned children anticipate support from the NGOs or other groups and hence decide to stay in their homes, hoping to receive

such support [FGD, MVCC: Appendix 7.4. 4/12/2009 and FGD, Iwawa Ward Tribunal: Appendix 7.4. 17/12/2009]. Relatives have felt that these children are supported, whereas those relatives who take the orphans into their families do not benefit. They feel it is better for the children to stay alone and access this support in their households [FGD, Iwawa Ward Tribunal: Appendix 7.4. 17/12/2009]. In the case of Karagwe the influx of international organisations supporting refugees from nearby countries, residing in camps in the district, have led people to believe that there is support out there, so they leave the children knowing they will obtain support [Interview 11: Appendix 7.1. 12/01/2010].

Sixthly, awareness of the rights of the child has been mentioned as another reason for leaving children within child headed households [FGD, MVCC and MM Isapulano: 4/12/2009: Appendix 7.4. and interview 91: Appendix 7.2]. It is said that children in schools are now taught about having rights. If their rights are violated they can claim them against the perpetrator. Adults can think these rights diminish the authority of an adult person who cares for them. The awareness of the right of the child has also changed some of the ways a child is treated. Children are asked to decide where they want to live after the death of their parents. This has given the child the right to choose and some have preferred to live on their own.

The seventh reason relates to the children's desire to stay together. They are not ready to be separated by being taken in by different relatives after the death of parents. Also in some cases children adhere to advice given by parents before their death [Interview 80: Appendix 7.2 10/12/2009].

Finally, there is also the notion that it is difficult to please an orphaned child (adult's assertion) and it is difficult for an orphaned child to please a person who is not his/her parent (child and adult's assertion). It has been claimed that whatever is done for orphaned children they are never satisfied as they think things could have been different if they had a parent. This has made some orphaned children dissatisfied by life in their relatives' homes. 'Even if you work hard they are not satisfied and they also have a tendency of mistreating orphaned children' [Interview 80: Appendix 7.2. 10/12/2009].

The net result is that OCHH are living in a situation which is not ideal for a child and they often suffer as they try to show their potential. The next section considers the broad socio-economic situation in Tanzania and how it relates to the above reasons asserting reasons for the construction of OCHH.

1.5. The Socio-Economic Situation in Tanzania

Some of the factors leading to OCHH in the country are associated with the socio-economic situation of the country. Tanzania, a country in East Africa is one of the poorest countries of the world, ranked 151 out of 182 according to the Human Development Index of the United Nations Development Programme (UNDP). (UNDP, 2009:12). The country's economy has been dependent mostly on agriculture which accounts for 85% of the workforce (Lipumba, 2003:10).

Agriculture has been affected by climate changes with either floods or unreliable rainfall in most of the 1990s as well as by the impact of the Structural Adjustment

Programmes (SAP) of the International Monetary Fund (IMF) and the World Bank(WB), which has led to increased poverty (Lipumba, 2003:10, Meertens, 2000). The cash and food shortage in the rural areas has caused an influx of the population to the urban areas and abandonment of agriculture (LHRC, 2009: 4). Employment in agriculture declined in 2008 by 7.7%. (Research and Analysis Working Group, URT, 2007:10). In an economy dependent on agriculture this situation has affected the government planning and jeopardised the most vulnerable, such as the orphans.

The oil crises in the 1970s, severe droughts, the collapse of the East African Community in 1977 and the war with Uganda in 1978/79, corruption and worsening relations with donors all culminated in the pressured “rescue plan” by the IMF/WB Structural Adjustment Programs(SAPs) and subsequent Poverty Reduction Programs (PRSP) Meertens, (2000).

1.5.1. Poverty

Poverty which has been mentioned by the OCHH as one reason for their abandonment is widespread in the country in its various forms: basic needs, social, human and economic. The 2007 Household Budget Survey (HBS) indicates that 16.5% of the population is below the national food poverty line, and thus extremely poor and 33.64% of the population is below the national basic needs poverty line (URT, 2008: iii). About half of all the households in the country use unprotected sources of drinking water with over half of the rural households travelling more than one kilometre during the dry season to obtain drinking water. Socially the gap between the poor and the rich is increasing (Sagday, 2009:16).

85% of the population rely on small holder primary agriculture which is mainly under developed with the use of small scale cultivation, hand tools and reliance upon traditional rain fed cropping methods. In spite of the SAPs, production of food and cash crops declined in the 1990s (Msambichaka and Naho, 1995). Despite government efforts¹⁰ there has yet been no noticeable improvement (Tanzania National Business Council, 2009:3). 87% of rural adults participating in a study felt their economic situation was worse than it was three years earlier and the cost of living had become a concern for many people (Research and Analysis Working Group, URT, 2007:80). In 2006/07 food shortage was reported in 50 of the districts in the country (Research and Analysis Working Group, URT, 2007:21). The number of people in rural households taking only one meal a day was said to be 2.2% (URT, 2005).

Thus the majority of people living in rural areas still feel the strain of subordinating their social needs to the concerns of the financial markets (under the SAPS conditionalities and subsequent poverty reduction strategies), as the government has not been in a position to ensure that the people obtain food, health or education (Global Exchange, 2001). This may be among the causes which have prevented people fulfilling the responsibilities they had undertaken in the past, such as taking care of relatives who have problems, or children whose parents are dead. The OCHH are part of this poverty stricken environment.

¹⁰ Such as policies which have been in force for more than 40 years which include: Iringa Declaration; “*Siasa ni Kilimo*” (Politics is Agriculture) “*Kilimo cha Kufa na Kupona*” (Agriculture as a life and death endeavour), Vision 2025 of the country’s forward looking development policy has agriculture as one of its focuses with the recent PRSPs having an emphasis on Agriculture.

1.5.2. Education

The literacy rate in the country had risen to over 90% in the early 1980s (Nyerere 1999, cited in Chachage and Cassam, 2010:186) but it dropped drastically at the height of SAPs in the late 1980/ and 1990s. The SAPs led the government to shy away from providing for education. Although primary education is guaranteed by the National Education Policy of 1995, it was not possible for children from poor families to attend school for lack of school fees. The situation was redressed in 2001 when school fees for primary education were abolished and this accounted for the increase of the enrolment rate (UNICEF, 2007). However, retention of and attendance of children in schools does not match the enrolment rate, as items such as school uniforms, meals, desks and security, need payment or contributions from parents or guardians.

The developments in education through the Primary Education Development Programme (PEDP) and Secondary School Education Programme (SEDP) have led to people realise the need to send children to school and children demand to go to school, while the government authorities encourage people to send children to school. This is a very positive development but parents are now stretched to the extent that they are not so sure if they can afford this and hence they are hesitant to take children other than their own. It is claimed that, it is not a problem to give a child food; the main problem is education since it has become very expensive¹¹.

¹¹ It has to be noted that school uniforms are expensive than the school fees which have been abolished in primary schools. In secondary schools the fee is minimal in government schools but the contribution to the school which each student has to pay is almost two hundred percent more than the school fees. Secondary school fees as of January, 2010 are Tshs. 20,000 annually (which is less than ten British pounds) but the contributions which include uniform, desks, school building, academic contributions, (lunch in some schools), total two hundred thousand or more depending on each school [Interview 42: Appendix7.1. 25/01/2010].

1.5.3. Health

Health is yet another service which has been affected by the government's policy (following the SAP) reducing the provisions of social services. The cost sharing in health services has impacted negatively on the majority of people, especially in the rural areas. In some areas the health facilities are inadequate and in some the condition of the service is deteriorating. The facilities can be very distant. Where they are available there is an insufficient number of staff or medicine. User fees have deterred people from using the facilities and they rely on local medicine or traditional healers who are said to be cheaper (Lipumba, 2003:11). This situation has increased the child mortality rate due to killer diseases such as malaria, anaemia, pneumonia, diarrhoea. These are said to account for 52.5% of the under-five children's deaths (Lipumba, 2003:11). These health costs might account for the hesitation in taking care of orphaned children. HIV/AIDS is also another issue which has brought about complications due to the length of the illness and treatment as is discussed in the next section.

1.5.4. HIV and AIDS

The HIV AIDS pandemic is directly related to the rise in the number of orphaned children in Sub Saharan Africa. Tanzania is one of those countries which have been affected by HIV/AIDS since the first three AIDS cases were clinically diagnosed and reported in 1983 in the Kagera region (TACAIDS, 2005:1). The number kept rising and it has spread throughout the country. The prevalence of the epidemic has recently seen a decrease from 7.0% to 5.7%, of the whole Tanzanian population, yet the number of people suffering from the pandemic is still high (TACAIDS, 2008).

Prevalence varies from region to region with the highest prevalence being 13.5% in Mbeya, 13.4% Iringa and 10.9% Dar es Salaam (LHRC, 2010: 105). However, it is combined with other factors such as poverty which affects more people and has affected the social institutions due to the cost of care for the sick and burial arrangements which strain families' incomes and leave behind orphans and dependants who are also looked on as a burden.

Thanks to the donors the pandemic has been given high profile with 1/3 of all donor resources directed to initiatives on HIV/AIDS (Mamdani *et al.*, 2009). It is mostly international donors who have taken the pandemic as a major issue for intervention. A National HIV/AIDS Programme (NACP) was formed by the support of donor funding and it began with short term plans (TACAIDS, 2005). These plans were health focused and hence did not make much impact in mitigating the epidemic. An extra effort undertaken was the declaration in 2000 of HIV/AIDS as a national disaster¹² and in 2001 a National Policy on Aids was passed, and a Commission for AIDS (TACAIDS) was established. The Commission is charged with the provision of strategic leadership, coordination and strengthening of the efforts towards combating the epidemic. Among the major initiatives are the two National Multi-Sectoral Strategic Frameworks on HIV/AIDS (2003-2007 and (2008-2012) and the National HIV/AIDS Law. In addition there are many other plans and organisations which have grown out of the financial incentives created by the increased funding by the donors (Mamdani *et al.* 2009). There are notable NGOS working specifically on HIV/AIDS programmes which cover, among others, groups of orphans and MVC.

¹² The then President of the United Republic of Tanzania (URT) the Hon. Benjamin William Mkapa in his new year speech delivered on 31st December, 1999 declared the pandemic a national disaster and he noted that it was "an extra-ordinary crisis which required extra-ordinary measures to deal with". [Online] <http://www.tacaids.go.tz/strategic-documents/strategic-plans.html> (accessed on 12/08/2010).

However these have no wide coverage in the country and in any case are not in the form of long term sustainable plan (Mamdani *et al.* 2009: 27).

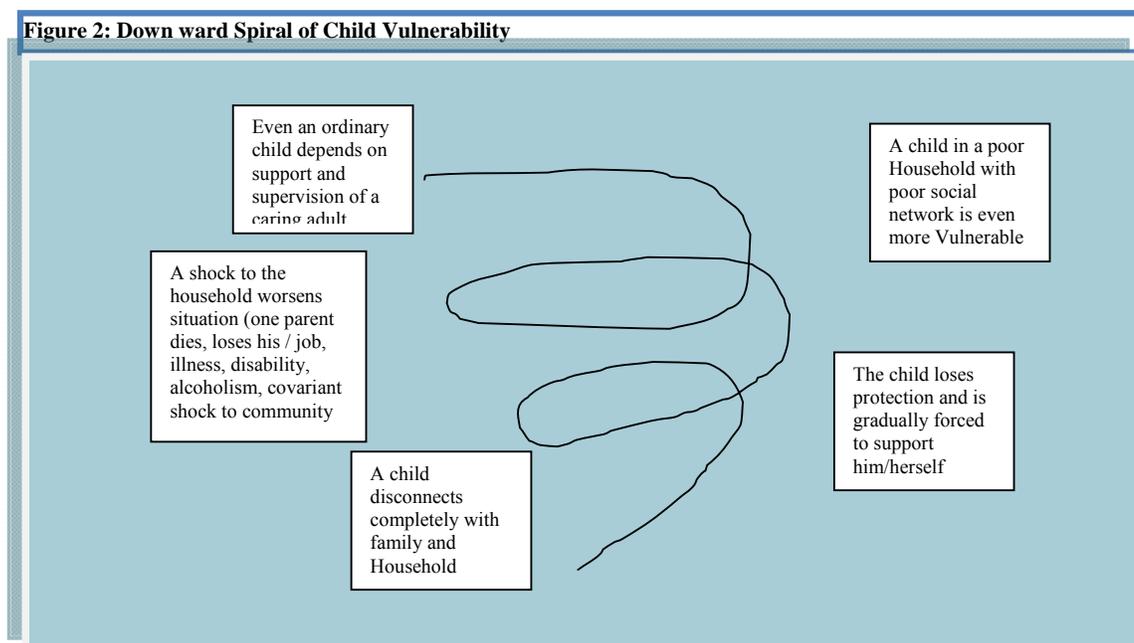
The OCHH are thus in the middle of an unfavourable socio-economic situation, given the mixture of unreliable and inconsistent interventions that have accentuated their vulnerability.

1.6. The “Vulnerable” Child

Vulnerability is a complex concept. There are different ways in which the concept has been defined to capture conditions associated with risk factors and ability or inability to cope with such factors for lack of control (Leach, 2007: 1). The different ways in which children are perceived has a bearing in how the term vulnerable is used towards children. The international human rights framework has in most cases taken children to be vulnerable generally and in need of protection. The vulnerability is central to human rights interventions (Goodale and Merry, 2007:195) and children are among the vulnerable groups because they are seen as powerless and with no voices. The alternative view which treats children as resources does not understand vulnerability in the same way as the international framework. The children in this study present yet another aspect of vulnerability. This section considers the different ways vulnerability is dealt with and the issues arising from the experience of the children who seem to be vulnerable, but who challenge such an understanding.

1.6.1. Orphan: International Institutional Definition

There is a general understanding that all children are vulnerable given the fact that they are dependent and immature. This view is supported by the CRC. The general understanding of child vulnerability is disputed as being a ‘naive mistake’, as it associates vulnerability primarily with age (Action for Child Protection, 2003:1). Although age matters, it is not the only criterion related to child vulnerability. The second assertion that child vulnerability is a comparative state has been clarified by use of a down ward spiral explanation that there are stages of vulnerability, as shown in Figure 2 above. Source (World Bank tool kit, 2005)



Even within the downward spiral, vulnerability of a child can be looked at from the point of view of capacity as well as risk factors associated to the child’s well being and access to rights. If we take the a situation where a child does not have the

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capacity to cope with conditions that are not familiar to her/him such as the death of parents, then the child is likely to be vulnerable. Another condition may be related to a child who has no control over the situation s/he is in. S/he is at risk of abuse, neglect or exploitation and has no means of protection. S/he can be said to be vulnerable. Age is one factor affecting a child's capacity to cope with adverse conditions.

Child vulnerability can then be referred to a child's capacity in relation to accessing basic needs and rights and the specific risk factors associated with his/her situation. In dealing with vulnerability, it is necessary to consider how access to basic needs and rights may be ensured, and how risk factors may be minimised. A number of questions have to be asked in relation to the child's well being as well as her/his rights, such as to whether a child is able to provide for basic needs? Can a child protect or assert her/his rights? Does a child know where to access such needs or rights? Is the child aware of the risks surrounding her/him? Is the child totally dependent on others? These questions which have also been used to assess vulnerable children in relation to protection and safety (Action for Child Protection, 2003) can be a guide in relation to a child's capacity and risks associated with vulnerability.

1.6.2. National Institutional Definition

In Tanzania children have been categorised as 'vulnerable' and 'most vulnerable' in a number of ways, using some determined criteria. The Social Welfare Department in collaboration with UNICEF conducted a community based exercise in 2001 in various districts to assess most vulnerable children (Lipumba, 2003:18). This

exercise was mainly concerned with children who are in need of special protection. It used basic needs criteria. The factors enhancing or indicating vulnerability were:

- The health status of the child as well as the caretaker;
- Nutrition status of the household;
- Those orphans having limited or no care;
- Lack of clothing or bedding;
- Poor /deteriorating housing conditions;
- Neglected and abandoned children;
- Those caring for a sick parent including child headed households;
- Those physically or mentally abused- overworked, denied food, clothing etc;
and
- Children with disabilities (Lipumba, 2003:22).

These criteria were used to help communities in some villages to determine what they understand as vulnerable children. The outcome of the exercise came with different understanding from village to village and from different groups. For example in Makete district it was said that a child with jiggers was described as vulnerable as these are associated with dirt and carelessness, while in Karagwe an orphan child whose inheritable property was misappropriated by greedy relatives leaving her/him in a risky situation was said to be vulnerable (Lipumba, 2003:30). Different groups in the communities which took part in this exercise defined a vulnerable child differently. While most of the groups perceived orphaned children to be vulnerable, a group of young people in Bagamoyo District did not mention orphaned children as vulnerable. Given the way the criteria were set, the outcome of

how people understood vulnerability reflected the welfare perspective that focuses on needs. Does vulnerability involve needs only?¹³

The above exercise culminated in the identification of the most vulnerable children (MVC) in the districts and later, at national level, a standard classification of most vulnerable children was developed. This is said to incorporate demographic characteristics and indicators of poor living conditions (MHSW-DSW, 2008: viii). The classification recognises six categories of children to be most vulnerable (MVC):

1. Children living in Child headed households;
2. Children living in elderly-headed households with no adult between 20 and 59;
3. Those with one or both parents deceased;
4. Those with disabilities;
5. In rural areas: children with one surviving parent living in a house with poor quality roofing (grass /or mud); and
6. In urban areas: children with one surviving parent living in a house with poor quality roofing or with poor wall materials or without a toilet facility.

These criteria are debatable especially the fact that people in most of the rural areas live in houses roofed by grass or mud and this might not necessarily mean that the children in such houses are vulnerable even where they are living with one parent only. It is however clear from the MVC registers observed in the field (Makete and

¹³ Needs in this case is one component only of subsistence as categorised by Max-Neef (1986:12) and does not include the other aspects such as ‘understanding’ or ‘participation’ which have attributes of capacity according to Max-Neef (1986) .

Karagwe) that, a Most Vulnerable Child (MVC) is any child who falls among one or several of the six identified criteria above.

1.6.3. Implication of the Different Understanding of Vulnerability

The indicators for being ‘most vulnerable’ are based on poor living conditions and demographic characteristics. Orphaned children and those in child headed households are categorised as MVC. However from my observation during the field study, not all orphaned children are necessarily in the lower part of the spiral and may not be experiencing vulnerability.

Understanding child vulnerability is important as a criterion to intervene. While the downward spiral is a good starting point, there is a need to investigate further the well-being frame it portrays. This is also the case with the Tanzania MVC categorisation. Sen (1999) considers functions and capabilities rather than concentrating solely on needs. At various stages a child seems to become vulnerable depending on the context and the perceptions of the observer.

The OCHH can be seen as vulnerable children in one of the last stages within the downward spiral however they have not disconnected with the household which means that they have the potential if given a chance to be agents of change in their own lives and in society at large. Hence there is a need to understand them as individuals within their perspectives for the realisation of a proper intervention.

1.7. Justification of the Study

Although OCHH as a problem in the society seems to be growing as noted above orphan studies had not gained much attention until recently, partly due to lack of reliable statistics (Foster and William, 2000:1) and lack of information related to the reality of orphanhood and its effect on children (Bequele, 2007:1).

Most studies undertaken so far relating to orphanhood have focussed on the consequences of orphanhood, measuring impacts on education, schooling (Beegle, K. *et al*, 2005; Bennell, 2005) and health (Bicego, *et al.*, 2003). Most studies have not dealt with children governance and legal frameworks dealing with the orphan children or OCHH. The studies have been analysed in the sociological framework, trying to inform policies on poverty reduction and HIV/AIDS prevention programmes. Studies related to care investigate children who are care takers for sick or disabled adults. Most of these children are not orphans in the meaning assigned in this study. Generally there are very few academic studies of Child Headed Households (MacLellan, 2005) and even fewer of OCHH although there are some modest developments (1997-2009) relating to child headed households in some specific countries such as in Kenya, Malawi, Rwanda, South Africa, Uganda, Zambia, and Zimbabwe¹⁴.

¹⁴ Ayieko, M. A. (1997) 'From Single Parents to Child Headed Households: The Case of Children Orphaned by AIDS in Kisumu and Siayi Districts'. *Study Paper No 7, HIV and Development Programme*. [online] <http://www.undp.org/hiv/Puplications/english/sp7.htm> (accessed 20th December 2008) (Kenya), Brown, L. *et al.* (2005) *Strengthening the Psychological Well being of Youth Lead Households in Rwanda: Baseline Findings from an Intervention Trial*, Washington, D.C: Population Council. Francis-Chizororo (2008) *The Foundation, Constitution and Social Dynamics of Orphaned Child Headed Household in Rural Zimbabwe in the Era of HIV/AIDS Pandemic (Ph.D. thesis, University of St. Andrews, 2008)*; Payne, R. (2007) 'Child-Headed Households and their experiences of Support in Zambia: A continuing Role for the Family (Unpublished paper, Edinburgh cited by Dijk and Driel (2009) 'Supporting Child-headed Households in South Africa: Whose Best Interests?' *Journal of Southern African Studies*, Volume 35, No. 4 (2009). Couzens, M. and Zaal, F.N. (2009). 'Legal Recognition for Child-Headed Households: An Evaluation of the Emerging South African Framework', *International Journal of Children's Rights*, Vol.17, pp.299-320.

As with children's studies generally, there is a tendency in research not to consult children on matters affecting them, thus relying on adults' accounts only (Ennew, 2003:1). This tendency has not been helpful either in planning appropriate interventions in children's situations or in clarifying the construction of childhood conceptually. However there is some evidence with the most recent studies that the research has been with children rather than simply on them. This is a welcome development.

The present study is set within this framework. It explores the situation of OCHH in Tanzania in socio-legal ethnography. It adopts a children's perspective to understanding the children's governance institutions supposed to protect them. The study focuses particularly on governance, which in this study is taken to be broad as it encompass plural forms of governance, including legal dimensions as portrayed through the children's perspectives on rights and their understanding of justice. While revealing the OCHH's 'agency' and their perspectives, it also portrays the ineffectiveness of the current rights and justice frameworks. It will be argued that an ethic of care is needed for the (re)construction of the rights and justice framework for the OCHH.

1.8. Objective of the Study

- To understand children's governance institutions in place and how the OCHH perceive them.
- To understand how the OCHH experience their situation, their coping mechanisms and challenges they face.

1.9. Organisation of the Study

This chapter has introduced the background to the problem. It has argued that there is a need for knowledge of the situation of OCHH and the children's governance institutions from the children's perspectives. The chapter considered the different reasons provided for the construction of OCHH within the socio-economic situation of the country and vulnerability as a concept which need to be considered in dealing with OCHH. The objectives and justification of the study have also been provided. The theme of this thesis is based on the understanding of the children's governance from the perspectives of the children, so the organisation of the chapters starts from below, introducing the children (OCHH) and the literature related to their situation.

Chapter two introduces the OCHH who took part in the study. It provides the basis for understanding what it means to be an orphan and for the concept of OCHH. The chapter proceeds to assess the different ways childhood is constructed. This discussion leads to chapter three which examines the literature related to the study and the theoretical framework adopted. The literature discussed in chapter three includes key issues raised from the OCHH stories. These are protection, rights, justice and care, all of which translates to children's governance. The governance literature is therefore surveyed in its broad dimension including legal pluralism. The chapter examines the extent to which the children's perspectives are overlooked in the range of governance networks and considers the contribution of the ethic of care in re-constructing the current framework.

Chapter four then links the literature and methodology used in the study. The methodology is child centred. Ethnographic methods such as photographing,

observation, songs, drawing of pictures and semi-structured interviews are discussed portraying how they were used to obtain data from the children. The role of adult participants who took part in the study is discussed as a contribution in understanding further the children's perceptions.

Chapter five examines the local governance institutions encountered by the OCHH at the local level from the perspectives of the OCHH. The way the institutions understand and perceive the OCHH is also part of the discussion in this chapter. It has been noted that the governance institutions in place have not addressed adequately the situation of the OCHH. Most of the local institutions are linked to national and international governance institutions which affect how they perform their roles.

Evaluation of the national legal framework in chapter six presents the Tanzania child law as it was at the time of the study and the implications of changes in law after the study. In this chapter the role played by state law on the issue of OCHH is discussed. It is argued that even with a new law, the State has not taken its responsibility towards the OCHH seriously, as it has relegated its role to other actors and invoked the principles of the international convention verbatim, without consideration of the particularity of the children in Tanzania. This seems to be an implementation problem of the international law at local level.

Chapter seven therefore considers the international governance institutions and how they influence what is happening at the local level. It is argued that while translation of the international principles to fit the situation at the local level has been seen as a possibility, there is more than just translation. The situation of the children may

provide an avenue to re-consider how the translation is undertaken. It is further argued that the international principles seem to be abstract, which calls for an analysis of the ethic of care as a consideration in trying to obtain a workable framework for the children under the study.

There is an identifiable dilemma in which the OCHH seem to seek independence and autonomy to decide what they want and to obtain protection. In conclusion, chapter eight discusses the limitations of the justice framework within the national and international children governance institutions. It is argued that justice framework has not captured the situation of the OCHH so as to provide for them. While at the local level some accommodation of what the children wants is observed, this has left the children without protection. This situation calls for reconciliation so that the children's claims can be observed without abandoning them. The attributes of the ethic of care which are relational and in networks are considered as an avenue to redress the situation. The study concludes by providing possibilities in trying to balance the continuum of the double face of the OCHH while proposing reconstruction of the rights and justice framework.

CHAPTER TWO

Constructing Orphanhood and Childhood

*Childhood ‘not life’s waiting room’ it is and should be ‘life itself’*¹⁵

2.1. Introduction

The eight OCHH are introduced briefly as a basis for our discussion on orphanhood and the construction of childhood. Their detailed stories are provided in appendix 6 and some of their stories are used in other chapters. The order in which they are introduced here is by the length of their roles as OCHH.

Kimako looked unhappy when I first met him, but in the course of the study he brightened up, especially when he was sharing accounts of what he had achieved after the death of his parents in 2002. He is from Karagwe and had been heading a household for over seven years at the time of this study. Kimako has five siblings and no paternal relatives. After the death of their parents he was taken by his maternal aunt and his young siblings were taken by his maternal uncle. After one year he realised that his siblings were suffering for lack of food with no proper place to sleep so he decided to return to his father’s land and rebuild their house. He took back his siblings although he was confronted with a lot of ridicule and discouraging words. The household had seven people at the time of this study after one of his aunts and her daughter joined the five of them as they had obtained a new house, a donation from an NGO. Kimako says: ‘I do not know when I became an adult, I

¹⁵ Slovakia Initial Report to the United Nations Committee on the Rights of the Child (CRC) pg. 240 in Hodgkin and Newell (2002).

began as a child but I had to grow since I was a child with responsibilities and problems' [Interview 49: appendix 7.1. 28/01/2010].

Kahoo from Makete seemed confident when I met her, although very sensitive to the issue of her young brother taken away to an orphanage. Her father died when she was nine and her mother when she was thirteen, in 2003. She refused to move to her relatives. She lived alone in their household for two weeks only as her two siblings taken by relatives returned home. She has been taking care of the household ever since. She sobbed bitterly when she narrated the part of the story about her young brother who was taken to an orphanage and had not visited them for six years. She had been heading a household of two for six years. She still is working to maintain her ten year old brother. Kahoo says: 'This habit of taking away and separating orphaned children is very painful. Go; tell them, although there are orphans who cannot take care of themselves, by the grace of God I have managed' [interview 86: Appendix 7.2.11/12/2009].

Kashighwa, from Karagwe, is a single paternal orphaned child. He looks younger than his age, malnourished, but confident and positive. At the time of the study he was fifteen. His father died when he was very young and his mother re-married. The step father died when Kashighwa was only eight and his mother re-married again. He had to live with his brother and later his sister. Kashighwa and his immediate elder brother built a small hut and lived by themselves after experiencing abuse and mistreatment from their older brother. He became the head of the household at the age of ten when his brother left. He has not seen his mother recently, his hut is leaking and food is unreliable. He is a school dropout. Kashighwa says: I'd rather

sleep on an empty stomach than face harassment from a step father' [Interview 65 Appendix 7.1. 2/02/2010].

Kakia a double orphan from Karagwe was jovial when I met her and in the course of the study, she indicated how her experience has helped her to remain positive. She was inquisitive and wanted to know how I was to use the information she is providing. She has been heading a household of two since she was twelve. Her father died in 2001 and her mother in 2004. She has two siblings. One is living with an uncle and the other is with her. She does not have paternal relatives. She has a maternal aunt and an uncle and a great aunt. Although they live in the same compound as the uncle he is not taking care of them. She has been struggling although she acknowledges receipt of sporadic support from NGOs and the district government secretly providing school fees, as there are many who are in need but the resources are insufficient. Kakia has this to say, 'I do not know if there is anybody who has experienced such a difficult life while so young. The difficulties have taught me to be who I am' [Interview 23: Appendix 7.1. 17/01/2010].

Kedi looked surprised when I referred to her as a child. She is a double orphan from Makete. Her father died in 1996 and her mother in 2007 when she was fifteen. After the death of her parents she decided to stay in their household with her young brother. She has been heading the household for more than two years and she was at the same time studying in a technical school away from home. This entailed her seeking permission fortnightly to return home and work. She also had to weed their plots of land and buy food for her sibling. She has relatives who support them occasionally. She says: I am not a child, when my mother died, she knew she had left

a woman to look after her child [my sibling], but I am not old enough to get married' [interview 80: Appendix 7.2. 10/12/2009].

Kili looked shy and softly spoken the first two meetings we had. In the course of the study, he became talkative and he freely discussed issues which disturbed him such as the removal of his siblings to an institution, and their property which was grabbed. He is from Makete and a double orphan. Both his parents died in 2005. At the time of the study he was sixteen years old. After the death of their parents Kili and his siblings were taken in by relatives. They had to return to their household as it was seen as an easier way for them to obtain support. He has three siblings who were taken to an institution after three years in their household. He has relatives, a maternal and a paternal uncle and several cousins. Kili dropped out of school when his parents were ill and he could not go back as he was struggling to look after his siblings. He was very sad and bitter because his siblings were taken and he did not know of their whereabouts. I had to find out and arranged a reunion for them in the course of the study. He says: 'I am a child with adult thinking', I am full of thoughts, taking away my siblings was not helpful.' [Interview 28: Appendix 7.2. 9/11/2009].

Kechee looked clever. He thought for some time and looked at you before he could answer a question. He was very proud when he talked of the guinea pigs he keeps. He is a double orphan from Makete. His father died when he was very young. His mother died in 2007 when he was twelve. At the time of this study he was fourteen and in standard six. He has relatives: an elder brother, two elder sisters and a maternal uncle. After the death of their parents, Kechee and one of his elder sisters opted to live in their parent's household rather than live with relatives. His sister went away from home for studies which entailed his living alone and heading their

household. He has several challenges although he has been supported in an adhoc manner. He says: 'I do not know if children who do what I do are still children, I have strength to carry planks' [interview 23: Appendix 7.2. 9/11/1009].

Kevona, a double orphan from Karagwe was confident and easy to talk to, from the first day we met. She was the only OCHH who had asked me not to use her photos anywhere. Her father died in 2002 and her mother in 2004, when she was eleven. At the time of this study she was seventeen and had been heading a household of three for seven months. After the death of her mother her elder brother ran away and she was sent to live with a clan elder. Life proved difficult so she went back home where her second elder brother was heading the household. She was later taken by her teacher and she came back home when her other brother left home. She speaks bitterly of the difficulties they are facing as OCHH although she acknowledges the support they had received from NGOs and the church. Kevona says: 'I am a child in difficulties, fending for ourselves, but I will not settle for stereo type work designated for orphaned children' [interview 27: Appendix 7.2. 19/01/2010].

All the eight OCHH began their role of heading households between the age of nine and sixteen. They are children with different experiences of their roles. There are those who made the decision to stay in their homes while there are those who had no choice. The fact that the adults let the children head households provides an avenue to further clarify the construction of childhood and to understand orphanhood. This chapter is discussed in two parts: first it addresses the concept of orphanhood from the experience of the OCHH and secondly it considers the different construction of childhood from a historical perspective and links this with the experiences and perceptions of these OCHH in Tanzania. The main argument is that the changes in

the African conceptualisation of childhood and orphanhood have affected the way in which OCHH experience childhood and orphanhood.

2.2. The Orphaned Child: Concept and Definition

To understand OCHH it is necessary to understand orphanhood. This section discusses the different ways in which orphanhood is conceptualised and defined. Orphanhood is understood differently by different organisations and societies. The discussion here focuses on the way the African understanding of orphanhood has been deflected towards the understanding and definitions used by the international organisations and copied by national NGOs and the national legal system.

It is claimed that in Africa there is no orphaned child because children belong to everyone (Armstrong 1995:11-12). Thus children whose biological parents are dead are not seen as orphans. They should be cared for in such a manner that they will not feel the lack of parents and normally they tend to regard their relatives as their true parents (URT, 2004 (a):24). It is not regarded as appropriate to make a distinction between a genetic father and a social father (Benembago, 1993: 209. cited by Rwezaura, 2000:333). The use of the word orphan directing it to a child is not common. How can a child become an orphan while s/he has all the other 'fathers' and 'mothers' around? In many African societies uncles (brothers of a father) are known as father (either young or old). For example in the Swahili language used in Tanzania (and most part of East and Central Africa) a brother of a father (uncle) is known as '*Baba Mkubwa*' if he is older than the father or '*Baba Mdogo*' if he is younger. The same applies to aunts who are the sister of a mother '*Mama Mkubwa*' or '*Mama Mdogo*'. In Makete, several people interviewed could not immediately

give the meaning of the word orphan in their local language of Kikinga. One person had to consult the Kikinga bible to search for that word. It was explained that the word is rarely used. This assertion was however disputed by other people in the same area saying that this is a known word and it has been in use.¹⁶ The issue here however is the fact that although there are orphans in a community, they are not described as such. Conceptually they are not regarded as orphans and to mention them in that way seems offensive.

2.2.1. How and Who Defines an Orphan Then?

The obvious answer would be ‘a child whose parents are dead is an orphan’ (Hornby, 2005:1013). However there are different ways an orphan is defined in different contexts. The death of both parents as well as the lack of other family members to take care makes a child an orphan in the African context. In some African languages such as Swahili the term connotes not only the death of parents, but also loneliness and lack of care (*mkiwa*) (TUKI, 2001: 369, 207, Frederick, 1939: 534, 285, 212). The National Population Census District Profile for Karagwe (URT, 2004 (a):24) and Makete (URT, 2004 (b):24) defines an orphan to mean ‘persons whose mother and father are both dead.’ This position is also held in other official documents such as the Makete District Socio-Economic Profile which differentiates an orphan from a child who has lost one parent. The wording is:

The term orphan classify(sic) a person whose both parents, mother and father are dead from those with single parent whether father or mother is alive’ (NBS, 2008).

¹⁶I tried to ask other people who are Wakinga to verify, and one person replied through email and said the word orphan in Kikinga is *mpina* (singular) and *vapina* (plural) and that they have been identifying orphaned children using these words. (January, 2011).

Yet a change seems to be taking place in the use of the word 'orphan'. In the research areas the people who were interviewed and observed, including the orphaned children, defined an orphan as a child who had lost one or both parents. This is the same definition used by NGOs and district projects as well as the ministerial documents such as the National Costed Plan of Action for the MVC (URT, 2008:9). Ennew (2005:129) in her study on 'Orphans and Economic Dependency' associates this type of definition as found in many parts of Africa with places where women do not have full economic and political independence and she provides an example of the definition of the Tanzania Ministry of Labour and Youth Development 1995. It is my argument that this is not necessarily African but it might have been an outcome of the analysis made by bodies working in support of orphans in Africa such as Joint United Nations Programme on HIV/AIDS (UNAIDS)¹⁷. Several OCHH said that an orphan would normally be a child whose parents are dead but nowadays 'they say' even the ones whose one parent is dead is an orphan. 'They' in this case mean the NGOs which work in the district.

This new way in defining an orphan seems to have been brought by external forces and constructed by the new realities and is used in the work by NGOs. It is also the definition used by international organisations such as United Nations Children Fund (UNICEF), UNAIDS and United States Agency for International Development (USAID)¹⁸. At national level this same definition has been given legal recognition by the State which has extended orphanhood to 'a child who has lost either parents or a

¹⁷ It has been noted that the UNAIDS prior to 2004 differentiated orphaned from the context of AIDS and defined orphans as children below the age of 15 whose mothers have died of AIDS (Ennew, 2005:130), and the definition which followed in 2004 is of children under 18 years whose one or both parents are dead (UNAIDS/UNICEF/USAID, 2004).

¹⁸ All the NGOs taking part in this study define an orphan as any child below the age of 18 years whose one or both parents are dead. This is the Definition used by /UNAIDS/UNICEF/USAID (2004) Children on the Brink: A joint report of New Orphan Estimates and a Framework. All the NGOs using that definition work with some of the international NGOs or UNICEF.

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parent through death’, per Section 2 of the new Tanzania Law of the Child Act, (TLCA) 2009. This new definition raises the question as to why the change? Is it due to the use of the definition by the funding organisations necessitating its use by the recipient of funds?

2.2.2. The Reason for and Consequence of the Definition

This way of understanding orphanhood might have increased the number of orphans who have now become objects of projects and plans at local, national and international levels. Orphanhood is now an identifiable category and has risen in Tanzania from 9% in 2002 to 11% in 2003-2004 (TACAIDS, *et al.* 2005:15). There are registers for orphaned children in schools, in village offices as well as at district social welfare offices, NGOs’ registers and at national level. These registers draw attention to children who in the past were not identified as orphans. In some of the interviews I had with children when they introduced themselves they began by mentioning the fact that they were orphans. Many will begin by saying, ‘I am an orphaned child and my name is so and so.’ A child would also say that ‘I got my school uniform from *‘uyatima.*’ This word literally means orphanhood. The classification and interventions have led to the construction of orphanhood. This development has put an orphaned child in the limelight and produced new ways to understanding orphanhood. The changes in the conceptualisation of orphanhood have also affected the care of orphaned children and hence OCHH. The concept of OCHH challenges the understanding of childhood in general as these children are torn between childhood and adulthood.

2.3. OCHH: A Life of Double Roles

This section considers the double roles played by the children (OCHH) as they head their households, exercising adult roles as well as trying to be children.

2.3.1 The Child's Adult Roles

The child head of a household takes the role of a parent or a guardian to provide for the household needs and to maintain order. One of the major tasks of OCHH is to make sure that there is food in the household and other necessities for survival. Another adult/parent role which has to be shouldered by the OCHH is to ensure the siblings go to school and have all the necessary school needs such as clean uniform, exercise books, text books and contributions required from time to time. Missing school is punishable to both the child and the responsible person (Rule 4 (1/2) of the Primary School (Compulsory Enrolment and Attendance) Rules 1979 (G.N. 129). The responsible person can be jailed and the child is subjected to corporal punishment.

The head of the household does all the activities which are normally performed by parents or guardians in the management of the household. S/he assigns roles to the siblings such as fetching water and firewood, cooking, going to the market to sell any goods, going to the grinding machine to grind maize/wheat for flour and weeding in any ground (garden or farm) they have. S/he must care about the life in the household. The OCHH have to maintain, repair or even rebuild the house left by the parents. Kimako for example had to rebuild their house as it had fallen down while Kashighwa had to build a house afresh. Housing for OCHH is a big issue which is difficult enough for adults, as it needs planning and saving resources to

ensure adequate repairs. The OCHH organises the other children in the household and also works, irrespective of age, so as to acquire money to buy whatever is needed.

2.3.2. Child Roles

The OCHH also has a child's roles. One such role is going to school. School is supposed to be attended from Monday to Friday beginning at seven in the morning to five in the evening with an hour lunch break. This means that for children who live away from school which can be up to seven or more kilometres away, they have to wake up very early to be in school on time. The OCHH however have many reasons for missing school when there is lack of food, school uniforms, exercise books and even other necessary contributions to the school. Several OCHH when interviewed said that when they are hungry they opt not to go to school as they lack concentration or they do not have the strength to go. Thus it is not easy to cope with working and school. Some of the OCHH have dropped out of school (the case of Kili, Kevona and Kahoo) while others have very poor attendance. The lucky ones have been able to get back to school, while for others it has been the end to the school dream. As part of the society the OCHH are also expected to attend to other social functions such as funerals, church, mosques and even helping with babysitting for neighbours.

2.3.3. Challenges in Balancing Roles

There is thus tension between meeting household needs and attending school which is a challenge in balancing the double roles. As children the OCHH and the children in their households need and want to play but this seems to be a luxury which they

cannot afford as they have too much to do. At least for those who go to school they can play during break times.

Psychological problems affect the health of the OCHH as they struggle to survive in the lonely households. All the OCHH who took part in the study said they worried to the point of getting ill. One OCHH explained how she was possessed by the ‘spirit of her mother’ after crying much when things were so difficult. This led her to obtain traditional treatment while others thought she had a psychiatric problem (Interview 23: Appendix 7.1. 17/01/2010). Living in anguish has been cited by all the OCHH as the most troubling aspect of their lives. There is fear, especially for the girl children of being abused. There is acknowledgment of such fear by village leaders who are aware of the danger and the vulnerability of girl children to abuse if they live on their own [FGD, Appendix 7.4. 4/12/2009].

The OCHH sometimes have to live with legal problems associated with inheritance and property. It is not easy for the children to follow up such issues for lack of awareness or means and capacity. Going to courts is time consuming and the OCHH have no such time, given the roles facing them. There is a noted tendency of relatives or neighbours to grab the property which a child has inherited from late parents and the child might not know what to do, or this might interfere with schooling (The case of Puta a former OCHH of Karagwe and Kili of Makete). Some children find themselves in criminal cases fabricated against them by greedy relatives who want them out of the way as they grab the inherited property [Interview 68: Appendix 7.1. 3/02/2010].

2.3.4. Survival at all Costs

Although the OCHH do suffer they also survive and many have grown up. The OCHH illustrates the phrase ‘*Yakikukuta huna jinsi, Yatima hadeki amdekee nani?*’ This means that when you are faced by a difficult situation you have to find a way to deal with it. An orphan does not have an easy way out, no one spoils her/him, and so reality must be tackled. This is what they are doing as individuals who are not helpless but who use their capacity and agency. The OCHH have been very innovative in ensuring they survive at all costs. It is surprising how they plan their day and fit in all which needs to be done in between work and school as well as attending other social activities. All the OCHH taking part in the study, have a high regard for school as they have the view that education is a means to a successful life¹⁹. In one of the focus group discussions [FGD, appendix 7.4. 31/01/2010], the OCHH stressed the need to take school seriously and to reject anything which might stand in the way of their finishing school. One OCHH repeated several times that they are different and they have to show their difference in how they perform in school. Another OCHH who has dropped from school was optimistic that he will get a chance to resume study even if it is through adult education [Interview, 65: Appendix 7.1. 2/02/2010].

The OCHH have accepted their situation and they try to make it work in a very optimistic way. It is not surprising that there are many who have made it to secondary school and even high school and university (KZAP Annual Report, 2007:14). The OCHH have been able to repair and build their houses sometimes

¹⁹ It has to be noted that the OCHH who took part in the study were not a special or privileged sample group. As is shown in chapter four, some were known to the authorities and some were unknown but identified during the study, they all had the same ideas about education.

with no support at all. There is evidence of OCHH using their meagre resources to make small businesses that provide for their needs. All the OCHH participating in the study shared experience of work after school such as fetching water and selling or collecting firewood. After that they cook and eat then they study into the night, to wake up very early and to go to school.

The girls OCHH participating in the study have shown a new perspective on how they approach the issue of marriage. They all mentioned that they are not ready to marry as expected or advised by some relatives, neighbours and even men who try to propose (as a solution to their plight). They want to ensure that they and their siblings have finished school and have settled well. Then they will decide whether to marry.

The OCHH do not present themselves as desperate victims who have no way out. In the FGD [appendix 7.4. 6/12/2009] they said with pride that ‘At least we have not got to the point of stealing.’ This was echoed by the head of the Makete prison who said that OCHH and other MVC in the area work hard and they never try to steal [Interview 77: Appendix 7.2. 8/12/2009].

All the OCHH who participated in the study seemed to know what they want in life. Kevona as introduced above said she will not settle for the stereo type work earmarked for orphans. Kevona and her young brother both passed to go to secondary school and their younger brother in primary school is among the best students. This spirit is with all the OCHH interviewed even those who have not made it to secondary school or have dropped out of school. They still see a purpose in themselves and have plans, such as to go to alternative schooling or to learn a trade.

Kiyaya, a standard five student in Makete, aspires to be an engineer. He is making electricity (light) using batteries and he is paid to do this in people's homes. When we visited the village he was at his business. When we saw him afterwards he said he makes electricity, he learned from a book. During the interview he mentioned that he would want to be a TANESCO person. TANESCO is the Tanzania National Electricity Company. When he was questioned further, he explained that he would study at university level to know more about electricity and how to generate it in a more sophisticated way [Interview 20: Appendix 7.2. 7/11/2009 and FGD, appendix 7.4. 5/12/2009].

The resilience and the coping mechanisms by the OCHH is not a cause for celebration by society: it is not an appropriate way in which children should exercise their agency. This is a social abandonment of the children which needs to be addressed. The lessons related to the children's agency learned from their coping mechanisms are necessary to understand the ways children's agency can be of benefit to them and not an outcome of suffering. It is also important to understand their significance to proposals for regulating such agency. The discussion points to different ways childhood is exercised and hence the next section considers childhood and how the concept has changed over time.

2.4. Defining Childhood

Childhood as a concept is not a simple term as it raises vast complexities related to how a child is understood. There are a range of understandings of childhood. One strand asks 'what is a child?' (Freeman, 1983: 7) while another asks 'who is a child?' (Van Bueren 1998: 33). The OCHH question what constitutes a child? Van Bueren,

argues that the ‘what’ approach is dehumanising while the ‘who’ approach is an artificial construct since the status ‘child’ is dependent on a birthday only. Franklin (1986) eschews this dichotomy and argues that the meaning of childhood is more complex and needs to be treated deeply. Freeman (1983: 7) further opines that the question ‘what is a child?’ is answered by adults who define whom they consider to be children. These avowals suggest the need to understand childhood, which may be biological, social, psychological or legal term.

There are several ways in which the international instruments have tried to define and give meaning to the term ‘child’ and therefore childhood. The Declaration on the Rights of the Child of 1924 did not define a child but the 1959 Declaration of the Rights of the Child in its preamble indicates the beginning of a child to be at the moment of conception by providing for protection ‘before as well as after birth.’ The Convention on the Rights of the Child 1989(CRC), defines a child to be a person below the age of eighteen years although State Members can accept an earlier age of majority (CRC Article 1). The international instruments as well as national laws use age to define a child and thus childhood. Developmental psychology as propagated by the work of Jean Piaget in his intellectual development theory, describes the stages in the development of a child at different ages (Piaget, 1968 cited by Corsaro, 2005: 10). As a result, the use of age to describe childhood has become embodied in the way children are understood in western societies (James and Prout, 1997).

James and Prout (1997: 10) have noted the dominance in the study of children and childhood of the key concepts; ‘rationality’ ‘naturalness’ and ‘universality.’ These themes are said to have spread beyond the disciplinary confines of psychology, guiding ‘sociological approaches as well as the socio-political context of childhood

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* itself' (James and Prout, 1997: 10). The presumption is that law and therefore the international law of the child has been similarly influenced.

The definition of childhood in Makete and Karagwe, as will be discussed later in this chapter, has some notions derived from the international law as well as those from African understanding, while the children and especially the OCHH experience a different notion of childhood. To understand the way childhood is defined, further clarification can be sought from history.

2.5. Western Historical Notion of Childhood

The major assumptions on childhood in western literature, with the child-centred ethic, are traceable back to the 15th Century (Franklin, 1986). There is an assumption that childhood is a time of a continued bliss and freedom from adult responsibilities, as children are taken to be the property of their parents (Hinton, 2008: 288) but also that they lack the legal capacity to undertake some roles such as maintenance or guardianship. This is a disputed assumption in reality as children have taken what are considered to be adult roles such as income generation, child care (Panter-Brink, 2000 cited in Hinton, 2008 and Evans and Becker, 2009) and even caring for themselves and acting as 'guardians' to their siblings as heads of households. The assumption that childhood is a time of bliss and freedom from adult responsibilities, is veiled with the socially acceptable view of adult and child relationships which carries with it various myths which have refused children any voice in society (Franklin, 1986:3). There are some arguments that childhood is a European invention of the last 400 years (Plumb cited by Franklin.1986: 8), which is articulated from the work of Aries 1960 (as translated from the French in 1962), with

the argument that childhood arose at the same time as the industrialisation period in Europe (Aries, 1962). These assumptions and arguments are discussed in relation to their influence in the universal definitions of a child and childhood in general. This section deals with the different complex patterns of change in terms of childhood and how children have been positioned in society over time, as a means to further clarify the construction of childhood and the children under this study.

2.5.1. Childhood: ‘Teeny-weeny Adults’?

The definition of childhood has always been complex (Franklin, 1986: 3). Childhood has been understood as a ‘historical shifting, cultural construction and is not a distinct universal permanent experience’ (Franklin, 1986:7). This is said to have been proved by anthropologists and historians, showing the diversity and relativity of the idea of childhood with a moving line between adulthood and childhood which might lead to the concept being a temporary phenomenon. In each period of history the perception of childhood has varied, depending on economic and sociological factors (Franklin, 1986: 8).

The history of childhood as provided by the work of Philippe Aries *Centuries of Childhood* in 1960 maintains the idea that childhood did not exist in medieval Europe but it is an invention of the 17th century (Aries, 1962: 129). In the medieval and immediate post medieval times, Aries (1962: 33) asserts that there was ‘no place for childhood.’ The society had children but they did not have childhood; children did not ‘constitute a conceptual category’ (Qvortrup, 2005:1). Children were part of the public life coexisting simultaneously with adults and there was no ‘awareness of the particular nature of childhood which distinguishes the child from the adult’

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (Aries, 1962:128). Children were seen as ‘teeny-weeny adults’ depicted as ‘small adults’ (Franklin, 1986) or as ‘miniature adults’, portrayed by Aries (1962) in his interpretation of medieval art. The work by Aries has also been questioned by many historians and others (Qvortrup, 2005:4) with claims that the evidence he uses is weak, as he relies mostly on artwork (Snell, 2000). Snell (2000) suggests that there is a large amount of evidence indicating that society at the time recognised childhood as a separate stage of life, and that in medieval times there were laws protecting orphaned children, and medicine approached the treatment of children separately from adults. It also has been asserted by Heywood (2001) that ‘childhood’ as a concept is not an outcome of modern society. Changes in society have affected conceptions of childhood, in particular the expectations that society has of children (Wells, 2009: 11). Irrespective of the objections and disputed facts about Aries’ work, it remains a notable cultural historic piece of work inviting a critical thought on children.

Whether or not childhood was recognised it is evident that in reality these ‘small adults’ from the age of three (for the poor ones) were working within the family or as apprentices so as to be fed, clothed as well as educated (Franklin, 1986: 10). The climax of work done by children was during the factory system before the industrial revolution (Engels, F. 1954 and Hill, C. 1969 cited by Franklin 1986), but changes began to be observed in the wake of industrialisation. Aries (1962: 329) notes that the ‘miniature adults’ gained recognition after a conscious shift by adults wanting to protect the child, emanating from the ideas of a small minority of lawyers, priests and moralists. This assertion has been disputed as idealistic (Lloyd de Mause quoted in Franklin, 1986: 11) since ideas are part of what occurs in society and demonstrates wishes and concerns of a particular social group (Franklin, 1986: 11). The shift is

therefore explained by the changes in the mode of production from feudalism to capitalism (Franklin, 1986:11). In this era children were no longer useful in the manual work of the pre-industrial era but were supposed to become more useful in mental activities provided through education in schools (Qvortrup, 2005). It became appropriate to protect children to enable them to undertake the expected role of the time.

2.5.2. Childhood: Innocent and Weak

Children portrayed ‘humanity’s original ontological goodness, purity and moral wisdom’ (Wall, 2008). Adults were then accorded the duty to protect the innocence from pollution by life and to toughen the weakness so as to foster character and reason (Aries, 1962: 119, 329). Looking after children became important. ‘We are bound to prefer that duty to all others when obedience imposes it on us’. This became the doctrine of the time²⁰ and general principles arose from the doctrine, one being ‘children must not be left alone...A close watch must be kept on children, and they must never be left alone anywhere, whether they are ill or in good health’ (Jacqueline Pascal cited by Aries, 1962: 114-115). The outcome of this change was the removal of children from the realm of the world of adults (Farson, 1974; Holt, 1974). They were taken away from work, which Hoyle (1979:5, cited by Freeman, 1983: 2) notes as a crucial separation suffered by modern children and directed more into education and schooling. The changes included dressing, which reverted from being a sign of status to being the difference in age with children having special dresses (Laslett, *The World We Have Lost*, Hoyles, *Changing Childhood*, Aries, *Centuries of Childhood*, Firestone, *Down with Childhood*, Pinchbeck and Hewitt,

²⁰ The time in question is not that precise as Aries’ chronology seems rather unclear but Archard (1993:16) observes that the time could be around 15th, 16th and 17th Centuries.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* *Children in English Society*, cited in Franklin, 1986 note 52: 21). Education was also limited to childhood, though it was enjoyed at any age during the renaissance period (Franklin, 1986: 10). Education was not equally available for all children. It began with the male children within the middle class as childhood did not apply to women of all classes and children from the working class had to work (Aries, 1962). Childhood was experienced differently by the children of different classes until the 19th and 20th Century when mass education was provided for all children (Franklin: 1986: 11). It has been pointed out that these historical underpinnings have to be treated critically due to the reality that what is provided can be selective and the history is mainly an account by western adult males from the upper class (Freeman, 1983: 12). What is evident however is the fact that childhood is not a static state but its present context is ingrained in the political, economic, technological, social and cultural changes which took place in Europe (Prout, 2005: 16) and elsewhere and which are still in the process of change.

2.6. Sociological Construction of Childhood

Although historians are said to be late in discovering children (Sommerville, 1990: xi) the study of children in sociology is said to have been ignored until recently, when it gained prominence (Ambert, 1986 cited in Corsaro, 2005: 5). The increasing interest of sociology in children has given rise to a new way of conceptualising childhood as an outcome of constructivist and interpretive theories in sociology (Corsaro, 2005: 6). These theories, when applied to the sociology of childhood, suggest that children, just like adults, participate actively in the construction of childhood and are not merely consumers of what is established by adults (Corsaro: 2005: 7). This section provides a brief introduction to sociological theories. These in

some ways influence the approach towards children as human beings in their own right as expounded by James and Prout (1997) and Corsaro, (2005). Socialisation theory has to a large extent influenced the ideas of children and childhood in sociology. Two models of socialisation as a process have been proposed: deterministic and constructivist. The former holds the view of ‘appropriation of the child’ which means the child is taken over by society to be trained so as to grow into a productive and valuable member of society (Corsaro, 2005: 7). Under this model the child does not have an active role. It contains approaches with differing views in relation to society. These are the *functional* as propounded by Talcott Parsons (1955, cited by Corsaro, 2005:8) and the *reproductive* models. The former was based on socialisation aspects of what children should internalise and the techniques parents were supposed to use to ensure such internalisation. The latter models are concerned with the dominance experienced by people with greater access to cultural resources which acknowledges the effect of social conflict and inequality on the socialisation of children (Corsaro, 2005: 9). Both approaches are open to criticism as they put emphasis on the outcome of socialisation while underrating the ‘active and innovative capacities of all members of society’ (Corsaro, 2005: 9), thus disregarding the significance of children and childhood in society. The constructivism model is seen as a model which acknowledges the child as an active member in society involved in ‘appropriating information from the environment and using it to make sense of the world’ (Corsaro, 2005: 9).

The constructivism theory has changed the traditional views of children in development theory and has led to sociology regarding children as active agents. Although this theory is taken to have been positive the fact that it focuses mainly on individual development has been questioned for the lonely view it portrays of a

child. The theory does not consider the interrelationship of the child's interpersonal experiences as reflected in cultural systems. The theory is concerned with the endpoint of development rather than the transition of a child from immaturity to adult competence (Corsaro, 2005: 16). There is therefore a new extension of the constructivist theory which takes into account children's agency in childhood (Tesson and Youniss (1995) cited by Corsaro, 2005). This stresses the acceptance of the significance in the 'collective and communal activities in the way children work out, share and develop culture with adults and each other' (Corsaro, 1992, James, Jenks and Prout 1998 cited by Corsaro, 2005: 18). Interpretive reproduction has been offered as a basis for a new sociology of childhood to replace the linear models, so as to let children participate as active members of both childhood and adult cultures. (Corsaro, 2005: 27).

The sociological construction of childhood using interpretative reproduction enables the understanding of the construction of childhood coming from the OCHH as children outside the traditional conceptualisation of childhood and makes it possible to observe and learn the children's agency in their daily activities and the community surrounding them. The surrounding of the child has also been influenced by the trends of globalisation which also have a bearing on how childhood is constructed. The African child is thus constructed within the African environment but influenced by the global environment. The next section examines the African construction of childhood before looking into the forms of childhood in globalisation. We return to conceptualisation of childhood based on the constructivist and interpretive perspectives in chapter four.

2.7. Childhood in Africa

In an African society, childhood carries a cultural, political and economic importance (Rwezaura, 1994). As we have seen African society is both a historical reality and an ideology. Neither is practised in the same way as in the past. Before the advent of modern society children experienced life and grew up in a family²¹, which provided all the requirements of a child (Ncube, 1998: 21). Biologically a person is attached to her/his parents throughout their lives with parents having authority over and leadership towards the child and the child having a role towards her/his parents in terms of assisting and also as a resource (Armstrong, *et al.* 1995: 338). In the process a child is being trained while contributing to the economy of the family as Ncube (1998: 21) points out:

... the food consumed within the family was often as much the contribution of their labour (children's) as it was that of their parents. Accordingly, the idea of a totally dependent child who is fed, clothed, educated and generally brought up at the expense of his/her parents is a concept which is alien to the traditional African setting which was characterised by a closely guarded and defended system of inter-generational dependency.

Children were thus a family resource in various ways, depending on age and sex. All children from a certain time in their childhood performed tasks in the family such as farming or herding of livestock and girls were/are involved in all types of domestic work performed by their mothers. In societies where 'bride price' (*Mahari*) is the

²¹ In the African sense a family means the extended family where all blood relations are involved and not the nuclear family.

norm the girls become a resource exchanged for cattle (Rwezaura, 1994) or any other valuable property or cash agreeable to the parents²². Armstrong and others (1995) have termed this ideology as reciprocal obligation: the children are supposed to support their parents at all times since the parents undertook their roles towards the children at a tender age.

The social construction of an African child however is as immature and without the capacity to form her/his own family (Armstrong, *et al.* 1995). In this regard the adults in the family and in this case the parents have the duty to nurture and protect the child as they lead her /him to maturity and independence. This means that children who are not mature enough to marry are with the parents in the home and they may not be left to face the struggle for survival on their own (Armstrong, *et al.* 1995: 339). Although a child is a resource and a contributor in the family, according to the social construction he/she is regarded as mentally and physically weak, inexperienced and unable to make sound decisions for herself/himself (Armstrong, *et al.* 1995). The society and family's expectation is for a person to be able at a certain point in time to acquire the needed capacity and move into the stage of an adult by getting married.

As already noted, this ideology still has resonance although with some modifications. Evidence from the field clarifies the position further. During the field study in both districts children as young as three or four years were seen performing various activities such as fetching firewood, cooking, fetching water, selling fruits or

²² The nature of the bride price transaction is a subject of debate. See Tamale Sylvia (1993) Law Reform and Women's Rights in Uganda, *East African Journal of Peace and Human Rights*, Vol.1 No. 2. (1993). There are claims that bride impede the rights of a woman and exacerbate domestic violence in a constitutional case in Uganda by Mifumi Project (Bureau of Democracy, Human Rights, and Labour: 2010 Human Rights Report: Uganda, (April 8th 2011) Online <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375> (accessed on 22/10/2011).

vegetables in the market, carrying siblings. Very young children were found at home by themselves as parents had gone to work leaving them under the care of an older child of four /five years. The children are socialised from their tender age to obey and perform such functions as are required as a form of training which makes childhood an extended perennial transaction intended to ‘reproduce and reinforce society’s underlying values on and about relationships between children and their parents,’ (Armstrong, *et al.* 1995: 338-339). The relationship of child-parent is very strong and hence if children are working or taking care of others it is within the directions of parents and other adults in the community, with no space for a child to be seen as abandoned.

2.7.1. Changes in African Childhood

There are changes which have taken place over time associated with ancient trades, colonialism, Christianity and a Western form of education (Ncube, 1998). Some family members are no longer located in the same place, leaving in search of work for cash, while children go to school at a distance, or in cities where there are relatives. The socialisation process is not necessarily within the extended family and in some cases families are left with women as heads while men live in the places where they work and come home only to visit. The effect of all this is the individualisation of the family. Communal life is no longer as strong as it was while western ideas and ideals have moved gradually into the local understanding of childhood (Boyden, 1997: 202). Children are understood in terms of age. Their socialisation process is extended through schooling because it takes a long time to acquire the skills necessary to undertake an occupation which enables a child to be independent. Kaime (2009: 77) explains this situation as a ‘development of new

conception of childhood which is African in form yet bearing the distinct imprint of western influence'. The situation has also been complicated further by the HIV/AIDS pandemic in Sub-Saharan Africa since 1980s, making more changes in childhood constructions, especially in relation to child responsibilities towards the general family.

2.7.2. Childhood Responsibilities

Thus, for the African child having responsibility towards the family has been accepted and expected. The responsibilities which children are expected to undertake are mostly in the form of assistance to parents as they learn. Due to the idea that they are vulnerable and immature children are always expected to be in the guardianship of an adult. The extended family has been weakened due to economic changes (Paliwala, 1993: 285), coupled with the HIV/AIDS pandemic which means that the extended family can no longer cater for the needs of all members who became ill and eventually die. Children's roles as resources have been utilised in that children support sick parents as carers as well as working for the provision of the family. Where the parents are still alive the children care for them during their illness and are still under the guardianship of the parents, who although sick are able to give some guidance. In the case of the death of both parents children often move to live with relatives, frequently very old grandmothers. The children acquire the role of looking after an old grandparent. Depending on the age of the grandparent, sometimes the child does not receive the necessary guidance. A child in this case is expected to work and to go to school at the same time, which necessitates dividing his/her time between schooling and working. This is a child who is not only being a resource, but is also training and guiding her/himself. The very new changes have

been where the child is further left to care for the whole household with no adult but with other children. Such a child takes charge of the household as an adult would do, while still going to school. The child is faced by a double role as a child and an adult at the same time. Although the role of providing for the family is not seen as too alien, the role of heading a household is alien, as a child supposedly needs adult care to guide her/him to maturity.

2.8. Wakinga and Wanyambo Construction of Childhood

The Wakinga and Wanyambo are two ethnic groupings in the location of the field research in Makete and Karagwe Tanzania. The people in these areas, like most African societies, take a person born of another to be a child to the parent all his life and therefore when confronted with the question of who is a child the answer is that a person is always a child of his/her parents. There is a way a child and hence childhood is depicted in these societies which can be observed from the language used for the various categories of children. The categories are to differentiate the stages in which a person moves from birth until marriage. The language differentiates a child who has just been born from a child who has been weaned or a child who is near puberty or is at puberty.

The term child in Kikinga is *mwana* and in Kinyambo it is *omwana*. The term *mwana/omwana* is also commonly used to refer to one's child. When a person talks of his/her child *mwana/ omwana* is used irrespective of the age of the 'child.' However, in reference to stages in life infants or very young children are referred to differently. In Kikinga an infant is *ikiswele* which is further categorised differently gender wise. A female infant is *ikihinza* and male infant is *ikidimi*. In Kinyambo

infant is referred to as *enkelemeke* whether a boy or a girl and is normally below the age of four. A child who is no longer an infant but has not reached puberty in Kikinga is known as *unginza* (Female) and *udimi* (Male). For the Wanyambo there is no recognised category between infancy and before puberty as there is in Kikinga. In Kinyambo *omwisiki* or *empangale* (Female) and *omusigazi* (Male) are the terms for a child who is at the stage of puberty. Kikinga has the term *nahudihili* for a child in the stage of puberty.

The categorisation of children implies the expectation of the parents and society for the child, and also the responsibility of parents towards the child. The infant is under the strict care of the mother mostly since she/he is still being breast fed. In Swahili such a child is known as *mtoto wa mgongoni* which means a child on her mother's back, which would be the same for the Wanyambo and Wakinga. A person is considered an adult when he/she gets married irrespective of her/his age.

2.8.1. Childhood Roles

When a child is no longer an infant s/he will normally be left to play with other children when the parents are working or with old grandmothers or neighbours. As children continue to grow they will be assigned roles depending on their age and capacity. The roles are dependent on each family and each community. In Makete for example very young children go to the farms with their parents and are provided with small hoes to weed and this continues gradually until a child is capable of carrying a big hoe and can go without a parent and do any work in the farm. For girls an additional role of house chores is also a process of being taught housework. There are claims that even male children are nowadays being taught house chores but this

is not common in either district. In both districts nowadays in some families children are not given any work in the farms for fear of disrupting their schooling. These are mostly families who have no farm work, as they are employed or have their own business. In both districts it was also evident that children performed tasks other than farm work or house chores such as casual labour to supplement income. Other work done by the children to get money includes timber cutting, log carrying and carrying of bricks as well as other petty business. Even children with parents do such work to get money to supplement the family finances, but also for their personal use.

In the case of OCHH, since they have no parents, they work to maintain their households and assist young siblings. This scenario provides different versions under which childhood is understood and constructed. The OCHH had some unanswered questions regarding their identity. They understand the legal construction of childhood and their community construction of childhood, and they do not see where they fit as they are not in either of the two constructions. There are OCHH who were clear that they were children (by the meaning assigned by their society that they are young and unmarried and by the legal definition that they are below the age of eighteen), but claimed to be different, given the roles they are undertaking. A number of children were not so sure whether they should be referred to as children, as they are performing adult roles. There are children who claimed to be children because they are not yet eighteen, although members of the society wanted to consider them as adults because they were managing their roles as head of household and were no longer in school. There are those who with certainty claimed to be adults because they performed adult roles and their peers were already married. This was taken to mean that since they are managing their household without adult supervision and are of marriageable age, they are not different from those who are

married. There were other OCHH who were still in school but were above eighteen years of age, they regarded themselves as children because they had not yet completed their education and were not yet married.

However, in the focus group discussions an OCHH who had claimed to be a child was referring to other children in the group as childish as they seemed not to understand life when they said working in the timber business was torture. He was of the view that work is what sustains their life, so calling it torture shows immaturity. The same child was insisting that he was a child when the others said he was an adult because he could perform heavy duty tasks and was not in school.

2.9. Childhood forms in the era of Globalisation

Childhood has been gravely entangled, altered and destabilised notably by globalisation, in the current social technological and economic change (Prout, 2005). Globalisation is a contested concept which has been given different meanings and understanding in the ways it is used in different disciplines. I adopt the meaning, shared by many philosophers that it refers to ‘an increasing interconnectedness and convergence of activities and forms of life among diverse culture throughout the world’ (Karavakou, 2005).

The global economy, although it interconnects its activities throughout the world, is not even-handed, in that while a few get richer, many become poorer (UNICEF, cited in Prout, 2005)²³. The unequal trading terms between the rich and the poor countries (mostly in the developing world) coupled with the world economic crisis,

²³ 90% of the world’s wealth is said to be held by 10% of the world’s population (UNICEF, cited by Prout, 2005).

have worsened the socio- economic situation in the poor countries, and impacted negatively on the conditions of children (as well as adults). These economic inequalities have been globalised in that the divide between rich metropolitan countries and ‘poor peripheral’ ones is not the norm. There is an emergence of rich individuals in the ‘periphery countries,’ who are also known as the ‘global south’ and of poor individuals in the rich countries of the ‘global North’ (Santos, 2005). The effect of this type of globalisation is that childhood of the rich in any part of the globe may have similar features with children’s time spent predominantly within the family home, in full time education or recreation in preparation for a productive adult life (Evans and Becker, 2009: 2). The childhood of the poor may have similarities wherever they are, with children engaged in economic activities at a very young age, most not attending school or not regularly in schools.

2.9.1. The Globalised Childhood

There are suggestions from history and social studies that there cannot be a global form of childhood although it has some universal characteristics²⁴ (Wells, 2009: 3). Childhood as a social phenomenon is not the same in all social settings. However this thesis highlights the way in which international laws, international actors such as Intergovernmental organisations, NGOs and private organisations at the global level presuppose that childhood is governed and therefore constructed at a global level (Wells, 2009: 3). Chapter seven in particular demonstrates the way in which the CRC and the international actors contribute to this regulation.

²⁴ Universal characteristics of childhood are such as dependency of infants on others for their physical care and emotional attachment and all children at the infant stage have similar needs and limitations (Wells, 2009:2).

Globalised childhood is mainly the western construction of childhood passed on to other countries of the world by means of human rights instruments, international development institutions and national laws and policies. These produce a global concept of a ‘good childhood’ (Edwards, 1996 and Boyden 1997, cited by Evan and Becker, 2009: 3). This type of childhood also constructs ‘good or healthy childhood’ as one which directs the children ‘towards independence rather than interdependence, towards school based rather than work based learning and separates them from wider forces of politics, economy and society’ (Wells, 2009: 4). This global construction of childhood has ignored the social and cultural realities of childhood in some places, mostly in the ‘south’. This global construction of childhood is evident in the research location where the intervention by NGOs and other national and international machinery has defined the global child at the very local level. OCHH are caught up in their own reality which is alien to their local African context, and at the same time they try to fit into the definition of the NGOs or the other institutions defining them by the global construction of the child.

2.10. Conclusion

The experiences of the eight OCHH introduced in this chapter summarises the situation of the children who are in an African village but they are also in a globalised world. Orphanhood and childhood do not portray the ideal notions of the terms in the African context. While children are not expected to be orphans, the reality is different. Where there are orphans the ideal is for their integration in the extended family but this also is not the reality. The African child is expected to work

for the cohesion of the family but it is alien for a child to be left without a guardian. This has opened up a new way an African child experiences childhood.

Childhood is a changing phenomenon due to changes which occur in society at different times in history. The changes affect the way children are understood and shaped within different governance institutions. Historically in the western countries, it is claimed that childhood had not been a distinguished category, and changes in the stages of development have affected the way children and therefore childhood are treated. The western conception of childhood of an individualised child seems to have influenced childhood construction in Africa. The OCHH in this study are children in Africa where a child is taken to be a maturing adult. The definition of an orphan and the construction of childhood are changing. Orphans are being left to head households and hence play double roles as children and adults. Neither the Western notion of childhood which has influenced the imported global construction nor the African notion of childhood fit the experience of OCHH. The children within this study live a different reality. Their construction of childhood has not been addressed. It is therefore necessary to discuss further the different ways in which children have been protected. The following chapter considers literature in the area of children governance, protection, justice, and care.

CHAPTER THREE

Children Governance: Protection, Rights/Justice and Care in a Plural Setting

Children do not live in the abstract. They live in a country; they live in a province; they live in a district; they live in a place. From global institutions to local community-based organisations, we all have a responsibility...everyone-concentrate their efforts in making the lives of children better²⁵.

3.1. Introduction

In this study the emphasis is on the children's perspective which involves commencing with their perspectives in relation to all issues of law and policy. The accounts of the eight OCHH introduced in chapter two raise a number of key questions related to how they perceive their status and situation. Chapter two has shown how these children are not within the construction of African or western childhood. The questions identified from the OCHH are: Can they be said to be children, given the roles they are playing which are mainly those of adults? If they are children, where is the protection accorded to children? If they are not children, why are they not accorded rights which adults have? These questions, analysed from the OCHH's cases, portray the major theoretical issues observed for the protection of children within the rights framework, care and responsibility. The scope of all the issues raised in the cases translates into governance of children. Governance in this case is taken to be broad, encompassing both legal and extra legal mechanisms. This

²⁵ Machel, Graça (2003), 'Tangible Care,' in Asmal. K., Chidester,D., James, W. (Eds.) (2003) Nelson Mandela in His Own Words: From Freedom to the Future, South Africa: Jonathan Ball Publishers (Pty)Ltd. pp. 411-415

chapter discusses governance on the understanding that it is more than law; it has special aspects at global, national and local levels which are plural in nature. Taking this dimension of governance, the chapter interrogates the three ethics which seem to appear as issues in the OCHH's case: Welfare (Protection), Rights (Justice) and Care. The discussion goes further by observing the extent to which children's perspectives are overlooked in the range of governance networks. A span of literature is considered in each aspect of governance and the three ethics mentioned above.

First, the governance literature is examined briefly by taking note of the different angles it has been considered by different scholars. Van Kersbergen *et al* (2004) examine multidisciplinary approaches to governance and discuss the idea of network governance. This is related to children governance in this study. The meaning of governance as elaborated by Smith (2007:3) that it is 'government plus something else: public policy, institutions or a role for the non-governmental sector in the business of the state' is studied in relation to the governance institutions discussed in chapters five, six and seven. The pluricentric nature of governance invites the discussions related to legal pluralism and the translation of rights from global setting to local situations also to be discussed in this chapter and chapters five and six.

The second part deals with the three ethics: welfare, rights and care in the literature, and as related to the issues arising from the OCHH's cases. The first issue relates to the question of responsibility towards children. This is discussed in relation to the literature on child rights aiming to protect or to empower a child. Of relevance is the literature by various scholars, such as Daniel Farson (1974) and John Holt (1974) on welfare (child savers) versus rights of the child (child libbers). For the OCHH the

issue is more complex as they do not seem to fit within the debates. The Convention on the Rights of the Child (CRC) is discussed in the context of its assumed role of protecting the child and protecting his/her rights to self autonomy (empowerment). How has this worked for the OCHH? There seem to be conceptual as well as practical problems within the children's rights framework, which fail an OCHH. I therefore argue that, although translation of such rights from the global to the local can be a consideration it might not be adequate to address all the issues. Considering the perspectives of the child conceived from the attitudes of the OCHH to the various institutions, re-constructing the CRC seems inevitable.

This chapter therefore considers the contribution that the ethic of care analysis can play in reconstructing the rights framework to better address situations like those of the OCHH. The literature on ethic of care is enumerated to consider its usefulness, and how it provides the possibility for children's perspectives to be considered and its interdependent nature bringing care into the public framework of justice.

The theoretical mix within the broad range of literature is discussed in this chapter, taking into consideration the reality of African childhood. The aim is to provide the analytical foundations for the thesis which argues that appreciating the children's perspective offers the most appropriate starting point from which to develop resolutions regarding protection of vulnerable children. This involves moving beyond saving or liberating the child to appreciating the child's agency as a human being as well as to re-think the working of the institutions which govern childhood at global/international, national and local levels.

3.2. The governance of children: A plurality approach

In Tanzanian society, as it might be in other societies, children are confronted with a multitude of governance institutions. The idea of plurality needs to be explored and in this study we look specifically into how such pluralism applies in the case of the OCHH. The plural setting is viewed from the family setting, the village governance institutions, national institutions including policy and law and regional and international governance institutions such as the ACRWC and the CRC.

All these have effects on child governance as related to the issue of OCHH. After the loss of parents, the matter of orphaned children becomes an issue for inheritance and settling of guardianship, which is supposed to be settled by State law codified under the Local Customary Law Declaration Order no 4(1963). The order to be followed after a death is its registration and then court proceedings for probate and administration. The probate issues however normally take place through the traditional clan council, and in other cases a meeting of clan members is joined by non-members. If the matter is taken to court the children must have birth certificates to ascertain they are the children of the deceased parents. Most children are not registered, making it difficult to process matters in court. There is a situation where the clan, the village authority and NGOs come together to deal with an issue confronting a child whose parents are deceased. The NGOs in their projects try to follow the rights provided for in the regional and international children's rights instruments. For example, In the case of Kili's siblings, who had to be removed from their home to be taken to an institution, several people took part in the decision. This included the Village Executive Officer (VEO) (local government institution), the Mama Mkubwa (MM) (linked to an NGO from UNICEF funding) and the uncle

(family member) who is the official guardian of the children. Legally the uncle was the only person who was responsible for the guardianship of the children but because the children had been registered in the village as MVC (a national programme for vulnerable children) and supported by the MM, it was inevitable for all of them to take part in the decision. This plurality shows networking of the three institutions. The OCHH who was having daily responsibility for the children felt he also should be listened to. These and many other situations are faced by the children including the interventions by NGOs, the church, burial membership groups and other societies such as *Upatu* (small lending group) as well as children associations. The situation has also provided opportunities for the children to be creative and to manoeuvre between the different institutions. This whole scenario can be summarised within children governance and hence the need to understand governance generally.

3.2.1. Governance and the governance of Children

The OCHH's know that the government ought to do something for them and they are anticipating support from other institutions in place. From what has been noted in relation to such children, there are a number of initiatives in place which can be reviewed in relation to governance and in this case the governance of children. The term governance as portrayed in the literature surveyed under this study has different meanings depending on the discipline in question. Smith (2007:3) provides the meaning of governance to be 'government plus something else' such as public policies, institutions or role for the non-governmental sector in the business of the state. Rosenau (2000:171, cited by Van Kersbergen and Van Waarden, 2004:145) defines governance as:

‘System of rule, as the purposive activities of any collectivity, that sustain mechanisms designed to ensure its safety, prosperity, coherence stability and continuance’.

The above definition, historically supposed to be the main activity of government, is no longer the monopoly of government as other actors such as non-governmental organisations and international institutions have similar attributes. UNDP (1997 cited by Smith 2007:5) recognises governance as including every institution and organisation in society from family to the state, and this is the position undertaken in this study. Governance has also been referred to as self-organisation of societies and communities in what is referred to as governance without government (Van Kersbergen and Van Waarden, 2004:146). Under this definition the capacity of communities to plan and take initiatives without government assistance has been observed through a bottom–up approach. In this study the term governance is understood broadly as ‘a plurality of governing agencies beyond the state...conceived of networks or partnerships.’(Prozorov, 2004:273). One of its characteristics is the pluricentric rather than unicentric approach (Van Kersbergen and Van Waarden, 2004:150). With this approach, there is more than one type of governance institution at the site of governance. Governance cut across disciplines with each discipline having its own meaning. One version of governance is governance through networks. This is discussed as one way in which the governance of children can be understood. Network governance suggests forms of communications between different institutions. The actors involved in the networks consider problem solving fundamental to their activities. Through networking relevant state and societal actors come together around an issue. The actors are self interested and have interest in the community issue they are dealing with. These are usually non-hierarchical. The fact

that such networks develop their own policies and shape their environment put them outside the realm of government direction. The networks have a role in the formulation and implementation of public policy and delivery of public services (Smith, 2007:5). For example on the issue of MVC/OCHH in the area of this study there are communications between non-governmental organisations, schools and the family which are not necessarily coordinated by the government. There are networks of the church, the MVCC, the school and MM to assist the MVC/OCHH. Some NGOs have facilitated the OCHH to form associations which communicate with village authorities in an informal way while there are networks of OCHH with friends and neighbours or family members in trying to solve some of their problems. Such networking is sometimes an outcome of media information and government initiatives.

The same approach of networking has also been linked to the term multi-level governance (Van Kersbergen and Van Waarden, 2004:150, citing Heritier, 1999). Multi-level is taken to mean different government levels such as international, regional and national, as well as the involvement of public and private actors at all the levels. Multilevel suggests several levels of governance. For example the NGOs at the community level receive funds and programme initiatives from national and international NGOs. The village authority is dependent on district plans which are initiated by national strategies which are also dependent on international policies and funding. In this study network governance is preferred to multilevel with the understanding that the two terms seem to have similar characteristics, but networks imply a less hierarchical and more interconnected structures. The network governance at the different levels has affected the way in which children governance is undertaken.

The governance setting is both legal and extra-legal. The legal here refers mainly to the letter of the law such as the Convention on the Rights of the Child (CRC) or national child laws. Extra-legal includes international or national NGOs that have some legal aspects in their establishment as well as in their functions. This situation then invites us to the discussion of pluralism within governance and specifically legal pluralism.

3.3. Legal Pluralism and Child Governance

Given the plurality setting observed above it is not easy to escape discussion on legal pluralism. The observation is combined with pluralism as experienced by the OCHH in the study area. The different normative approaches used by the governance institutions at the community, national and global levels, as well as how the children negotiate their lives within such institutions, can be understood in relation to legal pluralism. Pertinent to the observation by Tamanaha (2007), there are multiple uncoordinated, coexisting or overlapping bodies of law, but there is diversity amongst them which makes them noteworthy.

Legal pluralism as a concept has several transpositions but for the purpose of this section only the area apposite to the study is discussed²⁶. From the work of John Griffiths, (1986) '*What is Legal Pluralism?* Two distinct approaches have become topical in the discussions on legal pluralism. These approaches are termed 'weak,' 'juristic' or 'classic' pluralism and 'strong,' 'deep' or new legal pluralism (A.

²⁶ For more on the area of legal pluralism see Griffiths, J. (1986) 'What is Legal Pluralism?' *Journal of Legal Pluralism and Unofficial Law*, Vol.24 PP.1-55. Griffiths, A. (1997) *In the Shadow of Marriage: Gender and Justice in an African Community* (Chicago, Chicago University Press. Merry, S. E. 'Legal Pluralism' (1988) *Law and Society Review*, Volume: 22 (5) pp. 869-896. Sally Falk Moore (1978) *Law as Process: An Anthropological Approach*, (London, Henley and Boston: Routledge and Kegan Paul)

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (Griffiths, 2002:290). The two approaches revolve around the contentions regarding scope and meaning of law as a concept in different fields such as legal theory and sociology. There are a variety of opposing angles in the understanding of law in terms of legal pluralism. There is the position in which different legal orders within a state are recognised and another position is a wider concept of law not dependent on the state for its validity (Griffiths, 2002:290). Depending on how the concept is being used one of the two approaches is utilised. It can be used to affirm the standpoint of law or to promote a more socio-scientific and descriptive theory of law based on empirical data (Griffiths, 2002:289). The latter is how the use of legal pluralism is evoked in this study, which introduces the invariably mutable groups in society in line with Sally Engle Merry's (1988) elaboration of the 'multiple, overlapping and interpenetrating legal systems creating sites of contestations that can generate legal opportunities not only for resistance but also creative intervention and adaptation that signify, modify and transform legal meaning and practice within an existing plural legal system'. This could also be understood from what Sally Falk Moore (1978:54) terms 'semi-autonomous social fields'. Within the 'semi-autonomous social fields', groups have the capacity to generate effective internal rules and methods for their compliance but they are also subjected to rules originating from other external sources around them.

The interrelationship and variance within the different groups understood as legal pluralism pave the way for the OCHH to promote and develop their own agency and perceptions as they associate with the different groups but in another way it also shows how the interrelationship affects such a development. As has been pointed out by Griffiths (2002), legal pluralism raises important questions about power, especially when observed in relation to the challenges brought about by globalisation

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* and the location of local communities within it. In communities in Tanzania, and specifically in an area where there are interventions related to the effects of the HIV/AIDS pandemic, such challenges exist due to the many international and national NGOs, as well as government and faith based organisations. All of the interventions are found in the same area with different normative values for the protection of children, hence the opportunity to consider the effects of legal pluralism from the perceptions of the OCHH.

3.4. Protecting Children or Protecting their Rights?

In this section the perspective of the child is used to discuss the development of the rights concept for the protection of children, since child governance seeks to protect children. How best can the rights framework work for the OCHH?

3.4.1. Protecting children in a rights framework

What we observe from the situation of most of the OCHH are children who are neither protected nor empowered. They are craving for both. Within the governance framework and all the different institutions, who is responsible for their protection? There is another dimension regarding protection, as the children challenge the protection so far provided for them by relatives and even the government. They seek freedom from a situation they do not accept. Are the OCHH empowered to be free as some of them have chosen to be? What is needed if the child is to be provided with rights as advocated in the Convention on the Rights of the Child? Is it enough in this case to assign rights to a child in this situation or does the system of rights need to be redesigned because of the special position of OCHH? What roles do the village

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government, the relatives, the neighbours and relevant religious institutions have in relation to the protection and rights of the child?

Children's rights have been seen as a complex problem with no easy solutions (Freeman, 1983:1). The intricacy in children's rights depends on how children are conceptualised as well as how they are treated. Treatment follows how they are conceptualised. Freeman (1983:1) points to the fact that children are not adults, they are in a state of dependency and they have different needs (Kellmer-Pringle, 1980 cited by Freeman, 1983:1). The needs and the dependency of children have been debated in theories advocated by adults at different times to devise means to deal with children. Rarely have children been accorded the opportunity to decide what they really want. Two distinct approaches towards children's rights which Franklin (1986:17) considers as the 'older conceptual division between the liberationists versus protectionist orientation' are an outcome of the search for the protection of children. This division, derived from the work of Rogers and Wrightsman (1978: 61) has for quite some time lingered in children's rights literature differentiating protecting children from protecting their rights (Holt, 1974: 19). Taking the situation of the OCHH the question still remains as to who protects the child or the child's rights and for whose interest?

3.4.2. Protection of children the case of 'Child Savers'

When children's rights in western countries came on to the agenda in the mid nineteenth century and towards the 20th century, the language was principally 'child-saving' (Margolin, 1979:144 cited by Freeman, 1983: 19). At the time the concern had been to provide the children with what was good for them, as determined for the

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child by parents and adults in society, and not by the child (Rogers and Wrightsman, 1978:61). The children in this case were mainly children who had parents in a home environment (Rogers and Wrightsman, 1978:62). The needs of the children which came to be seen as special had to be taken into account and be provided through distinct sets of 'rights' supposed to meet such needs. The term rights in this case has been challenged, as there are categorisations such as 'welfare rights' and 'protective rights' which Freeman (1983:43) considers might correctly be conceived as protections rather than rights²⁷. The emphasis in this approach has been for society to ensure the child is furnished with the 'objects, environments, services and experience which are valuable for them (Rogers and Wrightsman, 1978:61). This approach in protecting children differentiated them from adults with distinct treatment; for instance, when they are in conflict with the law as can be seen in the juvenile justice system; likewise there is mandatory provision of education (Freeman, 1983:22). Tensions in this way of protecting children, who were taken to be controlled so as to make them useful to society, led to the child-savers being blamed for overlooking the fact that children are human beings endowed with character and virtue and need not be treated as objects or problems (Freeman, 1983:24). The child-savers are seen as being too paternalistic and treating children as property and not as persons. They portray children as vulnerable and incapable of looking after themselves, so adults are needed to do so, without consulting the children. As Rodham way back in 1973 noted, the legal and social assumptions equated the interest of a child with those of her/his parents. This way of understanding child protection confronted the other

²⁷ Where protection is taken as rights, Freeman (1983:44) argues that it remains a paternalistic notion, as children are not asked of their wish to be protected. Wald (cited by Freeman,1983:44) notes that such 'rights' do not change the status of children, as the children are not given a choice to decide since the situation in the protection entails substituting one adult for another.

approach aiming at liberating children by letting them act and choose what they wanted.

3.4.3. Protecting the Rights of the Child the Case of Child Libbers

The 'Child libbers' premised their arguments on the idea that children were among the main oppressed groups in western society, together with black people, women and the proletariat (Archard, 1993:45) and that children's status is subordinate to that of adults who manipulate their power over them; hence the need to review critically such a trend (Foster and Freed, 1972 cited in Fortin, 2009: 3). Child liberation was part of the broad liberation movement of humanity as a whole rooted in the 1960's widespread tumult seeking different approaches against oppression. One area where such movement can be traced is the American civil rights movement as well as the United States of America Supreme Court judgements such as *Re Gault 387 US 1 at 13 [1967]* which decided that according to the US constitution the Bill of Rights was not for adults alone, children have the same entitlements as adults. This judgement and others (such as *Tinker v Des Moines Independent Community School District 393 US 503 [1969]*, *Goss V Lopez 419 US 565[1975]*, *Haley v Ohio, 1948*) are said to have inspired the child liberation movement (Fortin, 2009:3).

Another angle is the feminist censure of patriarchy which pointed to the family as an oppressive institution for women and children. Some psychiatrists such as R.D. Laing charged the nuclear family as a possible destroyer of young lives (Archard, 1993:46). Some of the advocates in the liberation movement came to be seen as radical, advocating that the rights of the child should be the same as the rights possessed legally by adults (Holt, 1974:19, Farson, 1974) Farson and Holt, named as

prominent liberationists, did not see why freedoms granted to adults were not extended to children. According to this approach, irrespective of their age and if they were so willing, children should be accorded the right to equal treatment at the hands of the law, the right to vote and take full part in political affairs, the right to be legally responsible for one's life and acts, to work for money, own, buy and sell property, decide on how they want to administer their education, the right to make quasi-familial relationships outside one's immediate family, to seek and choose guardians other than one's parents and manage their sexual lives and even the use of drugs (Holt, (1974:18-19) and Farson, (1974 cited by Fortin, 2009:3).

The idea is to provide a child with the 'freedom to decide what is good for her/him' (Worldsfold, 1994:142 cited by Freeman, 1983: 19). The fundamental assertion of the child libbers is the idea that, competent thought and informed choice is not the monopoly of adults since even very young children can make such choices, sometimes more competently than adults (see Fortin, 2009:5).

This approach became contentious and attracted criticism. Fortin (2009:5) mentions two major factual criticisms which have been repeated since the 1970s. First is the fact that equating children with mature adults disregards the gradual development of children physically and mentally. Secondly, the child-parent relationship is likely to be jeopardised and there is an inherent likelihood of the family being destroyed. The concern here is with the family more than the child and consideration of children's capacities is also measured against mature adults and not mature children. The idea by the child-libbers of freedom of the child to decide seems to uphold some of the demands of the OCHH. The 'freedom' in this case is forced by circumstances. The

case of choosing the lesser evil can hardly be equated with a right to choose what is best from the rights point of view. As Archard points out (1993:11)

Abandoning a child to the exercise of a liberty which 'it' is incapable of appreciating ---seem to be a form of cruel barbarism.

Freeman (1983:3) considers the libbers' approach as overlooking psychological evidence related to children's capacities and he argues for a balance in which the autonomy of a child is recognised without abandoning the child. Freeman (1983) calls for the respect of children's competencies without treating children as adults and for children to be treated as persons and not cases. These arguments in relation to the OCHH need to be refined further. Can we say that by being left to fend for themselves the OCHH competencies are being respected? Do they think so? By deciding to live alone away from abuse and mistreatment can they be said to be abandoned? The debates in this area culminated in the idea that a balance needs to be struck so as to be able to accord children care due to their incapacity and proceed to enhance their capacity towards autonomy. Freeman (1983:4) thus hypothesises the morally neutral theory of the good which he terms the theory of liberal paternalism. On how to build this neutral moral ground the suggestion is:

We ask ourselves the question: from what actions and decisions would we wish as children, to be protected, on the assumption that we would in due course desire to be rationally autonomous, capable of planning our lives and deciding on our own system of ends as rational being?'(Freeman, 1983:4)

Following the above debates childhood as against adulthood is a matter of what adults perceive it to be. This is what Qvortrup (2005:3) observes as a portrayal of childhood and adulthood as happening in a distinct period from each other rendering the state of childhood being on a waiting list to reach adulthood. The rights framework in both approaches has also not envisaged children other than those with parents or under the state's welfare, and in a western setting.

These debates are summed up by some writers who suggest that the dichotomy protecting children and protecting their rights seems more 'apparent than real' (Franklin, 1986:19) and as such children for different reasons might require both protection in terms of care and protection of their rights in terms of autonomy (Minow,1986 cited by Fortin, 2007:7). Balancing the protection of the child with protection of the rights of the child cannot be simple. Is the children's rights convention an attempt to achieve such a balance?

3.4.4. The Convention on the Rights of the Child (CRC): An Umpire?

The Convention on the Right of the Child (CRC) is considered an umpire for the debates discussed in the last section, as it embraces both approaches. What is seen as a balance is the fact that the CRC has rights which can be said to protect the child as advocated by the child savers. These are the rights to provision or survival and the rights to the protection of the child. The CRC also provides for rights to participation which are seen as empowerment rights, as advocated for by the child libbers. There is however some controversy as to whether the CRC is both a child protection and child's rights protection instrument which is further discussed in chapter seven.

This then brings us to another level. How is implementation of the CRC taking place, and how does it protect the child as well as the child's rights? Translating the rights to fit the local situation is a way in which such rights can be of value and have meaning for the subjects (Merry, 2006:1). Translating rights into the vernacular as advocated by Merry (2006) underpins the idea of rights as provided in the international human rights instruments being given meaning at the local level. In the case of children's rights, it means the CRC being made effective by considering the social and legal environment at the local level.

The CRC provides general principles on the rights of the child. Sally Engle Merry (2006) has noted tensions between the global settings where human rights such as CRC principles are being prescribed and the local situations where they are to be applied. The global principles are general and are to be applied at the local settings, while the local situations are not easily understood at the global level. She underscores the difficulty in translating the human rights ideas from one setting to another, given the distance between the two sites: global and local. From Merry's point of view it is the task of activists serving as intermediaries to translate the global principles to be applicable at the local level. In the situation of OCHH, the role of the intermediaries may have to be questioned. These are actors who have their own perspectives which may not coincide with those of the beneficiaries of rights, and the local ideas and approaches not moving to the global (Merry, 2006:3).

Children's perspectives might differ from the general views provided within the international or global framework as well as from the local setting. For example the CRC sees the family as a haven for children's rights and the State as having the obligation to support the family (CRC, Articles 18). At a practical level the reality

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* finds children who are not in such a haven and where the government has not supported the family or the child. The child heading a household and seeking income to survive is in a context where the idea of the family function as conceived in the CRC fails. Ennew (2000:178) argues correctly that CRC's articles of greatest importance for children who lack the supportive care of families are not those referring to their need for families. Children orphaned and heading households are in special circumstances since they are neither 'children safely nurtured within families' (Ennew, 2000:177) nor are they children in the streets or abandoned by parents. Their situation easily escapes the attention of those trying to protect children outside the family environment.

If we take the Tanzania national child law of 2009 as an example, (discussed in chapter six) that law does not seem to translate the CRC principles so as to make them part of everyday social practice. What it seems to have done is to replicate most of the CRC principles. In this case the CRC principles might not be embodied as envisaged by the translation theory Engle Merry advocates. Although translation is one way in which the global principles can be introduced and applied at the local level, the situation of OCHH invites us to consider the problem as beyond translation. If we start with the perspectives of the OCHH, as is proposed in this study the global principles which seem counterproductive to such perspectives can be re- considered in an appropriate manner.

Another contention in this area is the individualistic nature of rights and abstractness which has given rise to ideas of looking to morality for answers to tensions in the rights realm (Kleinig, 1982 quoted by Freeman, (2007:11). There are theories which make proposals for re-evaluating the rights language, as is discussed later in the

chapter. Before I consider the discussion on rights and care, I wish to consider the specific situation of orphanhood within the theoretical debates.

3. 5. Orphanhood, Care and Rights

Children who lose their parents seem to fall out of the conceptual discussion related to being saved or being liberated as the ideal child within the family circles, and into the pit of ‘charitable pity’ (Ennew, 2005:132). The discussion about children who are orphaned moves from the rights such children possess to questions regarding responsibility towards them and who exactly bears such responsibility. In the wake of the child saving movement, children generally changed in status from being cherished for the labour they contributed to their parents to being regarded as precious for the joy they create for their parents (Zelizer, 1987 cited by Ennew (2005:132). This move left a child who has no parents in the hands of other people, such as relatives, governments or organisations that look at orphans in terms of the costs to be incurred in raising them, and for the State this situation in principle is a social crisis. In this case the question for protecting such a child or her/his rights becomes difficult. Although the international children’s rights framework makes elaborate provisions for the State to take care and responsibility for orphaned children, this has not been translated into action (Ennew, 2005:133). There is a tendency in poor countries for the State to rely on the extended family, the community or NGOs to take the responsibility. This looks like an abandonment of the community and the child (Ennew, 2005:143). In the next section I discuss the ethic of care to evaluate how it can contribute to the changes required in making the children’s rights framework work for the children in this study and for any other children in their situation.

3.6. Children's Rights and the Ethic of Care

There are proposals to seek different moral values such as 'love, friendship, compassion and altruism' as alternatives to the abstract nature of rights (Kleinig, 1982 quoted by Freeman, (2007:11). Carol Gilligan (1982) raises arguments for a moral reasoning which challenges the theory and practice of human rights. Gilligan makes a distinction of conflicting responsibilities and competing rights which she argues have to be resolved by contextual and narrative ideas and not through formal and abstract thinking (Gilligan, 1982:19). The distinction which Gilligan portrays has come to be understood as the contrast between an ethic of care and relationship and an ethic of justice and rights (Tronto, 1993:78). The premise in Gilligan's arguments within feminism have been challenged in various circles (see Tronto,1993) but the idea of an ethic of care as she proposes is within debates not only about feminism or human rights, but also about children's rights specifically and even in the African context (see Sevenhuijsen, 2003). For example Cockburn (2005) and Freeman (2007) have discussed the possibility of the application of the ethic of care to the context of children's rights. Freeman (2007:11) has argued that the ethic of care may be taken to be very appropriate for children's rights especially in relation to family but this is possible only in an ideal moral world which is not the case. Cockburn (2006:71) on the other hand, although he has cautioned the use of the ethic of care in relation to children for various reasons, has however gone further to conclude that the feminist ethic of care 'remains a constructive approach to children's rights context as it emphasises responsibilities and relationships'.

An ethic of care portrayed by Gilligan (1986) draws a divide between care and rights. It is her contention that care maintains relationship and networks while rights are concerned with abstract rules. The main critique is on ‘individualism’ connected to enlightenment, modern and contemporary liberal theorists (Cockburn, 2005:72). She argues that the rights framework is concerned with non interference with other people’s rights while the care framework is troubled with the likelihood of people not helping others where they could (Gilligan, 1986:21). Gilligan’s views have been developed further by scholars such as Tronto (1993) who captures the broad approach of the ethic of care which she claims has to be seen beyond ‘women’s morality’ notwithstanding the values which are commonly associated with women. I consider the discussions within this area important to children’s rights and specifically to the children in this study as it is important to underscore the fact that while the ethic of care is premised on the idea of adult caring for children or other dependent people, there are in fact children in this case who should be cared for and they have other children under their care. This then challenges the presumption that children are always on the receiving end of care. There is a need for understanding the ethic of care in relation to children as care givers as well as care receivers within the rights frameworks.

3.6.1. Ethic of care and child protection

Tronto (1993:102) takes ‘care’ as a connotation of some kind of engagement and provides two of its features: reaching out to something other than self and acceptance of a form of burden. She goes further to provide interconnected phases of care, which make care a process rather than just an activity and hence she categorises four phases of care; Caring about, Taking care of, Care giving and Care receiving. These

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* she argues need to accommodate practical, moral and political aspects (Tronto: 1993:102). In the work with Fisher, Tronto (1993:103) devised a definition of care:

[a] species activity that includes everything that we do to maintain, continue and repair our 'world' so that we can live in it as well as possible. That 'world' includes our bodies, ourselves and our environment, all of which we seek to interweave in a complex, life-sustaining web. (Fisher and Tronto (1991) cited in Tronto, 1993:103)

In an encompassing manner, the definition provides a way to clarify the four phases of the ethic of care as a social transaction. I therefore discuss each of the four phases so as to underscore their use.

'Caring about' entails the acceptance that care is imperative and therefore a determination to meet such a need from a point of knowledge of the actual need. This means that in our case the institutions in place (as discussed in chapter five) will be informed by the reality of those in need of care and make plans from such information. 'Taking care of,' goes beyond acknowledgement of the need to care by accepting 'responsibility' for the identified need and the means to respond to it. 'Care giving' is the actual provision done physically by contacting the objects of care. This requires 'competence' by carers, to ensure it is provided competently. In this relation then there are two sides in our case: on the one hand is the institution providing care such as Mama Mkubwa (MM), NGOS and family which need competence. On the other hand is the OCHH who are children providing care, whose competence should be appreciated and where appropriate supported. The last phase

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* is 'care receiving' which is about response to care by the object of care. This is an evaluative, responsive phase to ascertain if the needs have been satisfied and whether there should be changes. The importance of this stage is mainly in relation to interventions at a practical level which have to take into account the response from the care receiver. This stage is very important as it considers the ability of a child as care receiver to portray what she/he wants. This responsive stage avoids paternalism as is observed in the welfare rights approach, and gives a chance for the child's perspective to be considered.

Tronto (1993) has positioned the four phases into two main categories although there is an overlap in some ways. 'Caring about' and 'taking care of' are duties of the powerful while 'care giving' and 'care receiving' are for the less powerful. This means they could be used to set the standards for state and international policies. In this case my analysis of the situation is directed towards both the duties of the 'caring about' and 'taking care of' and their values (responsibility and competence) as well as the relationships connected with correlative care giving and care receiving by the children.

Virginia Held (1995) articulates the ethic of care as both a value and a practice which centres on personal relationships and communal ties. The practice of care and relationships she contends goes beyond the individual and is about the care competent adults give to the vulnerable that is children, the infirm and the aged. This view has been criticised as it conceives of care from the standpoint of more competent and powerful caregivers towards care receivers (Tronto, 2008). Held has also ignored the fact that children are not just recipients of care, but they also take the role of caring for others. Children in Africa take care of siblings and of sick

parents and old relatives and there are also children as are discussed in this study, who take care of households which have siblings. This is not the case of Africa only as there are studies suggesting that in Britain as early as the eleventh century older children took care of young siblings (Lloyd de Mause, (1974) cited by Cockburn, 2005: 73) while recent studies have also shown children as carers of parents or other family members (Evans and Becker, 2009). What is important in the ethic of care which fits the discussion in this study is the move from individualistic human tendencies towards interaction and interdependence. These features are said to be central to humans' engagement in each other's lives in various ways (Sevenhuijsen, (2003:315). They also insist on a morality of responsibility and contextual relativism against the morality of rights and non-interference which is said to be a potential justification for indifference and unconcern (Gilligan, 1962:22).

The interdependence is explained further in the African context. The work of Sevenhuijsen (2003:308) evaluating the South African Social Welfare Policy, provides a framework for the ethic of care to be understood in the context of Africa. She has pointed out ubuntu²⁸ as an African value with features in line with the ethic of care as a social and political practice. Evaluating Tronto's four phases of care Sevenhuijsen (2003:315) reinforces the interdependence and relationality ideas and the importance of the ethic of care as a process to be taken in a holistic manner and

²⁸ Ubuntu is said to be a traditional African concept (New world Encyclopaedia: [[http://www.newworldencyclopedia.org/entry/Ubuntu_\(philosophy\)](http://www.newworldencyclopedia.org/entry/Ubuntu_(philosophy))]). It is further understood as an African Philosophy as described by Archbishop Desmond Tutu the South African Nobel Laureate: 'It is the essence of being human. It speaks of the fact that my humanity is caught up and is inextricably bound up in yours. I am human because I belong. It speaks about wholeness, it speaks about compassion. A person with ubuntu is welcoming, hospitable, warm and generous, willing to share. Such people are open to others, willing to be vulnerable, affirming of others, do not feel threatened that others are able and good, for they have a proper self-assurance that comes from knowing that they belong in a greater whole. They know that they are diminished when others are humiliated, diminished when others are oppressed, diminished when others are treated as if they were less than who they are. The quality of Ubuntu gives people resilience, enabling them to survive and emerge still human despite all efforts to dehumanise them' (<http://www.buzzle.com/editorials/7-22-2006-103206.asp>) (accessed on 22/3/2011).

from the perspective of the care giver, as well as the care receivers, which augurs well with what is proposed in this study in relation to the OCHH in Tanzania.

3.6.2. Ethic of Rights in View of the Ethic of Care

Before I turn to the ethic of care and its relation to children, it is necessary to discuss the concerns which have been raised within the rights ethic. Some scholars have identified problems associated with the rights ethic (Held, 2006) which has also been termed by others the justice ethic (Gilligan, 1982) or in some places the two terms have been used interchangeably. In this study the discussion of the different scholars is used in the same way the two terms are used while acknowledging their difference. Justice ethic I contend is broader than rights ethic and that is why even with the various arguments below, justice as an ethic is said to be about rights and rules. This will mean that rights are a way justice can be exercised. I would argue further therefore, justice is more than rights although in the discussions here under, the rights ethic is associated more with justice ethic in relation to moral theories, which seem to narrow justice into rights and rules. The distinction between the ethic of care and the ethic of justice as earlier noted is traced from the work of Carol Gilligan (1982) *'In A Different Voice: Psychological Theory and Women's Development.'* Tronto (1993:79) identifies three important distinctive features raised in Gilligan's work. First is the difference in moral concepts in that the ethic of care is about responsibility and relationship while the ethic of justice is about rules and rights. Secondly the ethic of care is about real situations and not formal or abstract; and thirdly, care is articulated as an activity and not a set of principles. Gilligan's work has been debated and used in different academic fields (Tronto, 1993) and the rights/care dichotomy has continued to be evaluated. Held (2006:1) argues that the

ethic of rights focuses on individual rights and fair solution which lacks critical attributes of the ethic of care, which are the attentive trust and response to needs and cultivation of a caring relationship.

Following the same lines as Gilligan, Curtin (1991 cited by Cockburn, 2005) identifies six flaws within the rights approach: adherence to universalism, ethics is not applied to context, persons are conceptualised as autonomous and not relational, experience is not considered in relation to searching for objectivity and rationality and the rights concepts are grounded upon 'disembodied rationalism.' The liberal rights-based approaches are said to assume universalism against the pluralist ethic (Cockburn, 2005:75). This assumption is seen as the outlook of a male, white, western, middle class, but is utilised in some, if not all, situations. Universalism does not consider the world's differences and the diverse nature of humanity. There are debates, mostly by feminists, which identify the different notions associated with universalism such as 'the self' as linked conceptually by the 'generalised other' elaborated by John Rawls (1999) (see Benhabib 1992). The main argument in this area is the idea that by the use of the 'generalised other' the self is detached from the daily experiences of relationships with others during social life (Benhabib (1992:159). Arising from this argument Benhabib argues for a 'concrete other' which assumes the individual uniqueness of each moral person. Such an individual, she further argues, has a personal history, character, needs and even limitations and is found within the framework of relationship with others (Benhabib, 1992:159). The 'generalised other' conceptions, on the other hand, stay aloof to the daily moral interactions known to the 'concrete' others since they place them within the less valued private circles. The outcome of this situation is said to be the invisibility of women and children's activities within the universal moral theory (Cockburn,

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* 2005:76). Benhabib's 'concrete other' rather than 'generalised other' provides an avenue to locate children within political theory (Cockburn, 2005:76) as well as in the legal theory. The 'general other', as conceptualised within universalism lacks the view of an engagement of 'the self' in what is going on in the life of children, women and men on a daily basis.

The second criticism in regard to the ethic of rights is the abstractness in its application which is neutral when it comes to context. Contextualisation has been identified as central to childhood studies in recognition that children, as part of society, live their lives within networks of relationships (Cockburn, 2005:77). The abstract nature of the rights might fail to take into account the vital roles children play in the networks and thus the need to consider their place within the networks when assessing their rights, needs or protection. It is argued that the rights ethic has a perception of children in terms of their future rather than their present (Lee, 2001) cited by Cockburn, 2005:77). Cockburn argues that contextualisation:

Will recognise the life world of children in the present and pertain to specific questions about children's immediate rights, needs, and identities based within the context of their social networks.

Context is further seen as the basis for rules and decisions rather than rules being brought into the social context.

The third issue is the adversarial nature of the rights ethic. This is premised on the idea that rights are claims which a person has against another person and hence the

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connection of having rights and personhood. The ethic of care as propagated by feminists dismisses the adversarial and autonomous standing of rights discourse. Lorraine Code (1995) draws out propositions of the ethic of care which does not agree with the adversarial stand point. On the one hand is the assumption related to how people treat others in recognition that they are different and taking into account how other people understand the world. On the other hand is the assumption which takes into account people's experiences as opposed to the objective and rational ethical judgments.

The above propositions portray the abstractness in the rights discourse which overlooks experiences of people in society and their relationships with one another (Cockburn, 2005:78). In this case the ingredients which make care a feature of the human condition are not recognised within the abstract autonomy, thus losing sight of the reality that 'all people are vulnerable, dependent and finite and that all have to find ways of dealing with this in our daily existence and in the values which guide our individual and collective behaviour' (Sevenhuijsen, 1998:28).

The fourth issue is 'embodiment', which is related to the 'concrete other', but the argument in this area is the idea that the rights ethic prioritises the rational while ignoring the body and embodiment. This has led to the situation in which the autonomous individual is disembodied and masked from the reality of human vulnerability (Cockburn, 2005:78). Embodiment traced through history and science shows its relationship with the rise of the 'naturalised body' which does not see all people as 'individuals'. Scientific practice for example portrays children 'as ontologically and irreducibly different from adults' (Cockburn, 2005:79). The use of terms such 'development', 'schooling', 'paediatrics are said to portray children's

bodies as becoming and hence differentiating adult and children bodies. The rights ethic is therefore seen as not taking embodiment on board and hence might not be a proper avenue in an ethic of care, especially when appreciating children's perspectives.

3.6.3. Aligning the Care Ethic and the Justice Ethic

There are arguments for identifying ways in which the rights discourse can be aligned with the ethic of care. Held (2005:71-72) makes a proposal in this relation for the rights to be fitted into care:

I now think that caring relations should form the wider moral framework into which justice should be fitted. Care seems to be the most basic value... without care ...there would be no persons to respect and no families to improve...Within a network of caring, we can and should demand justice, but justice should not push care to the margins, imagining justice's political embodiment as the model of morality, which is what has been done.

There are however arguments that the divide between the ethic of care and ethic of justice seem to be artificial (Houston, 1990) and Tronto, cited in Tronto 1993 :). Rita Manning (1991:45 cited by Cockburn2004:84) argues for the use of both ethics to provide some form of 'moral minimum' for determining interpersonal behaviour and policy. The trend of the feminist ethic of care proponents shows there is a possibility for the ethic of care and justice to be aligned: a suggestion which Cockburn (2005:85) accepts, with a warning as to its use in the context of children. Cockburn

makes this caution but acknowledges the need for a compromise in this relation and proposes strategic ways in the use of justice approaches to suit a specific situation. This then demands a search into the way in which the ethic of care can apply in reconstructing the justice framework for children.

3.6.4. Ethic of Care and Children's Protection

Within the ethic of care it is understood that all persons need care for at least the early years of their lives and stress is on the moral force of responsibility to respond to the needs of the dependent person (Tronto, 1993). The ethic of care is seen to be an avenue for understanding the 'world of children and their position in society' (Cockburn, 2005:84). The ethic of care as defined by Tronto provides an avenue to understand children who give care, while needing to receive care themselves. Care as a process captures the situation in which children are not only in the position of recipients of care, but also are 'care giving', and expressing their concerns in 'care receiving. According to the care ethic, the child is part of a network of relationships in which children exercise their agency, as they share their perspectives. The ethic of care as a process and not an activity, as elaborated by Tronto (1993) can be related to the findings in the field under this study where the Mama Mkubwa (MM) in Makete are seen in relation to the ethic of care as they are not legal nor are they customary institutions. The process in their establishment involved the children who appointed the MM in each hamlet. In their operation the MM begin with the children by identifying the needs relevant to an individual child and support according to such need and inform the MVCC or the village government. The MM is differentiated from the MVCC which can be said to be an institution initiated from above using the rights framework. This has been initiated in response to the goals and standards set in

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the World Summit for Children 1990 and the UN Special Session for Children (2002), (MHSW, DSW, URT, 2008) as an international call for the protection of children, as discussed further in chapter seven. Although both institutions are supposed to care and provide for the children, the MVCC is not known to the children while the MM is. This also is quite notable in Karagwe where there is no MM and the few MVCC in place are also unknown to the children although they are supposed to support the MVC including the OCHH. The OCHH visibility in Makete is different from Karagwe given the difference in relation to the care attributes observed in the former district and not in the latter. The main argument under this study is the need to begin with the OCHH as a child in the community so as to understand his /her situation, needs and rights from his/her perspective as a bottom-up approach not visible in the rights framework.

3.7. Conclusion

This chapter has discussed different theoretical implications related to the children in the study. In the theoretical mix what has been noted is the lack of a single framework which fits the situation of the OCHH. Although the OCHH are children, their perception of childhood is not understood in justice and rights frameworks. They are not children in an ideal family situation nor are they street children or children abandoned by their parents. The roles they play put them in between adults and children. As children they are socially neglected and in need of protection and provision and as 'adults' they do not have the autonomy envisaged for adults. The issue of their protection necessitated a discussion of the rights and justice approaches to children. The debates on protection of children and the protection of their rights and the rights enshrined in the CRC do not seem to address adequately the issues

from the children's perspective. The child saver, child libbers debates fall short of the discussion related to children's agency and the regulation of such agency. The CRC and the human rights framework generally have also not resolved that dilemma, as it has not conceptualised the rights of such a category of children and its framework is abstract and individualised. An argument for the re-construction of the rights framework is proposed and the ethic of care is sought as an avenue to enable the situation to be evaluated from the policy level (Caring about, taking care of) to the level of the context of the children who are both care giving and care receiving. The ethic of care is discussed as approached by Tronto (1983) as a relational but also a political practice, by Sevenhuijsen (2003) with a view to its use in Africa and by Cockburn (2005) on its relevance to children's rights.

The complexity regarding the way child governance is observed at community level and its interaction with the national and international /global governance terrain paved the way firstly for considering governance as networks inter-connecting the various levels and for invoking legal pluralism as a way to further capture the children's perspectives. Legal pluralism is evaluated, as providing opportunities for the children, but also its limitations as perceived by the children. Generally the chapter provides a framework in which the analysis of children's perspectives is undertaken in the coming chapters. The limitation of the rights framework has been discussed as to how it has not been able to capture the problems facing the OCHH and that the ethic of care has attributes which can be used to capture such problems and hence identify means to solve the identified problems. The next chapter specifically provides the methodology undertaken, which is mainly a 'research with children' seeking their views about their lives within the various governance institutions.

CHAPTER FOUR

Researching with Children: Methodology and Methods

*'To change the world with children'*²⁹

4.1. Introduction

This chapter discusses the methodology and methods used in the study aimed at reaching children's perspectives regarding their situation in heading households. The methodology adopted stemmed from my desire to commence the study with the children so as to gain new knowledge from them. The children's perspectives are studied within a broad children's governance framework at local, national and global levels in three different dimensions. First, I undertook a grounded research approach to the study with orphaned children heading households (OCHH) and other children in the study area, to understand how they perceive their situation. Ethnographic techniques were used because their methods 'allow children a more direct voice in the production of ... data than is usually possible through an experimental or survey style of research' (James and Prout, 1997:4)³⁰. This process led to the second dimension, the study of children's governance institutions at the local level as perceived by the OCHH. Thirdly, legal and non-legal children's governance institutions at national and global levels were studied to understand the meaning of the two first dimensions and their relation to the perspectives of the OCHH. The

²⁹ The title of chapter II of the State of the World's Children 2002, Leadership, UNICEF

³⁰ For more information in relation to children's voices see Kijo-Bisimba, H. 'Conducting Research with Children: Capturing the Voices of Orphaned Children Heading Households in Tanzania', 2010 (2) Law, Social Justice & Global Development Journal (LGD) [online] http://www.go.warwick.ac.uk/elj/lgd/2010_2/kijo-bisimba (Accessed on 18/8/2011).

study of the children governance institutions at local, national and global levels were conducted by use of different methods such as semi-structured interviews with members of staff and leaders, observation of meetings and study of reports, and literature related to the institutions.

The study therefore, combined field work based research and library research. The former enabled the research to be undertaken within the OCHH's social setting and data to be gained from their experiences. The methodology on children's perspectives led to the realisation of key findings contributing to knowledge on child perspectives regarding the situation of OCHH and the role of child governance institutions. This is what has been termed as researching with children rather than conducting research about them (Mullender, 2002:5). The library research was necessary in studying the national and global children's governance institutions in relation to the data gained from the children's perspectives.

The chapter is organised in six parts, including the introduction and the conclusion. The second part, providing the theoretical framework, is mainly qualitative, influenced by the interpretative epistemologies. Ethnographic techniques informed by childhood studies provide other theoretical underpinnings for the study. Theory shapes the research design, process and practice, which is discussed in parts three, four and five respectively. The design encompasses the plan used to obtain answers to the research questions. The research process provides details on ethical issues and how they have been handled and the challenges faced. Part four unveils the research practice depicting how as an adult researcher, I entered the children's space while the children remained intact as children participating in a way that data was produced. The adult participants are discussed mainly to shed light on how they relate to the

OCHH within the children's governance institutions. In conclusion the chapter provides an assessment of the methodology, including its limitations and the way in which these were addressed.

4.2. Methodological Theoretical Framework

4.2.1. Grounded Theory Approach

Grounded theory is an iterative³¹ process in which data and theory, lived reality and perceptions about norms are constantly 'engaged' with each other to help the researcher decide what data to collect and how to interpret it (Hellum and Stewart, 1998:18)

Following the above understanding of grounded theory, the design, process and practice of this research have been influenced by the interpretivist epistemological position. This position follows action research tradition (Banakar and Travers, 2005) or actor-oriented approach (Long and Long, 1992). The nature of interpretative epistemology is to ground its concepts in the everyday life experiences and understandings of people. This type of theorisation and field methodologies suits the objective of this study. The objective of this study is to learn the way the OCHH understand and perceive their situation as individuals in their society and how the children and their governance institutions interact with each other.

This position has been taken while being aware of the debate related to the interpretivist epistemology approach as opposed to the positivist approach. The tendency of the positivist approach is to be hierarchical, top down search of social

³¹ Iterative is defined as repetitive, make a change or assertion repeatedly (Hellum and Stewart,1998:18)

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* reality (Banakar and Travers, 2005). It further observes reality or system by using an explicit difference of the system and presenting individuals as objects shaped by social system or structures (Banakar and Travers, 2005: 28). The action nature of the interpretivist epistemology on the other hand is concerned with the individual (in this thesis the child), and allows for the interaction of the researcher with the research participants, giving a chance of stepping into the world of the participants as knowledge is gained. As an action researcher you participate, reply and even help when it is necessary. In researching with children this interaction is important as it can ensure achievement of child friendly research, as advocated for by the Committee on the CRC (CRC, GC 12, 2009).

Starting with the children at the centre, the forms of institutions surrounding the children (OCHH) were tracked and studied as interconnected, multiple networks which unfolded during the research process. This combined approach provided the opportunity to learn more about the OCHH and to connect with them at a human level, which is the benefit of using a qualitative research approach.

4.2.2. New Childhood Studies

The theoretical underpinnings for this study have an emphasis on children as participants in their own right. Children have been characterised as a minority group with no power to influence the quality of their lives (Mayall, *et al.*, 1996,207 cited by James and Prout, 1997: xiv) necessitating studies which regard children as social actors. The study of children in this case is linked with the question of agency and action, and follows theories that accept children's competence, taking more account of their experiences and capacities (James and Prout, 1997:8). The methodology employed is compatible with childhood studies as well as the epistemological

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position, accepting children as real people (Alderson and Morrow, 2004: 22). Although the study began with the assumption that children are vulnerable, the methodology and methods employed enabled the view that OCHH and the other child participants can be problem-solvers and inter-dependent contributors interacting with other community members not as victims and helpless dependents (Alderson and Morrow, 2004:22). The study analyses the experience of the OCHH as affected by the processes of law allowing the OCHH a more direct voice and participation (Lee, 2001:48). Ethnography³² as suggested by James and Prout (1997: xiv), seems to be the most important methodology for studying children, thus some of its techniques have been adopted in this study.

4.2.3. Ethnographic Techniques

‘Ethnographic techniques’ is not a generic term. Hammersley (1990, cited by Francis Chizororo, 2008:115) is of the view that it is not that clear now, as to what constitute ethnographic techniques given the diverse ways ethnographic research is being undertaken. Under this study ethnographic techniques are taken to be the various research methods ingrained in ethnographic research. This is taken from the understanding that ethnographic techniques have developed from reliance on participant observation over long period of time (James, 2001:247) to a mixture of techniques used in qualitative research as well as research with children (Lee,2001:49). In this study, ‘ethnographic techniques’ include participant observation, semi-structured interviews, photographing, drawing, diary making, composing songs and poems undertaken for a period of time with the participants in their environment (Lee, 2001:48).

³² The term means ‘writing about people’ and doing ethnography entails commitment to interpretative approach encompassing a range of different qualitative research techniques. ‘The interpretative understanding develops slowly: through immersion in the lives of those we seek to understand, over a period of time across a lengthy period of time...’ (James.2001:247).

Children are central to this study which distinguishes the theoretical methodology as well as ethical concerns from research designed for adults. Hinton (2008: 291) argues that children and childhood have not been included in mainstream theories due to the centrality of adult-centred models. While the traditional theorisations of childhood have conceptualised children as passive individuals, in this research they are understood as objects existing independently of the researcher. Ethnography, together with the initiatives for providing children with the right to self expression is currently becoming an accepted stance in children's studies (James, 2001:246) as its methods and techniques provide a chance to treat children as individuals worth of study and the researcher get time to be near the children in a subjective manner. The child is central and the child's social relationship and culture are acknowledged as deserving of study in their own right (James and Prout, 1997:4). Lee (2001:49) summarises ethnography with children as:

A strategy for doing research with children, which allow[s] for different understandings of the experience of childhood, child-adult relationships and of children's position in society to emerge. It provides opportunities for children's muted voices to be heard and for children as individual social agents to shine...

Six months field study was spent with the OCHH and the other participants in the two districts of the study interacting in their daily lives as a means of gaining insight into their social lives. This is in line with the interpretative perspective which is committed to long time, hours, days, weeks (Tamanaha, 1997), in this case months, of living among the OCHH while seeking to address the in-depth perspectives of

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their environment and to discover how they view themselves and others (Lee, 2001: 48).

Ethnographic methods (such as participant observation combined with semi or unstructured interviews, conversation) however, have been criticised as ‘idle past time, a case of fiddling while world burns’ (see Hammersley and Atkinson, 1983: 20). This is the case due to the time used by these ethnographic methods. In relation to researching with children the method has been questioned as to its limitations related to ethics (Francis -Chizororo, 2008: 116). The former criticism has not appreciated the data and the knowledge which the methods produce specifically when researching with children. The time spent in the field helps to harness relationship with informants when participating in activities such as funerals, church services, development work, school visits as well as in much of what is happening daily. It is then possible to gain the ‘emic perspective³³’ as well as---deepening our understanding of ‘otherness:

moving beyond the cover stories, idealised self-representations well rehearsed verbal modes of public image and strategic manipulation of those whose lives we seek to understand (Jessor, Colby and Shweder, 1996: 18).

The “otherness” here describes the children, and relationships and understanding built through ethnographic techniques which enable the researcher to appreciate the capacity of children to express what is happening in their lives, which eventually

³³ ‘Emic perspective is said to be the point of view of the local people without the researcher imposing their own conceptual frameworks as differentiated from ‘etic’ which is an outsider’s perspective (Tamanaha, (1997) *Realist Socio-Legal Theory Pragmatism and a Social Theory of Law*, Oxford: Clarendon Press, also found at: <http://fds.oup.com/www.oup.co.uk/pdf10-19-826560-3pdf> (Accessed on 19/08/2010).

leads to treating children as “human beings” in their own right. This is based on the most significant characteristic of ethnography; to recognise children, as what they say or do in the course of the research can influence the researcher’s agenda (Lee, 2001: 48).

On issues related to the ethics it is true that the time and different methods used in ethnography are prone to cause not only disturbance but also stress on part of the children. However, Robson (2001), in her study with young carers of the South proposes the need to justify any discomfort caused in the process of research in order to enable the children (OCHH) to exercise their right to self-expression. The voices of children can be heard only as a benefit to them and other marginalised children in future and to further challenge the notion that OCHH are just susceptible victims of their circumstances with no ingenuity on their part.

The ethnographic approaches therefore help to take an account of the realities of the legal and other plural settings and the constantly developing meaning by way of cultural frames and people’s (in this case OCHH) daily lives practices. There are however some challenges when the researcher is an adult researching with children which entails considering positioning of self as a researcher.

4.2.3.1. Positioning Self

As an adult researcher I entered the field aware that the children might accept to participate so as to please me or they might feel they are obliged to do so. I explained to the children the objectives of my study and my position as a researcher. The children associated with me as a grand mother (bibi) which made it easy for them to be free and for me to be able to associate easily with them. This situation reduced the

power tensions which might have arisen if they had looked at me as a stranger coming from town. Visiting the OCHH in their homes and working with them also positioned me as one of them. I remember Kevona and her young brother commenting on the long time I spent with them in their small garden. They could not imagine I could work for so long like a person from the village. Kedi was also very happy when I went with her to collect firewood and that I could carry the bundle like she did. The fact that I told the OCHH I was a student and I wanted to learn from them helped to reduce the idea that I was a person who had more power over them as most of them laughed at the idea that I could be a student at my age. They were surprised when I asked them to decide when we could meet and that it depended on their time and not mine. There was however an instance when one of the OCHH provided information which meant to impress on me that she was in difficulties, hoping to obtain assistance from me. This happened with one OCHH and it was easy to detect due to the long encounter I had with the children and the different techniques I used in the study, which was an advantage. I also was aware that it could affect the children if I became attached to them too much. I avoided staying in their homes although I visited them several times which did not raise their expectation of having an adult in their homes. This notwithstanding they remain attached to me, some of them continued to send telephone messages even after I had left.

The following section connects the theoretical framework to the research design to further clarify how the study was conceived and planned.

4.3. Research Design

4.3.1. The Research Topic

The reason for the choice of the research topic for this study is twofold. First, it is an outcome of personal interest in children's matters, combined with my LLM dissertation which was on how the CRC can be applicable to Tanzania. Secondly, the topic came as a way seeking to understand children's perception of various legal and other institutions in place from the community upwards. This question arose through personal experience of trying to support three girls who had tried to run away against the traditional practice of FGM³⁴. It proved impossible to assist these children who had approached seven different institutions from which they had expected to obtain protection³⁵. The questions the children were asking when we finally found them³⁶ and the decision by the children to turn "hostile" when they were supposed to testify in a criminal case instituted against their father (who was responsible for their ordeal) showed that children have perceptions different from those of adults. The children's perceptions of the various structures surrounding them might be important in understanding the way the institutions function. This incident together with

³⁴ For further information about this issue see LHRC (2004) *Legal Process Can it Save Women from FGM? A Case of Three Maasai Girls in Morogoro* (Dar es Salaam, LHRC).

³⁵ The girls had begun to negotiate with their mothers (family) who advised them to run to the church, the church sent them to the police station and the police sent them back to the village authorities (VEO/WEO) which did not have anything to do but to give them back to their father. They then ran to the District Commissioner who was not in office on that day, they went to an NGO which was not open on that day, they ended in a court of law but they could not be heard as a summons issued to call their father was not delivered and their father caught up with them as they were struggling to get the summons delivered. When the LHRC (which is a known human rights organisation in Tanzania) intervened, the girls had been cut and married off. The private prosecution initiated was defeated as the girls were not ready to testify and turned into 'hostile witnesses'.

³⁶ The question one of the girls asked was "What is the use of the police? Another one said "I had thought being a Christian could have helped but what is the use?" (From the interview with the girls (by the author) during a fact finding mission, the questions were however not documented because at the time they did not seem important).

several others in human rights work and surveys³⁷ conducted in the area of children rights was the motivation for picking this topic on children's rights but specifically OCHH in order to understand the institutions supposed to protect children and specifically the different children's governance institutions in place. It was also necessary to learn this from the children themselves. The choice of the topic decided the area of the study as will be explained in the next section.

4.3.2. The Location of the Study

The study has two parts: the field study and library research. The field study was undertaken with children and adults within the various institutions which interact with the children in one way or another.

The field research was conducted in Tanzania in two of the then 21 regions of Tanzania Mainland. Specifically, the two sites for the field research are Karagwe district (Kagera Region) and Makete district (Iringa Region) while Dar-es-salaam was used for policy level participants, international institutions and academicians. A mini pilot with OCHH was also conducted in Dar es Salaam.

The two rural districts were picked for the study for two main reasons. First, both districts feature in reports³⁸ related to the high number of orphans and child headed

³⁷ In human rights work there have been disappointments in how the law works when human rights are abused, an example being the *Nyamuma Case* of Serengeti residents who were evicted from their land. This case which can be further read in (LHRC, (2006) *The Human Calamity of Evictions at Nyamuma-Serengeti: Legal and Human Rights Implications*, DSM) showed the limits of the law when it comes to timely and practical justice. In using law to engineer justice there were many questions which needed re-thinking. At the same time the LHRC had conducted two surveys (LHRC, 1997 and 1998 Extent of child abuse, News paper survey, DSM: LHRC,) which revealed the extent of children's abuse and neglect but there were no programmes in place to follow these up. Further, the organisation was having so many projects and it had not conceived a specific project on children. There was lack of an in depth knowledge on the issues.

³⁸ The reports are such as: Lipumba, (2003) *Reaching The Most Vulnerable Children: The Process*, Social Welfare Department with support from UNICEF, UNICEF Flyer, *Orphans in Tanzania: Information from The CNSPM situation Analysis of Six Districts in Tanzania* (The six districts included Makete, Karagwe and others being Magu, Bunda, Bagamoyo, Musoma Rural and

households (CHH) associated with HIV/AIDS pandemic with indications that the children have not been reached by interventions (Lipumba, 2003: 8), or the efforts to reach these children were insufficient (de Waal *et.al.*, 2004: 2). Secondly, the two districts were seen as potential sites for a comparative study on the issue, as one district has a longer history of the problem (Karagwe) while the other seems to be in the shock stage. The comparison was aimed at pointing out any lessons from the former to the latter and vice versa.

Makete district is located in the southern highlands of the country about 890 kilometres away from the major city of Dar-es-Salaam and about 350 km from Iringa the regional administrative headquarters. Karagwe is in Western Tanzania in Kagera region about 1500 kilometres from Dar-es-Salaam and 115 kilometres from Bukoba the regional township of the Kagera region. I had to use a private car to travel to Makete because the local buses are not reliable and it could have been very impractical to move in the different locations of the study area. It took about thirteen hours from Dar-es-salaam to Iwawa town of Makete. To Karagwe I travelled by air for one and a half hours to the city of Mwanza and then twenty minutes to Bukoba town before travelling for two and a half hours by car to Kayanga town of Karagwe. I however used a private car to move in Karagwe as it proved very difficult to reach the different places where the OCHH were located in the study area.

In Tanzania, districts are divided administratively into hamlets, (smallest administrative unit made of a number of households) villages, wards and divisions (highest unit before the district council). Karagwe is larger geography wise than

Kisarawe), REPOA, (2006) *Vulnerable Children in Tanzania and where they are: Report to UNICEF*, De Waal, *et al.* (2004) 'Changing Vulnerability to Crisis in Tanzania: Implications for Children and UNICEF Activities', *Report to UNICEF Tanzania*.

Makete and more populated as is shown in the number of administrative units of the two districts in Table 1 below.

In Makete the study was conducted in Iwawa ward which is one of the 17 wards of the district and specifically in two villages; Ndulamo and Isapulano. In Karagwe it was in five of the 28 wards in the district where the OCHH were located. There was no one ward in Karagwe where the information was enough to locate all the four OCHH at the beginning of the study, as will be explained later in this chapter.

Table 1 Administrative units, Population size and number of Orphaned children and MVC in Karagwe and Makete (Source District Socio-economic Profile Makete (2008) and Karagwe District Profile (2009))

District	Household	Hamlets	Villages	Wards	Divisions	Population On Size	Number of Orphaned Children	MVC
Karagwe	89047	1162	109	28	4	423,423	41,000	13,765
Makete	27672	444	97	17	6	105,775	13,804	6,889

4.3.3. The Participants

While the field work was designed to obtain the subjective voices of the OCHH, there was a need to understand the people within the surroundings of the children. In this case there were more adult participants than children from the children's governance institutions which the OCHH pointed out. Some participated because of the flexible methodological approach. For example, two participants from a children's home in Dar-es-salaam were included in the study after one of the OCHH

was assisted to visit his siblings in that home³⁹. In Makete a member of an orphanage staff which takes in infants with no parents, took part in the study. It was important to understand such an institution in relation to the OCHH.

4.3.4. Sampling

The nature of the thesis had in mind the OCHH, the institutions and individuals surrounding them. So random sampling was not an appropriate methodology for this particular research. The sampling used rejected all people/children who did not fit the earmarked category (Long and Long, 1992: 48). For example orphaned children who were with guardians could not be sampled as core research participants, although some of them were sampled as Focus Group Discussion (FGD) participants as they fit the category of people surrounding the OCHH.

For the participants in the institutions snowballing, also known as ‘beetle dung’⁴⁰ sampling, was used as a method used in grounded theory. In some instances it was necessary to understand from one NGO which other NGO is working in the same area affecting the OCHH. This also happened in the district office where departments mentioned other sub-departments which are relevant to the study and were then included in the sample. This way of sampling is said to be ‘Non-Probability Sampling’ since the sampling scheme in which the probability of a

³⁹ This is the SOS children’s village in Dar-es-salaam which is a home designated for orphaned children where they have assigned mothers and are expected to live as in a family life. The children’s home was one of the structures used as an intervention to support the OCHH although it was not in the area of the study. Children from the area of the study were taken in and it was interesting to understand how the children understand and perceive the institution and how it functions as an intervention for supporting OCHH.

⁴⁰ Hellum, A. and Stewart, J (1998:18) found the ‘beetle dung’ as a new metaphor to replace snowball since in a region like Africa there is little or no snow at all. They describe the ‘beetle dung’ as ‘a grounded research process in which the researcher collects data, sifts and analyses it, considers the implications of her findings, determines what to collect next to meet her needs and continues the collections and analysis cycle. In this research this method was used in the research generally and specifically in the sampling procedure.

population element being chosen is unknown. Of the four basic kinds of this sampling method snowball/beetle dung seem to have been appropriate although the OCHH as participants were not directly asked for names of other participants but from their narrations a list of institutions which matter to them were identified and the process continued.

In total, sixty three (63) children and one hundred and thirty three (133) adults participated in the study (see table 2 below). Eight OCHH, four girls and four boys and four from each district are core to the study and were engaged in the full process of the research. More time was taken with the eight OCHH than the other children who were mainly participants in FGD. The OCHH were visited at home, in school, at work and in church for those who were going to church. Some of them also participated in the FGD.

4.3.4.1 Basis for selection of the Eight OCHH

The selection process was guided by the decision to have children who are orphaned and are heading their households. It was also meant to have a small size with equal number in the two locations and four was seen as a good number. All the children identified by the officials in the district but did not meet the set criteria were not accepted. Children, who were former OCHH or were heading a household but living with an adult, were also not included in the list. It was then possible to obtain from the many children identified, eight OCHH. In Makete district all the OCHH identified and accepted were from one village only as the other village did not have any child who met the criteria. Although I had in mind having boys and girls, the selection process coincidentally lead into having two boys and two girls from each district.

From the outcome of discussions and observation of the core group of eight, more children were recruited in the study and in total fifty five more children participated but not as intensively as the eight. All but three of the children were orphaned. The orphaned children involved in the research brought in their experiences as former OCHH, children in OCHH, or orphaned children who have guardians. Others who had experiences in organising and working together as orphaned children also participated. The three children who were not orphaned participated in the study, one as a friend to OCHH, and the other two from a Child Headed Household (CHH)⁴¹.

The adult participants included relatives of the OCHH, neighbours, MM, MVCC, institutional leaders, villagers, heads and NGOS' staff, government policy makers and academicians (As shown in figure 3, in chapter 4). In Makete the sample size was 28 children and 72 adults and in Karagwe 33 children and 47 adults and in Dar es Salaam 2 (two) children and 14 adults. The number of participants in this study is not for empirical generalisation as the methodology adopted allows the intensive study of a small number of research participants so as to obtain data and thus findings are generalised to the theory obtained from the data and not necessarily on the population (Bryman, 2004:285).

⁴¹ CHH is a household which is headed by a child who is not an orphan, in this case the child was heading a household of three other children but they have parents who are alive but they had to head their household because their parents live far away from where they go to school and there is no school in the neighbourhood. The household was specifically made for them to enable them attend school. When I visited the parent he was of the view that he had to struggle to ensure his daughters go to school as he did not get that chance, since there is no school in the hamlet and the school village is about 15 kilometres away, he decided to send his daughters to a school where he can visit them and send them food easily. This is 17 kilometres away from where he lives.

Table 2. Number of Participants

	Makete			Karagwe			DSM			TOTAL		
	F	M	Total	F	M	Total	F	M	Total	F	M	Total
CHILDREN	14	14	28	12	21	33	2	-	2	28	35	63
ADULTS	32	40	72	16	31	47	5	9	14	53	80	133
TOTAL	46	64	100	28	52	80	7	8	16	81	115	196

Table 3. The Eight OCHH⁴²

DISTRICT	OCHH PSEUDONYMS	AGE	SEX	LENGHTY OF TIME AS OCHH	NUMBER OF MEMBERS OF THE HOUSEHOLD
KARAGWE	KAKIA	18	FEMALE	5 YEARS	TWO
	KASHIGWA	15	MALE	6 YEARS	ONE
	KIMAKO *	23	MALE	7 YEARS	SEVEN
	KEVONA	17	FEMALE	7 MONTHS	TWO
MAKETE	KAHOO	18	FEMALE	6 YEARS	TWO/THREE**
	KECHEE	14	MALE	2 YEARS	ONE
	KEDI	17	FEMALE	2 YEARS	TWO
	KILI	16	MALE	4 YEARS	FOUR/ONE***

⁴² ***Note:** The age is of an adult but he was included due to the experience as he began to head a household when he was only 16 years. In the village he is still considered a child as he is still in school. It was difficult also to be sure of the exact age of most of the OCHH for lack of records such as birth certificates.

** Kahoo household had three members but one had been taken to an orphanage.

*** Kili Household had four members for three years but at the time of the research three siblings had been taken to an institution.

Table 4. Categories of Child Participants⁴³

Category	OCHH ⁴⁴		CHH ⁴⁵		OC/in OCHH ⁴⁶		OC/G ⁴⁷		F/OCHH ⁴⁸		NOT/OC ⁴⁹		GRAND TOTAL		
	F	M	F	M	F	M	F	M	F	M	F	M	F	M	Total
Makete	2	2	-	-	-	1	8	11	3	-	1	-	14	14	28
Karagwe	2	2	1	1	2	3	7	14	-	1	-	-	12	21	33
Dsm *	1	-	-	-	-	-	1	-	-	-	-	-	0	-	02
TOTAL	5	4	1	1	2	4	16	25	3	1	1	-	28	35	63

4.3.5. Sampling Methods and the Study Location

The selection of the OCHH differed in the two districts. In Makete the government personnel were contacted to locate the OCHH while in Karagwe a mix of ways was used. In Makete every activity seems to revolve around the government machinery. The courtesy calls at all levels from district to the village authorities seem crucial, while in Karagwe it did not seem the same. Although courtesy calls to the district authorities were made in both districts, the District Social Welfare Officer (DSWO) in Makete insisted that he had to introduce me to the village leadership in each village I was planning to conduct the study which was not the same in Karagwe. In Makete the DSWO directed me to the Ward Executive Officer (WEO) for courtesy call at ward level. This was helpful in the decision of which villages to conduct the

⁴³ The DSM participant took part in the pilot study only.

⁴⁴ OCHH-Orphaned children Heading Household

⁴⁵ CHH-Child Headed Household

⁴⁶ F/OCHH-Former OCHH

⁴⁷ OC/G-Orphaned child with Guardian

⁴⁸ OC/in OCHH-Orphaned child in OCHH

⁴⁹ NOT/OC-Not Orphaned Child

study. From the ward I was then directed to the village authorities where the DSWO introduced me to the village leadership. This exercise was necessary to ease access since the village leaders might not have been cooperative if they had not received authorisation from the district authorities⁵⁰. In Karagwe on the other hand it did not seem necessary to go through the village authorities before accessing the children as will be explained later.

I decided to visit 5 villages⁵¹ out of the 8 villages of the Iwawa ward to establish the villages I could conduct the study in. From preliminary discussions with the village leaders I was able to get information related to the OCHH in most of the villages. I ultimately decided to do the study in two villages only; Ndulamo and Isapulano, as two villages were not easily accessed as the rains had begun. I provided introductory letters to the VEOs in Ndulamo and Isapulano to be given to the OCHH from each hamlet (7 Hamlets in Ndulamo and four in Isapulano) after which I could identify the size I wanted. The result was four OCHH in Ndulamo⁵² but in Isapulano the children who were appointed did not fit the category I was looking for. The children were either former OCHH or orphaned children who have guardians but are responsible for providing for the family.

In Karagwe the DSWO was taking me straight to meet the children she understood to be the category I wanted without necessarily going through the village or ward

⁵⁰ It was also said that the villages have become suspicious of people going into the villages. Some issues appear in the media about the villages as a result of unknown people who take photographs and tarnish the image of the villages and the district at large [Interview 9: Appendix 7: 06/11/2009].

⁵¹ The five villages I visited in Makete are Maleutsi, Ivalalila, Luvulunge, Isapulano, Ndulamo, The remaining villages of the ward which I did not visit are Ludihani, Ivilikinge and the township village of Iwawa.

⁵² The OCHH were from three hamlets of Kiduga (2) Mbosa (1) and Ipulo (1). There were no OCHH found at the time in Utimbe, Kwa Yuta, Ngiu and Kilanzi hamlets as some were said to have been in boarding schools while one was said to be in a working site away from the village.

offices. She had directed me to six households in four different villages⁵³ but it was only one household which fitted my descriptions. It happened that the DSWO had information from WEOs where the children live but she had not met some of them so when I met the children I found out they were not necessarily OCHH. For example one such child had just lost his mother⁵⁴. From this experience I had to change plans and worked through an NGO⁵⁵ as well as moving alone in the ward offices to meet the ward leaders. The limitation in working through the NGO was the fact that the staff directed me to the children in their projects only. Although I was informed by the NGO staff that there were OCHH who were not benefitting from the NGO's project yet I could not meet such OCHH.

I was new to the place and I had to depend mostly on the hosts because the time in the field did not allow me to just go and expect to meet my study sample. I however visited two ward offices on my own (Kayanga and Bugene). In one of the wards the WEO did not have much information regarding OCHH as he claimed to be new to the place; he said there were no such children while I had already met one such child in the ward. (The OCHH I was directed to by the DSWO). In the second ward I met the WEO, the Ward Councillor and the Ward Development Officer (WDO) and they provided information which included a list of OCHH in the ward. When I arranged to meet the OCHH as enlisted I found out that not all the names provided were of OCHH. There are arrangements to use the name of an orphan child who is below the

⁵³ The villages are Kituntu, Kayanga, Kishoju and Ndama.

⁵⁴ In this place it was very embarrassing as people were still mourning and the child could not be said to be heading the household at that time as the clan had not met to decide how the children were to be looked after. This was a household which people were sympathising with as the children had lost their mother one year after their father died and it was not known what would happen to the children who were dependent on their mother. The WEO who mentioned the household had the idea that if the DSWO knew of the children she might be in a position to help those who were in school.

⁵⁵ The NGO was The Karagwe Zone Aids Project of the Evangelical Church of Tanzania I had contacted the head of the NGO before going to Karagwe so it was easy to work through the organisation.

age of 18 as this is the category which is accepted for the household to obtain support from NGOs or the government. So when the OCHH attains the legal age of majority, (18 years) his/ her name is dropped from the list and her/his younger sibling is listed. So in one of the households a 26 years old orphan who was responsible for a household of five orphaned children did not appear in the list but instead his younger sister (17years) was listed. The household of the OCHH I was directed to by the NGO was listed in the ward but the name of the head was that of a sixteen year old brother, as the head was seventeen and about to reach the age of majority.

In Karagwe as was in Makete I had to take time to understand the categories of children as there were children heading households who had parents. It took time to identify the category of children I wanted as participants since there was a difference in the understanding or conceptualisation of OCHH. In the Makete villages all orphans are categorised by the village authorities as most vulnerable children (MVC), (*“Watoto walio katika mazingira hatarishi or watoto walio katika mazingira magumu”*) and are in the village MVC register. Another category within the MVC is of an orphaned child or any other child who lives with an old relative who is not able to provide for the child, the child is said to be looking after her/himself. This is the category which is also referred to as accompanied CHH (Foster, *et al.*, 1995)⁵⁶. The understanding of the Swahili words used to define the children was useful in my categorisation. There are two terms which were confusing and needed clarification. *“Mtoto anayejilea wenyewe”* and *“mtoto mkuu wa kaya”*. The former literally means a child who is nurturing or providing for her/himself and he is not necessarily

⁵⁶ This has been quoted by Francis- Chizororo, 2008: 121 and shows that Foster distinguishes the CHH as accompanied and unaccompanied.

the head, s/he might be living with an adult who is a head. The latter means a child who is head of a household in this case it is the child who is in charge of the household with no adult. However there were times when the two categories were used interchangeably. I had to meet a child in her/his household and to have preliminary discussion so as to make sure they are the category I was looking for.

I however ended up involving orphaned children who had been head of their households but they are no longer in that situation (Former OCHH) and children who live with guardians but they are responsible for providing for the necessities of the household. These other categories provide their perspective which is compared with the current OCHH.

In total for both districts I managed to meet and research with eight OCHH, three however are above the age of childhood as defined in law (although the community regards them as children because two are still in the school system and the other is not married) but one has been heading the household since he was 16 years old and the other since she was thirteen so their experiences are valuable. All the four OCHH in Makete were from one village Ndulamo in one ward Iwawa. The four OCHH in Karagwe came from four different villages in three different wards which are Kayanga village in Kayanga ward, Kamagamba village in Kiruruma ward and Kishao and Bujuruga villages in Bugene ward.

4.4. Research Process

The research process after gaining access to the field participants began with negotiating consent, then building of rapport and trust with the participants which helped in getting the data. This section will give an account of the process and how

the research questions linked with the methods which are to be discussed in the next section.

4.4.1. Consent

Consent was one of the major issues taken into consideration in the research process. For all the research participants consent was sought before the actual research activity began. It was however different in how consent was sought from the OCHH and other children and how it was for the adult participants. For the children the study was informed by Article 12 of the CRC which implies obligation on the part of a researcher to seek the views of children related to their lives (Ennew, 2000: 178) and the English Law landmark case of *Gillick v. West Norfolk and Wisbech Area Health Authority*⁵⁷ as another development in the area of children's consent. There were stages in seeking children's consent. First it was necessary to consult an adult who seemed to be 'responsible' for the child, such as guardians, teachers, village leaders or *Mama Mkubwa* (MM). A poster written in the Swahili language was given to the children through the adult before the first meeting. The idea was to make the child understand what was involved and make a decision as to whether she/he was ready to participate.

The second stage was discussion with the child of the poster to clarify comprehension and ascertain consent. The third stage was for the child to fill in a consent form. However, each time a child was involved in research activity consent was negotiated and the right to withdraw at any point in time was re-clarified (Evans and Becker, (2009): 78). There was also a special session for group consent which

⁵⁷ [1986] A.C. 112 In this case the House of Lords held that a child below the age of sixteen who was mature enough was able to give consent for medical treatment.

was initiated when meeting a group of children in FGD. This however was done after each child had made a personal consent and the children decided how to consent as a group.

With the adult participants the consent was sought after providing them with the information poster and making verbal clarifications. Most of the adults filled in the consent form provided but for the policy level participants the process of meeting them was so long through assistants and telephone calls that when I met them clarification was made of my objectives and I did not proceed with the filling in of consent forms. One of the policy level officials had told me that the fact that he made time to meet me after the appointment was consent in itself and he did not see why he should fill in a form. For the rest in this category I made sure they were aware of the objectives of the research after which they provided information which did not give me time to begin the formal filling in of a consent form⁵⁸.

4.4.2. Trust and Rapport

For the research to move on smoothly trust and rapport is vital. Various activities were undertaken to build this, especially with the OCHH who were core to the research and encountered several times. There were children whom I met first when they were in school (Kechee and OC/G in Makete) and I asked them if I could walk with them as they go home. On some occasions I went with children in their church as they had informed me they would be going to church and after church we walked

⁵⁸ The type of participants under this category is three Government Ministers, Minister of Constitutional Affairs and Justice; Minister of Community Development, Gender and children; and Minister of Health and Social Welfare. Also in this category is the First Lady of Tanzania Mama Salma Kikwete, the wife of the sitting President of the United Republic of Tanzania Jakaya Mrisho Kikwete who is also the head of an NGO by the name of *Wanawake na Maendeleo* (WAMA). It took four months from 17th November to 19th March to be able to meet the First Lady with having to call her personal secretary almost on a weekly basis.

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to their home. On the way we began to talk about various issues such as the climate, the food eaten in the area and their language⁵⁹.

When visiting the OCHH I carried presents expected traditionally when family members or friends visit. The presents were mainly food stuff. I had asked the people in the villages what the usual presents in the areas were. For all the eight OCHH I went to visit for the first time I carried food stuff such as rice, maize flour, sugar, salt, cooking oil, packets of tea and meat. This is not the same as compensation to the participants but a normal way to visit a home traditionally. This made the children associate with me as a relative and in most cases as discussed earlier they called me Bibi (Grandma). In subsequent visits I also carried small presents a grandma would give to grandchildren such as sweets, groundnuts and the like. It took some time to understand the children through participant observation and to let them understand me before I could interview them.

4.4.3. Process in Gaining Data

The process in gaining data followed the ethnographic methodology by having multi methods especially in the research with the OCHH. Observation was undertaken as a way to discover patterns of behaviour which might not be evident in an interview situation. This was done through participating in various activities with the OCHH such as walking, working and even studying as will be explained in the next section. Observation generally included what was happening in the district and the villages, taking part as an observer in District Council meeting, (Karagwe) village assembly (Ivalalila Makete), Ward Tribunal session (Iwawa ward Makete) Development work

⁵⁹ In Makete the local language is Kikinga and in Karagwe the local language is Kinyambo. The children speak their local language as well as the national language Kiswahili. I speak Kiswahili but not Kikinga or Kinyambo.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (Ndulamo Makete, Kayanga Karagwe) Funeral (Makete), Church services (Makete and Karagwe), school visits (Makete and Karagwe) and Market (Karagwe and Makete).

Semi-structured interview was one of the methods used to gain data by use of a guide prepared for this purpose (See appendix 4). Focus Group Discussion (FGD) was used for two main reasons. First it was to gain more insight of what was already gained through observation and semi-structured interviews with the OCHH and secondly, as the main method for groups which I met only once such as the MVCC, ward tribunal and MM as well as with an association of orphaned children. The semi-structured interviews benefitted from what was already observed while it also contributed to the design of the FGD on issues which needed clarification and issues which were observed but did not feature in the semi-structured interviews. It was essential to observe various ethical issues as this is a study with people and specifically children.

4.4.4. Ethical Considerations

Ethical considerations were paramount in the planning, design, implementation and reporting of the research project. As a researcher I examined the responsibility on my part to protect the participants against any harm which might arise from the research (University of Warwick research Code of Conduct and Guidelines on ethical practice (19th July 2005)⁶⁰ while taking care of my safety as a researcher.

⁶⁰[Online]
http://www2.warwick.ac.uk/services/rss/apply_funding/ethics_governance/governance/codeofconduct/ (Accessed 5th June 2009)

Considerations of ethical values related to children and to the people surrounding the children or related to the children entailed understanding the University of Warwick code of ethics and getting the required ethics clearance. Since this research involved children it was necessary to get a Criminal Record Check from the UK police before going to the field. Research clearance from the government of Tanzania was also necessary as related to my safety in the field and the research participants. From the details of this whole chapter concern on ethical issues were vital, in this section the main issue is on power relations and confidentiality.

4.4.5. Power Relations

The qualitative methodology with a mix of methods used acknowledges a researcher as an active participant in the research, which raises the issue of power relations between the researcher and the participants. Consideration in relation to power issues was on my personal position in Tanzania. It was my assumption that the authorities as well as the participants might agree to participate in the research not only because they know me but also might relate to me in anticipation of getting some specific solutions to specific legal or human rights issues in their setting. When this happened in the two research sites it was mainly with adult participants and not with the OCHH and children participants. Some of the adults wanted legal aid in relation to inheritance matters, while others wanted financial support as they were taking care of many orphaned children. I was however aware of the power relations issues involved and ensured they did not affect the process.

Adult researcher researching with children is yet another power relation issue which is not easy to overcome so in all the stages of the research I ensured that this was

acknowledged and in some cases mitigated through a specific method. The participatory action research engaged the children in the research process in such a way that some of the ethical concerns over unequal power relations were addressed (Evans and Becker, 2009:73). To ease tensions a variety of methods was used which include focus group discussions, photo taking, songs, drawing of pictures and diaries. Through these methods children expressed their views in a more relaxed manner.

The question of power between the children and some of the organizations or adults, who are supporting them, whether directly or indirectly, is yet another observed issue. I had to take care regarding the dynamics of power revolving around the research participants themselves especially during the FGD and between the NGO staff and the OCHH who receive support from NGO so as to avoid a situation which might replicate oppressive tendencies. An example of such a tendency was observed when the NGO staff and village leaders seemed to take for granted that the OCHH must participate in the research. One scenario was when we visited one of the OCHH (Kevona) the first time and she and her young brother were not at home. Although we were three hours late,⁶¹ the children were expected to have waited for us as the research is supposedly for their benefit. I had to correct this notion by clarifying several times to the OCHH that she is not obliged to take part if she was not ready to.

⁶¹ The NGO staff was supposed to take me to the OCHH as I did not know the place and he had already notified the OCHH of my coming but the Staff did not arrive at the planned time and we ended up going there three hours later and the children were expected to have been sitting there waiting for us. They had gone to look for mangoes to eat when we arrived and we had to wait for half an hour for them to come back.

4.4.6. The Rationale for the Link of Research Questions to the Research Methods

The study has several questions leading to the attainment of the main objective. Some of the questions brought up more questions during the semi-structured interviews and FGD as the questions were open ended. The chart below shows the links and rationale.

Table 5: Link Between Research Question and Research Methods

Research Question	Data Source/Methods	Rationale
Is the law contributing to the creation and the Vulnerability of the OCHH?	Written laws of Tanzania, International declarations and conventions, reports to the CRC, court records, Judgements and children registers. Observation, Semi-structured interviews with OCHH, NGOS leaders, Government officials, family members.	Review of the written law and other written materials as primary data revealed the position of law in relation to the OCHH. The semi structured interviews with the mentioned categories provided data on how the OCHH are treated within the various institutions, and the way the written law is put into practice.
How do the OCHH perceive the institutions surrounding them?	Observation, semi-structured interviews and FGD with the OCHH, former OCHH and children living in the OCHH.	During the visits to the OCHH and observation sessions data were collected from the comments made by the OCHH on how they view the various institutions around them. The former OCHH provided data on the experiences they had before and after they were in the OCHH and how they see the institutions. The Children living in the OCHH provided information which showed how the OCHH view and perceive the institutions.
How do the institutions in place	Semi-structured interviews with the various officials in	Observation session in different institutions and interview with staff and officials in the

perceive the OCHH?	the systems, observation.	institutions provided data related to how the systems perceive the OCHH.
What are the coping strategies/resilience avenues which make the OCHH to survive?	Observation, Semi-structured interviews, FGD with OCHH, Former OCHH, and MM, MVC.	The blend of methods used with the OCHH provided data on the coping strategies. Observation while working and walking was an opportunity to hear different means invoked for survival. Specific questions during the semi-structured interview also provided information as to the coping strategies.
What are the needs and challenges facing the OCHH?	Observation, semi-structured interviews, FGD with the OCHH, Former OCHH, MVCC, MM.	The needs and challenges facing the OCHH were observed during the sessions with the OCHH and through the FGD and interviews. The FGD raised new issues.

4.5. Research Practice

This section covers the way the research was undertaken to obtain answers to the questions through the different methods. The children were participants in their own right in their own space as children and the adults as participants and the researcher remained as adult with respect for the children’s space. Several methods were employed to ensure children participated in the research as children and as a researcher I remained an adult without trying to imitate the children, but to take part in what they were doing as children.

4.5.1. Entering the Children’s Space

The children’s space was entered in different ways, so as to capture their perspective. Observation, semi-structured interviews and FGD discussions provided the avenues to enter the children’s space, as did visiting the OCHH in their homes, school and church. The combination of these methods reverses the adult-centred models which are said to take adult ideals as their starting points (Hinton, 2008).

(i) Visiting the Children

All the OCHH were visited at their home several times and there were specific tasks which were undertaken during the participant observation. Two OCHH were visited in school and later at home. The school visit was to observe the way they relate to other students but also to understand the school environment and the way the teachers are handling the issue. One OCHH is practising masonry so I visited him at the working site. Two OCHH I met in church and later walked home with them. In some instances the OCHH wanted to go to the market during my visit so I went with them. In all the situations I was able to listen and hear the OCHH and also to see how they relate to other people in the village and in school, church, on the way to the market or to the fields and how they relate to each other in their households.

(ii) Participant Observation

I went to two secondary schools in Karagwe and two primary schools in Makete, where the OCHH go to school. During these visits I came to learn about the school environment and how the OCHH and other MVC fare in the school environment. For example during the lunch break the OCHH (Kechee) and a few other children (mostly orphans) did not go for lunch, but stayed at school while others went home. In discussion the OCHH told me he had no reason to go home as there was no food at home, he cooks once a day in the evening after school. He was not the only child remaining behind. No lunch was provided in school while those who go home are assured of food at home. Those who are not sure there could be food at home do not go. In one of the secondary schools the day I visited the OCHH (Kimako), many students had been expelled from school for lack of school fees.

On our way to the market and in the fields we met people who talked to the OCHH and some talked to me asking if I was a relative visiting the OCHH. Some of the greetings made the OCHH to make comments which raised issues which made me understand the way the OCHH perceived some members in the community. For example on one occasion when I was with Kevona in a market place a woman passed and Kevona sighed. When I asked why she was sighing she told me what that woman had done to her. Participation as observer in one of the village assembly meetings revealed the plans the village had in relation to the MVC (including OCHH) in the village. An agenda item was approval of funds from the MVC account to buy school material for needy children who have been identified at hamlet level and their names read at the meeting.

(iii) Semi-structured Interview

Semi-structured interview as a method said to be data dense (Corbin and Strauss, 2008) was used. The OCHH were asked to narrate their life stories. In this way each one began with whatever she/he felt prepared to tell. Each OCHH had a different angle s/he used to narrate her/his story. For example one would begin by telling what happened after the death of parents, another would begin by the illness of the parents while another would begin by the issue of school. After the narration specific questions followed which helped to fill information gaps. Almost all the semi-structured interviews were tape recorded after securing the agreement of the participants. All the OCHH agreed to be tape recorded and for the adult participants there were a few who could not be tape recorded for different reasons.

(iv) Focus Group Discussion

The focus group discussions were undertaken with different groups for different purposes. OCHH participated in FGD which were organised for the different categories of children who had experienced living in OCHH and former OCHH as well as CHH. The focus group discussions by children raised the children's self expression as it was a way of reaching the subjective experience of children while providing them with the opportunity to be valued as 'experts' and pronouncing their thoughts [Gibbs, 1997 cited by Taylor, *et.al.*, (2008)].

The aim of the FGD was to understand from the children their experience and also their different perceptions of the roles that they have been carrying of heading households. One FGD was carried specifically for a group of orphaned children who have formed an organisation. These are children in Kagera's Muleba District and the idea was to understand how the organisation was formed and how it is run and whether there are any lessons which can be shared by other children in the same situation. FGD was also carried out with adult participants mainly the MVCC, Ward tribunal and ward leadership. The aim was to learn how they understand the issue of OCHH and their actions and perceptions about the OCHH. It was also a way of triangulating data from interviews and observation.

In the FGDs with the OCHH different activities provided specific information on specific questions. The main activities were role plays depicting the life of OCHH, songs narrating the situation of OCHH in the area, diaries of the life of OCHH, drawings and specific questions regarding the different places they seek support. After a presentation made by a small group the whole group joined in a discussion of what had been presented.

The interaction during discussions raised many issues related to the children's understanding and perceptions regarding their situation and the interventions in place. Issues emerged such as suffering, relevance of assistance provided, age and how they are referred to by the authorities. For example a song composed by three children⁶² raised the issue of whether the type of work they have to perform to survive was suffering. This was hotly debated, and the FGD was divided.

The younger participants did not take part actively in the debates but their drawings were discussed in the whole FGD. One of the drawings done by a 9 year old child who lives in a CHH was translated by the group but the child gave her version of the picture. The FGD made the children feel free to discuss and debate issues concerning their lives. They were able to compose songs, plays and to discuss the issues raised in the plays or songs. For example the issue of the OCHH obtaining food loans from the MM had never been mentioned by the OCHH or the MM, but it was during a role play in Ndulamo that it was raised.

4.5.2. Children Intact in their Space

The study tried to locate children in their space as children. The methods used were aimed at letting the children participate as children. It is possible for children to feel unable or unwilling (Aldridge, 2008: 261) to respond to interviews for various reasons. Since it is important to have the voice of children in matters which concern them, different methods have been proposed such as visual ethnography (Aldridge, 2008: 261) or 'task-centred activities' (Hill, 1997, Christensen and James 2000 cited by Evans and Becker 2009: 73). Both methods include a photographic approach as

⁶² The song had a theme of the suffering of an OCHH and the type of work she/he has to do just because he/she has no parents.

well as drawing and preparing a diary. These methods afford children (in this case the OCHH) the moment to demonstrate their living experiences, challenges and coping mechanisms. Different methods were employed with different children on different occasions. OCHH were provided with a digital camera and asked to take a photo of whatever they wanted in their household. This was an exercise which was used during the familiarisation process as well as at opportune times throughout the research process.

Children who used the camera took photographs which brought up some meaningful aspects of their lives. Most of the photographs taken when put to discussion brought out the notion of pride the OCHH had for what they have managed to do in their circumstances. For example there were photographs of a house built by Kimako and guinea pigs owned by Kechee who has sold some and bought a radio. A photograph by a former OCHH of his father's grave brought up his life story while Kedi took a photo of her vegetable garden as an example of many plots of land she cultivates for the food they need. This method helped the OCHH to be in charge of the information they wanted to share in a very relaxed manner. Photography was also combined with yet another method, preparing a diary which again provided the OCHH with an opportunity to share their daily experiences between school and work.

The use of a diary involved the children narrating their way of life. This was then discussed individually but one diary by a former OCHH was used in a FGD, to see whether there was a difference between earlier and present experiences, and those of orphaned children with guardians.

4.6. Conclusion

The main discussion in this chapter has been the methodology and methods used in this study with children, in two rural districts of Tanzania. The study has generally been influenced by an interpretive epistemology approach. It has not been very easy to situate the research in one single discipline or theoretical paradigm due to the nature of the study. It is a study with children so the epistemological approach needed to consider the children debates on how to make a study with children and not on children.

The ethical concerns which are important issues in research have also been discussed in relation to studying with children and the challenges in consent making, harm and stress to the participants and their mitigation. This chapter has tried to present the way in which the methods used have negated tokenism in working with children. The different methods invoked have put the children at the centre and intact in their social setting and the researcher was guided by what the children were putting across as people in their own right. From what was learned, the next chapter provides the perspectives of the children on the different governance institutions which are supposed to protect and care for them.

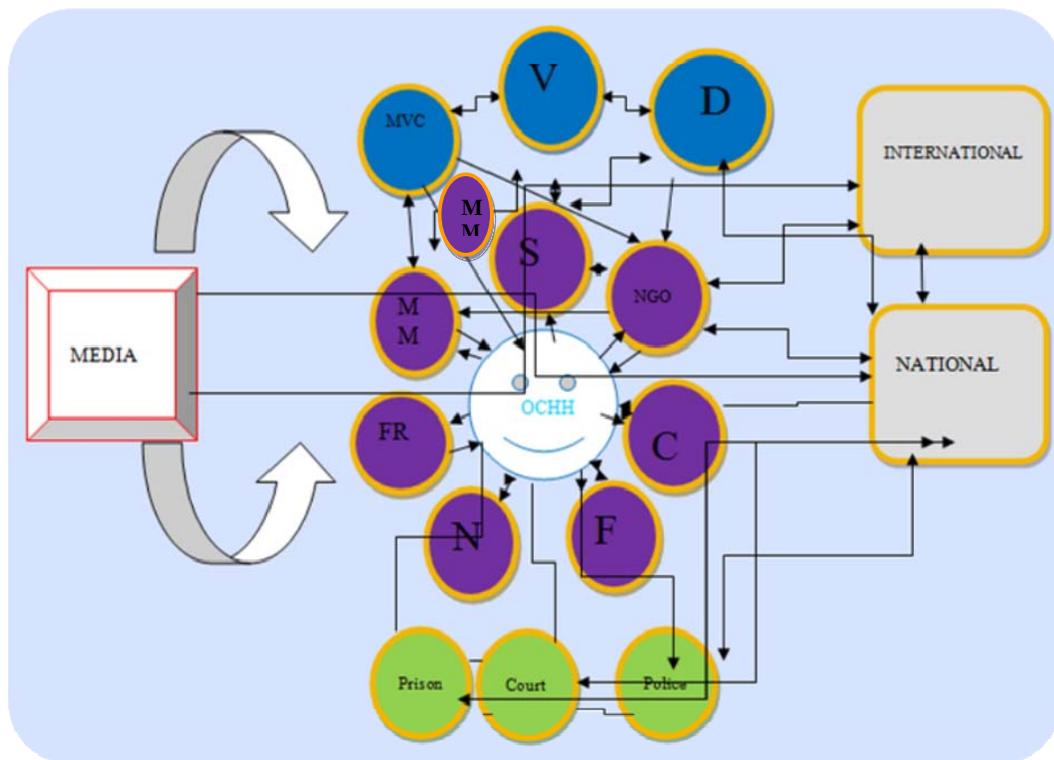
CHAPTER FIVE

The OCHH Account of Local Governance Institutions

*'Asking orphaned children of their opinion as to where they would prefer to live, is not usual ... Normally the clan decides and the children are to abide by the decision'*⁶³.

5.1. Introduction

Figure 3. The OCHH in the middle of Institutions



Legend:



⁶³ The common view of the majority of the people interviewed and observed in the Makete District, Iringa.



Description of figure 3

- **The Green** is the institutions not mentioned by the children directly
- **The Purple** are institutions nearest to the OCHH and are mentioned directly by the OCHH
- **The Blue** are the institutions which are at village and district level but are not mentioned by the Children
- **The Media**, International and National Institutions seem to be on the side but they have a great influence in various ways
- **The arrows** show the different ways of communication or networking
- The OCHH might contact the courts or police or prison after problems with family or neighbours

Figure 3 above encapsulates the discussion in chapters one to four and links it with what follows in this chapter and chapters six and seven. Chapters one and two are represented by the OCHH at the middle of figure 3 and the media. Chapter one provided the background to the issues confronting the OCHH while chapter two introduced the OCHH and what it means to be an orphan as well as notions of changing childhood. Chapter three provided the analytical framework relating to children governance. In particular that chapter highlighted governance as a network, and discussed how the network has not taken into consideration children's perspectives. An analysis of the ethic of care was invoked as a way to redress the situation. Chapter four then argued that a combination of a grounded and children's perspective methodology using ethnographic methods was appropriate to uncover the way in which plural governance institutions as shown in figure 3 construct the identity of OCHH while enabling the agency of the OCHH to emerge. This chapter now places the OCHH more specifically, within the various governance institutions and reveals how such institutions construct the identity of the OCHH. In line with the analytical framework provided in chapter three, this chapter identifies four

categories of governance institution shown in figure 3, linking the theory to application.

The first category of institutions which is the community or local level governance is comprised of the family, school, NGOs, church, friends, neighbours and *Mama Mkubwa* (MM). The OCHH have different perceptions of each of these institutions and they have identified needs and rights gaps. The interrelationship of the categories shows the power each has and how that power affects the children's perspective. The second category (local government welfare institutions) comprises the village authority governed by the village council, The Most Vulnerable Child Committee (MVCC) and the District Council. These have links with the national and global institutions which give them an outward outlook at the expense of being noticed by the OCHH. The third category (State power institutions), the police, the courts and the prison depend on the first and second category for their effectiveness. This category is not mentioned specifically by most of the OCHH, but its role in issues affecting the OCHH has been observed in the course of the study. This chapter deals with the three categories only. The fourth category, discussed in chapters six and seven, comprises national and international institutions.

The chapter begins with the order of the significance of the institutions as perceived by the children from the first category. The significance is measured either in terms of the importance the children assign to that institution or the actual contact and support the children have received from that institution. Noteworthy is the fact that the significance assigned is derived from either actual relationship or from anticipation. For example: The OCHH perceives non-governmental organisations (NGOs) (in the first category) as instrumental, in terms of provision of immediate

needs. This perception exists, even though not all OCHH have been supported by NGOs, while those who have, have not found all their needs fulfilled as they would have wished.

The OCHH have unsatisfied needs and rights which they have identified during the study. These include security as raised by Kevona and CHH in Kishojo village. The major need which each OCHH raised is of provisions as all of them, as discussed in the study have no reliable food, clothing, medical care, housing (with exception of the few who have been supported). Schooling is yet a very important need related to the children's rights to education which has not been met. There are OCHH who are school drop-out as for being unable to balance the roles of heading household and schooling or for lack of resources needed to continue with school. There are OCHH (e.g Kili) who were unable to access justice as a right when their property was grabbed. Kili and Kahoo, have identified non- participation in decisions which mattered to them as a problem affecting OCHH. All of these culminate in the lack of the OCHH rights to protection, participation, provision as well as prevention as advocated for in the CRC, ACRWC and the TLCA discussed further in chapters six and seven.

The nature of each institution and how it affects the OCHH is introduced before a discussion of the interrelationships between the different institutions and the connections between the local governance institutions and their relationships with the national and international governance institutions discussed in chapters six and seven. In conclusion the chapter highlights the dilemma of the OCHH, as different institutions seem to revolve round them without taking responsibility for them. Some institutions are 'caring about' by trying to accommodate the OCHHs' perspectives,

but without 'taking care of.' Others are 'giving care' by providing for some needs, but not taking 'care receiving' into account. The rights enshrined in the international convention such as the CRC, ACRWC are not a reality to the OCHH.

5.2. The OCHH in the Middle of Institutions

The OCHH in Makete and Karagwe are surrounded by institutions as depicted in figure 3 above. These institutions affect and impinge on their lives as they struggle to take care of themselves and their households. The interactions between the different institutions affect the extent and methods in which the OCHH can access them. The OCHH is located at a household,⁶⁴ the smallest unit in the village administration. The family members of the OCHH can be within the village or the district, and may also be part of the village leadership or other institutions such as the MM, MVCC or the church. Schools are in a village (primary school) or district (secondary school). Primary school is part of the village structure as there is a specific school committee in the village assembly. The head teacher is the secretary to such a committee. The MVCC is one of the village special committees. The MM is an institution in Makete which was initiated by NGOs and its role is acknowledged by the village; some of its members also belong to the MVCC. The MM provides information to the MVCC and the village assembly on the situation of the OCHH and other MVC. The NGOs operate from the district and they take part in the District Council meetings as observers. Some of the NGOs work through the village, other through the schools, or the church, or with the OCHH directly or through the MM. Some neighbours are family members or village leaders or MM. The OCHH have friends who are neighbours or school mates or church members or peers who are also OCHH. The

⁶⁴ The 2002 Population and Housing Census Volume IV - District Profile (Karagwe and Makete) defines a household as one or more persons who make himself or themselves provisions for essentials of living. The persons in the group may be related, unrelated or both. But usually this type of household includes a husband, wife, children and other relatives.

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district is part of the national governing machinery as a unit in the local government structure. The district council is funded partly by the central government and from local taxes as well as by some NGOs and UNICEF through specific projects. Courts, police and prisons are found at district level although their actual location can be in a village (for example, the Makete prison is located at Ndulamo village). At district level there is an effort to coordinate the activities of NGOs supporting the MVC, mainly around the issue of HIV/AIDS. The media have intervened in following up HIV/AIDS especially in Makete (as discussed in chapter one). They drew attention to the Makete OCHH, which led to NGOs and funding moving to the district. This has also led government officials to visit the district, specifically the OCHH. Although there are all these governance institutions the OCHH have unsatisfied needs and rights which have been observed from the study from their perspectives. These include security as raised by Kevona and CHH in Kishojo village. The major need which each OCHH raised is of provisions as all of them, as discussed in the study have no reliable food, clothing, medical care, with some of them having houses which are in need of repair. Schooling is yet a very important need related to the children's rights to education which has not been met. There are OCHH who are school drop-out as they were unable to balance the role of heading the household and schooling as well as lack of resources needed to continue with school. There are OCHH (e.g Kili) who was unable to access justice as a right when their property was grabbed. Kili and Kahoo identify the lack of participation in decisions which matter to them as a problem which affects OCHH. All of these culminate in the lack of the OCHH rights to protection, participation, provision as well as prevention as advocated for in the CRC, ACRWC and the TLCA discussed further in chapters six and seven.

5.3. The Family: Nature and Function

The Family is discussed first, given its position as explained by the OCHH but also as the place where ideally a child finds him/herself at birth and in childhood. The fact that children are heading households means they are outside the normal family framework, yet they feel the family has a role to play in their lives. As already discussed, there is a compelling ideology in Africa that children belong not to individuals but to families (Armstrong, 1995:4). The family⁶⁵ is sometimes categorised as nuclear or extended, and the latter is the dominant form for African families even today (Armstrong: 1995)⁶⁶. This study tries to understand the way the OCHH perceive the family where they belong and should receive protection and enjoy rights.

The Wakinga in Makete and Wanyambo in Karagwe are the largest ethnic groups in their districts⁶⁷ and they are formed by clans. The clan is seen as a family. There is no legal definition of a family under the codified Customary Law (Local Customary Law Declaration Order No. 4) regarding Guardianship and Inheritance. However the newly enacted Law of the Child (2009: Section 2)⁶⁸ defines a family as:

Parental father'(sic), mother and children, adopted or blood related
and other close relatives including grandfather, grandmother,

⁶⁵ Family as a concept is not very simple, as it changes in nature and form from time to time and differs between and within cultures (Douglas, 2004: 2).

⁶⁶ The nuclear family has been explained as that which consists of a married couple (husband and wife) and their immediate offspring including those adopted (Armstrong, 1995). The extended family on the other hand includes more than the nuclear family, as other relatives outside the nuclear family also belong. For discussions about extended and nuclear family see Armstrong (1995), Rwezaura (1986) and Ncube (1998).

⁶⁷ Other ethnic groupings in the districts include, Haya, (Karagwe). In Makete, Wamahanji, Wamagoma, Wawanji and a mixture of some tribes including Nyakyusa.

⁶⁸ The Law of the Child Act, 2009, (Act No. 21 of 2009) (TLCA). This is a new Act which provides for the reform and consolidation of laws relating to children, according to its long title it also stipulates the rights of the child so as to promote and maintain the welfare of a child, with a 'view to giving effect to international and regional conventions on the rights of the child'.

uncles, aunties, cousins, nephews and nieces who live in a household.

The same Section defines a relative as:

A grandparent, grandmother, brother, sister, cousin, uncle, aunt or any other member of the extended family.

The nature of the family in Makete and Karagwe is patriarchal as well as extended, in that the relatives who form the clan are from the paternal and not the maternal side of the clan. Although there are assertions that family and the father's extended family as known in Africa is no longer the norm (Holleman and Armstrong, 1995) this study reveals that the family, at least in Tanzania and specifically in the two districts of this study, is still in the extended form. This is also the primary institution where a child is found although there are changes in how the family behaves towards a child, as discussed in chapter one. The next section discusses the position of the OCHH within the family and how they perceive it.

5.3.1. OCHH: View of the Family

The fact that there are orphaned children heading households presupposes that such children are not under the direct care or responsibility of an adult. A child who is orphaned is normally left in the hands of the paternal family for care and guardianship and if there are no family members on the father's side the mother's side take up the role. This is provided for under the Local Customary Law (Declaration) Order No. 4 on Guardianship which seems to be the same practice in the customs of the Wanyambo and Wakinga in Karagwe and Makete respectively. The same is provided for in the Law of the Child Act, 2009 under Section 9 (1),

which allocates parental responsibility of a child whose biological parents are deceased to relatives of either of the parents. The TLCA indicates that the responsibility can be given to custodian by way of a court order or by following any traditional arrangement. In the tradition of the Wanyambo and Wakinga, as it is also observed in the Customary Law Declaration Order (1963), a clan council of a deceased man is responsible for the appointment of a guardian to minor children and that the clan has to inform the appointed guardian of his role⁶⁹ and to change him if he does not perform as expected.

In theory orphaned children in Makete and Karagwe are under the guardianship of their family members immediately after the death of their parents. In both districts the clan members meet and make arrangements for the orphaned children's upbringing. In most cases the members divide the children amongst themselves. Although this is the norm it is not always the practice. In both districts for instance, all the OCHH and former OCHH interviewed explained that the family clan met immediately after the death of their parents and made arrangements for their guardianship and where they could live. In Makete the family discussed with the children and accepted their choice, even where it was contrary to the norms. In the case of Kedi she was asked as she explains;

Kedi- Alipofariki mama, walijadili ndugu, wakatuuliza

'we Kedi ... mtakaa wapi?' Nikasema, 'nitakaa humu

humu.' Wakaniuliza, 'Utaweza kukaa na mtoto?

Nikasema, 'Ndio'. Wakamuuliza mtoto, na yeye akasema

⁶⁹ The role of the guardian as explained by the people interviewed in Makete and Karagwe is to take care of the children through custody if the orphaned children do not have both parents, to ensure their property is used for their benefit and that they are raised well by being provided with food, clothing and education.

atakaa humu humu. Wakasema 'Watoto wamekataa waache waka' [Interview 80:Appendix 7.2. 10/12/2009].

[Translation: Kedi- After my mother's death, the relatives discussed and asked us, 'Kedi --- where would you prefer to live?' I said, 'I will stay here (Home).' They asked me, 'Will you manage to stay with your sibling?' I said, 'Yes.' They asked my sibling who said he would remain here. They then said, 'the children have refused (to be taken) so let them stay.'

Kahoo had a different experience although she also was asked:

Kahoo: Baada ya 'msiba' kulitokea kikao cha wanandugu kutaka kugawanya watoto, yaani walitaka kujua watoto watakaa wapi, na ndugu walituuliza. Mimi nilisema 'kukaa na ndugu haitawezekana'. Wakasema, 'Kama unakataa we tuna kuacha kama ulivyo'. Wakatishia, 'chakula chote tunanyang'anya'. Wakachukua watoto, nikabaki [Interview 86:Appendix 7.2. 11/12/2009].

[Translation: Kahoo- After the funeral the relatives met so as to make arrangements of where the children could live. The relatives asked us. I said, 'To live with relatives! No way!' They said, 'If you refuse, we shall leave you and not take care.' They then

threatened, ‘We shall take from you all the food stuff’. They then took the children and I remained at home].

To discuss and ask for children’s opinion is a new trend. Normally the clan decides and the children have to abide by the decision. The changes are said to be brought about by the situation of children’s rights which is being advocated by NGOs and also taught in schools and the media (Views of many people observed and interviewed in the districts). The family seems to accommodate the new trend. In the case of Kahoo although they threatened her they did not enforce their will, and later her siblings came back to her and the relatives did not object. This however does not mean that after letting the children remain in their homes they supported them; the children had to fend for themselves. The acceptance of the children’s wishes by the family might be seen as flexibility but it might also be seen as resignation.

The other side of the matter is the reason adduced by the OCHH for their decision not to stay under the care of the family as expected. There is fear that the family members will take advantage of the orphans⁷⁰, will mistreat them⁷¹, will not take them in as their own children⁷² but will make them work as slaves⁷³. Two of the OCHH said it was an advice from their late mothers that they should not take the relatives’ offer to stay with them as they would lose their property⁷⁴. In another scenario the orphaned children are sent to relatives but after some time they are asked to go back to their household or they decide to go back. This is the case of Kili

⁷⁰ Kahoo and Kedi’s assertions and former OCHH in Karagwe actual experience [Interviews 86 and 80: Appendix 7.2. 10/12/2009 and 11/12/09, Interview 12: Appendix 7.1. 13/01/2010].

⁷¹ Kedi and Kahoo’s assertion and Kechee’s experience and FGD debates in Isapulano, Ndulamo and Karagwe [Interview 80/86 as noted above and interview 23: Appendix 7.2. 09/11/2009].

⁷² The same as [interviews 80/86: Appendix 7.2. interviews 11 and 12/12/2009].

⁷³ Puta in Karagwe and FGD debates [Interview 12: Appendix 7.1. 13/01/2010].

⁷⁴ The case of Kahoo, and former OCHH in Isapulano, [interviews 86: Appendix 7.1. 11/12/2009 and 58: Appendix 7.1. 2/12/2009).

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* and his siblings and two other orphaned children in Kahoo's household in Makete and Kevona, Kashighwa and Kimako in Karagwe. The OCHH asserts that the relatives had their own children or were too poor. Some relatives are said to have seen an opportunity for the OCHH to get assistance from NGOs if they stayed in their own houses⁷⁵.

The OCHH is sometimes an outcome of family politics and power relations in that a maternal relative like an aunt or grandmother might wish to take a child, but the paternal relatives refuse even if they are not in a position to take care of the child. This was noted in both the districts. A former OCHH (Avona) in Makete explained her ordeal when she had a misunderstanding with her sister in law. Although her maternal grandmother was ready to take her in, it was not easy as her brother did not allow it. Since the brother is the accepted "legal guardian" (according to the customs as well as the codified Customary Law) the grandmother could not take the child for fear of trouble [interview 58: Appendix 7.2. 2/12/2009]. Another child (Nainkwa) who had wanted to stay with her maternal aunt was not allowed to, and had to stay with a step grandmother (the wife of her paternal grandfather) [interview 25: Appendix 7.2. 9/12/2009]. This was seen as a near relative to her than her mother's sister although the child thought otherwise. The paternal relatives often have more say than the maternal relatives.

The OCHH understand the family as an institution responsible to take care but they also have perceptions of lack of responsibility and improper care which has led some to head the households. The power tensions between the relatives and indentifying a

⁷⁵ The case of Kili's household as explained by his sibling and also the same assertion was given by Kedi and some members of the ward tribunal in a FGD in Makete (interviews 5: Appendix 7.3. 7/01/2010 and 80: Appendix 7.2. 10/12/2009).

responsible guardian have been cited as among the reasons which have made some children to decide to stay in their houses. The next section takes the mistreatment issue and how the OCHH observe it within the family.

5.3.2. Mistreatment by Family Members

Mistreatment by relatives has been cited by the OCHH as a reason for lack of trust⁷⁶ in the relatives and hence the decision to live on their own. Kechee and Avona (Makete), Kevona, Kashighwa and Kimako (Karagwe) are some of the examples of children who had begun to live with their family members but after experiencing abuse and some form of mistreatment and neglect they decided to go back home to their households. Kashighwa and Kimako did not have a home to go to they had to take an effort to build a house for themselves with no support from the family members.

Although a child can report abuse to family elders when mistreated in most cases children do not trust the family structure to resolve a conflict with an older family member. Mrahira mentioned how he was rejected by his guardian (family member) when he complained over a matter [FGD, appendix 7.3. 6/12/2009]. Avona had to report mistreatment to a government official after she was failed by the family. Abusive language and being denied food were cited as other forms of mistreatment. During the FGD in Ndulamo and Isapulano [4/11/09 and 5-6/ 12/09 respectively] it was a consensus of the children that some of their relatives had the habit of taking from them materials such as mattresses and exercise books, as well as using the

⁷⁶ Trust as explained by the OCHH fits the definition of trust 'as a process of constant imaginative anticipation of reality of the reliability of the other part's action' (Khodyahov, 2007:126). This however is a proposal provided to the understanding of trust since the concept as used in sociology varies and shows disagreement amongst scholars (Khodyahov: 2007:115).

property left by parents⁷⁷ or even clothes left by parents. They termed this mistreatment. This might be the basis of the perception the OCHH have of the family.

5.3.3. OCHH Perception of the Family

The OCHH take note of the family as a structure which is there for them. All the OCHH participating in the study mentioned their family members and how they associated with them. The children's perceptions of the family vary but the meeting point is that the family is supposed to take care but it has somehow abdicated its role, at least partially. The OCHH all mentioned one or more members of their family as being responsible for their care. They give examples of the relationship before and after they lost their parents, lack of efforts when they are in need and lack of appreciation of what they do.

In Karagwe, OCHH who are double orphans and have no paternal relatives (e.g. Kakia and Kimako) feel that the maternal family is not treating them as their own children just because they are from maternal uncle's side (*Ujombani*).

Kevona says: 'Our aunt and uncle used to visit and bring lots of presents when our parents were alive but after our parents died we have not seen them, they do not care, what can an orphan do for them? We do not matter' [interview 27: Appendix7.1. 19/01/2010].

⁷⁷ An example was given by Kechee who said his brother sells timber from the family property left by their father but he never give him any money and when he asks he can be given a very small amount or he can buy him a pair of shorts to silence him.

Kakia has this to say: ‘the time was when our mother was alive, our aunt used to love us, but I do not know what happened after our mother died. She does not care at all, you cannot imagine, we are just orphans she does not think we are anything’ [interview, 23: Appendix 7.1. 17/01/2010].

Kedi’s views: ‘I do not think it is any good to stay with relatives as an orphaned child, they will not treat you as one of their children they will just see you as an orphan. This is why I said you cannot live with other people if you are an orphan as they will mistreat you. Even if you try hard to work they will not appreciate it. They can opt to take you but they do not have the true feelings that you are anything to them’ [interview 80: Appendix 7.2. 10/12/2009].

Kahoo insists: ‘I said it was impossible to live with relatives, I knew they would just mistreat us’ [interview 86: Appendix 7.2. 11/12/2009].

Putu (a former OCHH): ‘Our relatives were ready to make us look like their slaves. They made us work for them and they seem to enjoy seeing us going to them with no food so they can give us work for food. This is abuse of orphaned children and you know there is nowhere to run to and when the relatives know you have nothing they just want

to make you their labourer' [interview 12: Appendix 7.1.

13/01/10].

The negative perception notwithstanding the family is still the institution which the OCHH associate with most. All the eight OCHH taking part in the study have some association with their family members. Seven of them claimed to distrust the family, five to the extent of refusing to live with the family members. All seven have been supported or are being supported in some ways by the family. When they were answering a question as to who are the most important people in their lives, three of the OCHH mentioned members of their families only, two mentioned members of the family and NGOS which support them while two mentioned members of their family and neighbours. Only one did not mention a member of his family as important in his life. When the OCHH have issues which need intervention they would go to the family members first. The main consultation is on land matters. For example the Kevona household had to consult the head of the clan when they had to decide in which part of their land they should build a house, for which they got support. They had to consult the elder even though he is not taking care of them but just because for such serious matters he had to be consulted. Kili had to consult his uncle when he wanted to sell timber from his inheritance farm. Other consultation is made with the family members when the OCHH face any other problems. There is also evidence that in some instances when the children are sick it is the family members who take them to hospital as was the case of Kechee when he twice broke his leg. One OCHH was helped by her brother to register her young brother in school.

The OCHH know their family members but they do not feel so secure, nor do they feel that the members of the families care or value them much. The same sentiments have been shown by the four former OCHH and the OC/Guardian who participated in the FGDs. Two OCHH who are now living with an aunt and a grandmother respectively had the view that they feel they are better off than when they were living as OCHH. I also have the view that some of the children had thought I was coming from the NGOs and might help them or even take them away if they claim to have no contact with relatives. This was mentioned specifically by one OCHH although I had told them about my work⁷⁸. Another OCHH had given me the impression that she had no one left even the ‘Good Samaritan’ who was helping her is dead. This information I came to verify later and she had to tell me the truth that they are not dead but they are ‘as good as dead.’ Generally however the situation is mixed with most of the OCHH feeling the family has neglected them.

5.3.4. How the Family Perceives the OCHH

All the eight OCHH participating in the study have near relatives so it was easy to learn from the relatives how they relate to the OCHH. The family members are aware that the OCHH are in a difficult situation and that it is not acceptable to have children looking after themselves. However, the family members encountered had the view that they did not have enough resources to maintain the children and so the situation was inescapable. This is what is mentioned in the ethic of care discussed in chapter two. It is not enough to know that there is the need to care by ‘caring about’ but there is an importance in ‘taking care of’ by making sure something is done.

⁷⁸ For example Kiyaya thanked me for coming to their aid while I had nothing in terms of aiding them. Kimako and her siblings thanked me for the house which was built for them. I had to tell them that I am not part of the group which helped them build the house. This they repeated so many times that every time I had to make sure to inform them of my different position from the NGO which had built their house.

The families in Karagwe as well as in Makete accept that orphaned children of a deceased relative should be cared for. However the members of the family do not take their role as a binding obligation in the legal sense. Most of the family members consulted in the study perceived the OCHH as a burden. They observed that life had become very difficult. Everything is costly so it is not easy to accommodate more children as they have their own children. They had promised to “keep an eye” on the OCHH where they were and once in a while they gave the OCHH some help such as a bar of soap, salt, oil and so on. Some studies have argued that the customary ideal of care for children in a family is being confronted with increasing individualisation and scarcity of resources (Armstrong, 1995) and either of these factors may be responsible for their attitude. What is observed is the fact that these family members spend more than the OCHH need on their own children. For example Haiwa’s uncle is paying school fees for his daughter in a private school nearly 400% more than the amount of school fees in a government school, which he says he cannot afford for Haiwa [interview 61: Appendix 7.1. and observation 2/12/2009].

Some family members said that the OCHH are difficult to handle, so it was better for them to live on their own [FGD, appendix 7.3. 4/12/09]. The relatives were of the view that the OCHH had lived with them but they had gone back to their homes because it was not easy to satisfy them.

A number of family members in Makete claimed that the NGOs had created the status of orphans, since in the Wakinga tradition they do not identify children as orphans. The members thus claim that the existence of OCHH is due to NGOs, so the NGOs should take care of what they have created. This contention was repeated by several people other than the family members who claimed that they had been

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* taking care of the orphans but when the NGOs came they did not appreciate the role of the family members. They intervened without recognising them as family [FGD, appendix 7.3. 17/12/09].

The NGO/family tension is seen even with family members who are taking care of orphans. Anticipating some help from NGOs or outsiders they identify a child as an orphan expecting to obtain some assistance. This is a result of plurality of the institutions. It was obvious that the family members were expecting other institutions such as the NGOs and the village council to take responsibility for material assistance such as school fees and equipment, as well as psychosocial needs. This is discussed further in the next section.

Nevertheless, the family still feels it has an obligation towards the OCHH and that is why some children in Makete have been taken back to live with members of the family after the First Lady⁷⁹ had removed three children from OCHH in a village. The members of families in Makete claimed that it was a shame for an outsider to come and take children while the real family existed. This shows that they still have a sense of responsibility.

This study portrays the changing nature of the African family. The extended family accommodates some of the children's perspectives while avoiding actual support. The family know that there is need to 'care about,' but there is no 'taking care of' by

⁷⁹ The current Tanzania First Lady Mama Salma Kikwete visited Makete District in October 2008 in a tour with the wife of the USA ambassador to Tanzania Mrs Sue Green, and they visited a house with OCHH in Ndulamo Village. Later Mrs Kikwete decided that the children were in a pathetic situation so she arranged to take them away from that situation [Interview 12: Appendix 7.3. 19/03/2010]. Also see press release Embassy of the United States of America 07/10/2008 'Mrs Green and Mama Kikwete visit orphans in Makete' [online] http://tanzania.usembassy.gov/pr_10072008a.html (accessed on 14/10/2010).

making sure something is done. This tendency may be associated with reliance on the Non-Governmental Organisations (NGO), as is discussed in the next section.

5.4. Form and Nature of Non Governmental Organisations (NGO)

There are a number of NGOs which have projects aimed at supporting children and vulnerable people in Tanzania. The extent of NGO influence and how it is perceived by the OCHH is discussed in this section. The term NGO has been referred to as a sector (Manara, 2009) or a form of association (Lindblom, 2005:3) coming from or a part of civil society. Lindblom (2005) has noted that irrespective of the variety of ways NGOs are defined there are common elements. These include autonomy from the State, having objectives which are not for profit, not being political parties, not promoting or using violence and without apparent connections with criminality.

The definition of NGO under the Tanzanian NGO law⁸⁰ recognises voluntary autonomous individuals or organisations which are not partisan, non-making profit and are organised either locally, nationally or internationally⁸¹ The objective of such groupings have to be the enhancement or promotion of economic, environment issues as well as lobbying and advocating on issues of public interest.

The Makete and Karagwe districts economic profiles mention active NGOs in the district. Some are active in work concerned with the OCHH and other Most Vulnerable Children (MVC). This study focuses on five NGOs in Makete⁸² and five in Karagwe⁸³ which are registered in accordance with the law.⁸⁴ These have been

⁸⁰ The Non-Governmental Organisations Act, 2002 (Act No. 24 of 2002). According to its long title the Act is to provide for registration of NGOS so as to coordinate and regulate their activities.

⁸¹ It is according to Section 2 of the NG O Act cited on note 67.

⁸² These are TUNAJALI, Tanzania Home Economics Association (TAHEA), and Support Makete for Self Support (SUMASESSU), IYDC and MASUPHA.

⁸³ These are KZACP, KARADEA, SAWAKA, WVT and WOMEDA.

picked because they have projects for children or orphaned children specifically. All of them are noted by the district officials as collaborators in development and some of them were mentioned specifically by the children. I visited all of them and had discussions with either the executives or project staff.

The Karagwe NGOs were formed between 1987 and 2003 while the Makete NGOs were formed between 1997 and 2005. The target focus of the NGOs varies. Those formed in the 1980s are mainly developmental in focus (e.g. KARADEA, TAHEA). The more recent NGOs have a specific focus on women and children⁸⁵, children⁸⁶, the elderly⁸⁷, people affected and infected with HIV/AIDS⁸⁸, or marginalised groups such as people with disability and orphans⁸⁹. Currently all the NGOs have the question of HIV/AIDS and orphaned children /MVC as one component in their work. Most of the NGOs in Makete seem to have been established in response to the HIV/AIDS pandemic while others such as TAHEA and SUMASESSU have shifted their focus from their original objective to take up HIV/AIDS impact mitigation projects⁹⁰.

⁸⁴ Five are district NGOs in that they operate in the district only (KARADEA, WOMEDA, MASUPHA, SUMASESSU and SAWAKA). Two are regional as they are part of a regional or zonal NGO. (IYDC, Iringa) KZACP (Kagera and Mwanza) and two are National (TUNAJALI and TAHEA). One is a national NGO working locally but affiliated to an international NGO (WVT/WVI).

⁸⁵ Women Emancipation and Development Agency (WOMEDA)

⁸⁶ World Vision Tanzania (WVT), Iringa IYDC

⁸⁷ Saidia Wazee Karagwe (SAWAKA)

⁸⁸ TUNAJALI (Literally means We care), Support Makete to Self Support (SUMASESSU), Makete Support for People Living with HIV/AIDS (MASUPHA) and Kagera Zone AIDS Project (KZACP).

⁸⁹ Karagwe Development Association (KARADEA).

⁹⁰ Currently all the NGOs have the theme of HIV/AIDS and orphaned children /MVC as one component in their work. Most of the NGOs in Makete seem to have been established in response to the HIV/AIDS pandemic while others such as TAHEA and SUMASESSU have shifted their focus from their original objective to take up HIV/AIDS impact mitigation projects.

All the NGOs receive funds from international donors based in or outside the country⁹¹. KARADEA and IYDC are the only NGOs which are also funded by membership contributions and sale of service. The International NGOs funding the local NGOs seem to determine the agenda of the local NGOs as will further be shown in this chapter.

5.4.1. The NGOs Interventions

Most of the assistance provided to the OCHH and other MVC is mainly material assistance such as food, repairing and building of houses, school fees, uniforms, equipments and shoes. There are NGOS which provide health insurance⁹² for some MVC while one NGO has established a vocational training school⁹³ and two NGOS help children to obtain birth certificates⁹⁴. Each NGO acknowledges that it has not been able to reach all the needy children as the projects depend on the funds they receive and the focus of the funding agency, not on the magnitude of the problem. Karagwe has experienced the problem of OCHH for a longer time than Makete⁹⁵ and so the NGOs in Karagwe have some programmes which are not yet established in Makete. These are psychosocial⁹⁶, community capacity building⁹⁷ and legal support

⁹¹ Such Donors include Global Fund, Family Health International, PEPFAR, USAID, Individual donors in the USA, Dan-Mission (Denmark) Swedish Mission, German Mission, Help Age International and Fire light Foundation of USA.

⁹² TAHEA in Makete and SAWAKA in Karagwe have programmes on health insurance. Health insurance cards (HIC) are issued to the children for them to get treatment in designated hospitals free of charge when they get sick.

⁹³ The IYDC in Makete has established a vocational training school to train the OCHH and other MVC on specific vocational skills such as masonry, tailoring or carpentry.

⁹⁴ TUNAJALI in Makete and SAWAKA in Karagwe both organisations receive funds from USAID.

⁹⁵ Karagwe is in Kagera region where HIV/AIDS was first diagnosed in 1983 and spread in the region and to other parts of the country. In Makete the pandemic was pronounced in the 1990s but came to be manifested in early 2000.

⁹⁶ These are initiatives for the OCHH and other MVC in form of clubs for children in schools. Such initiatives were also mentioned by TUNAJALI and MASUPHA but as new projects which I could not see at the time of the study.

⁹⁷ WVT for example has programmes which helps the community to improve itself (capacity building) for a number of years with the aim of catering for children's well being. They work through what they call Area Development Programmes (ADP) with an ultimate aim of letting the ADP mature into a Community based organisation (CBO) carrying out initiatives which have been

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* programmes⁹⁸. These are the NGOs encountered and given an account of by the OCHH.

5.4.2. The OCHH Views of the NGOs

As care recipient, the OCHH have different ways in which they regard the NGOs which seem to or is expected to be supporting them. The OCHH know some of the NGOs which have supported them and those which support other children in the village. In Makete all OCHH taking part in the study have received some type of assistance from one of the NGOs working in the villages, even if it is only exercise books (the case of Kedi). As explained above the support is in the form of material needs such as school uniform given once, or exercise books, a tin of maize, or the repair of a house. In Karagwe however two of the OCHH participating in the study had never received any support from the NGOs and two had been helped to build a new house. The OCHH are also aware of other OCHH or MVC who could have benefitted from support from the NGOs but have not. All the OCHH however anticipate receiving support from the NGOs. Some OCHH have tried to obtain assistance but have not been successful for various reasons, to be explained later.

The OCHH who had received some support appreciated that it had helped them. The OCHH have noted that the assistance is not consistent with the needs and is always insufficient. They explained that one can get a tin of maize once in a year or school uniform once. Some OCHH would have wished to get a school sweater but they got

going on with the support of WVT. Such initiatives include education by working on structures such as schools, health, environment etc. The KZACP also work to reinforce capacity of the community and government structures which seem to be weak in providing for the society.

⁹⁸ KZACP mentioned Human rights capacity building to ensure that the rights of children are upheld, as there are children who have run away to towns because their rights have been infringed. The capacity building concerns not only the child but all the structures which might infringe the rights of the child. WVT Child protection is on issues such as rape, early marriage, education and child labour.

a blanket instead. Support in terms of taking away siblings from the OCHH has been resented by the children, who thought it was not good to separate them without communication. Health insurance cards given to one child in the household instead of all, has also caused some dissatisfaction especially with OCHH in Makete.

However, during the FGD the OCHH were of the view that the NGOs have somehow contributed to their well being. NGOs have been termed “parents” because they have supported children with school fees, housing and some food (Re: Kimako, Kevona and Semhoo in Karagwe). A former OCHH (Semhoo in Karagwe) said,

Nyumba hii na hili shamba litakuwa letu. Huku ukiishi kwa wajomba ni kama huna kwenu. Hili shirika limetuwezesha kuwa kama watu wengine [Interview 45: Appendix 7.1. 26/01/2010].

[Translation: This house and the land shall be ours. In this area if you live with uncles it is just like having no domicile. This organisation has enabled us to be like other people].

There is a tendency for the OCHH to trust the NGOs than the family or the village authorities although contact with the NGO is through the village. From the discussions during the FGD (Karagwe, Ndulamo and Isapulano) the OCHH were of the view that the NGOs are genuine, but the village leaders and their relatives misappropriate the support. They mentioned how one NGO is now asking the village leaders to send the children to their office some miles away to receive material assistance because the leaders cannot be trusted to pass on such materials to the children [FGD, appendix 7.3. 5/12/2009]. It was also noted that the OCHH would rather report to the NGO on issues related to their support than to the village

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authorities. (The case of Kiyaya who walked ten kilometres to go to an NGO office
on a matter related to school uniform given to him by the NGO)[Observation:
7/11/2009].

Some of the OCHH in Makete mentioned that they stayed alone anticipating that the
NGOs would see them and support them. They gave the example of an OCHH
whose house was repaired and siblings taken to be educated [FGD, appendix 7.3.
6/12/2009]. Kedi also said,

*Heri (yatima) wakae peke yao. Watoto kule Ndulamo walikuwa,
wakikaa peke yao akaja mke wa Kikwete akawachukua, wako
Dar-es-Saalam. Wanaweza kukaa wakiwa wadogo lakini wakiwa
wakubwa watarudi tu.* [Interview, 80: Appendix 7.2. 10/12/2009].

[Translation: It is better for orphans to stay alone in their house.
There were children in Ndulamo who were living alone and they
were later taken by President Kikwete's wife during her visit.
They are now in Dar-es-Salaam. They may stay there while they
are young but when they grow up they will come back.]

The NGOs are regarded highly even by OCHH who have never received assistance
from them. It is said that even children with parents wish they were orphaned so as
to receive the assistance the orphaned children receive. The OCHH had made the
following comments:

Haya mashirika yanatusaidia tunang'aa mpaka wenzetu wenye wazazi wanatamani na wao wawe yatima [FGD, appendix 7.3. 6.12.2009].

[Translation: These organisations (NGOs) help us to shine to the extent that fellow children with parents wish they were orphans.]

NGO staff, VEO and teachers in schools in Makete mentioned how some children who are not orphaned had claimed to be orphaned so as to get some of the material assistance given to orphaned children.

The OCHH and other children are of the view that the NGOs have more to offer than the family or the village. They also have a high regard for NGOs coming from outside their area which links to perceptions on global governance. For example they repeatedly mentioned UNICEF although none of them had received its support directly. Kiyaya said 'UNICEF *ndio baba lao*' (UNICEF is the father (great) of all) because it has given bicycles to the village leaders [for the OCHH, UNICEF is also an NGO]. Kevona repeatedly mentioned that the house they are in was provided by *Mzungu* (European) although she did not know the name or where that *Mzungu* came from, just because a representative of a donor in Denmark had visited to see the house, which had been an initiative of a local NGO. There is an obvious level of expectation by the OCHH (especially in Makete) from NGOs, although there are initiatives by some NGOs to localise the projects so as to let the village own them. The Mama Mkubwa (MM) initiative in Makete is one such project. The international NGOs interventions shape what is undertaken at the local level. For example the houses built for some of the OCHH was different from what normally is done by the

local NGO. The value of one house could have built two or more houses normally built by the local NGO or village authorities.

5.5. The Mama Mkubwa (MM) Initiative in Makete

MM is a new initiative which is neither provided by law nor is it customary. The MM concept depicts the role of an aunt (Mother's elder sister or mother's friend) and is an informal fostering scheme for the care and support of orphaned children associated with traditional patterns in African societies where relatives take care of the orphans (Mwaipopo, 2005: 19). The MM initiative is practised in Makete district but not in Karagwe. The MM initiative originated from a group of women in Rufiji district in the Coast region of Tanzania, members of the Society of Women against AIDS Tanzania (SWAAT) in 1995/96. It was a response to the increased number of orphaned children in the community with no guardians, following HIV/AIDS pandemic (Mwaipopo, 2005:19). The Tanzania Home Economics Association (TAHEA) introduced the MM in Makete in 1999 as a psychosocial care and support, culturally relevant community programme for the Most Vulnerable Children (MVC) in the district. According to TAHEA, Mama Mkubwa ideally, could be any woman in the village who is respected, shows love for children and is chosen by the concerned children. A person becomes a MM after a process of appointment. The MVC in a hamlet appoint the MM and is approved by a village assembly. Most of the MMs in place were trained for a week by TAHEA in 1999 by funding from UNICEF. There is evidence of a few MM in Ndulamo and Isapulano villages who are new and have never received any formal training.

None among the four OCHH and the 28 other orphaned children (Makete) participating in the research took part in appointing the MM. Most of them were not

orphaned when the MM initiative began. Kahoo, who became single orphaned at that time, does not seem to remember as she was very young. All twelve MM interviewed explained the fact that MMs were approved by the village assembly after being appointed by the MVC in a hamlet. Each hamlet has one MM who is responsible for the MVCs/OCHH in the hamlet. From explanation given by MM1 and MM2 the MM decided the number of MVC she is able to handle as it is not easy to support all the MVC in a hamlet [interview 21:9/11/2009 and 39:13/11/2009 appendix7.2.]⁹⁹.

The role of the MM after appointment and training is to visit the MVC and to support them in case of needs such as food, school materials, health problems and to listen to them. This is unpaid voluntary activity initiated by NGOs and accepted by the community.

5.5.1. The OCHH Views of the MM

The OCHH participating in the study know the MM and all of them have been visited by her and some of them have sought her assistance. Some of the former OCHH and orphaned with guardians who were part of the FGDs said they had not been visited by the MM although they know the MM in their hamlet. The children feel the MM is important because she takes time to listen to them and to know their problems and try to help. The MMs have helped the OCHH with food and soap and also in weeding their food crops. The OCHH however, have noted that most of the MMs are not as active as they used to be in the past. They claimed that:

⁹⁹ MM1 for example had to take only five out of the twenty MVC in her hamlet when she was first trained back in 1999. All the five she picked were OCHH.

Mama Mkubwa sasa hivi wamepoa si kama pale mwanzo [FGD, 5/12/2009 and 14/11/2010 appendix 7.3].

[Translation: Nowadays the MMs have ‘cooled down’ they are not as active as they used to be in the past].

The OCHH suggest that the visits they receive are insufficient, as they are visited once or twice a year. In some instances MM do not provide food to the OCHH free of charge. They give it as a loan and the OCHH are expected to pay back after working [FGD: Appendix 7.3. 6/12/09].

5.5.2. The MM God Given Assignment

The MMs on their part have taken the role of taking care of the OCHH and other MVC in the hamlet voluntarily. It is not an employment and they are not required to be relatives of the children (although they sometimes are). All the MM interviewed mentioned as a fact that they are doing this work without pay as a ‘God given role to be paid in heaven’. They feel that the children appointed them, so they should not let the children down. They also empathise with the situation of the children, since they also may die, leaving somebody else to look after their children.

The MMs understand that the children are in a very pathetic situation and they try to help as far as they can. When they cannot they report the matter to the Most Vulnerable Children Committee (MVCC) or to the village council. The MM interviewed complained that the MVCC and the village council have left all the work with the MVC to the MM.

They call the children (MVC) our children while these are the children of everyone, lamented MM1 [Interview 21: Appendix 7.2. 9/11/2009)].

MM2 said that the MMs are actually undertaking a burden which should be carried by the government, and their work should therefore be recognised [interview 39: Appendix 7.2. 13/11/09]. The same MM and a group of MM in a FGD in Isapulano and Ndulamo claimed that the village authority is not sensitive to the fact that the MMs are volunteers. There is a tendency to request MM to go to the village, ward or district offices whenever someone comes wanting information about the MVCs. This they said is time consuming and there is not compensated. An example was given of the many days and hours spent preparing for the visit of a Minister in 2006,¹⁰⁰ and that of the Tanzania First Lady Mama Salma Kikwete and the wife of the USA ambassador to Tanzania then Madam Sue Green, in 2008. There were also visits by other people in the district, region or from other regions or countries.

The village council has recognised the role played by the MM and has excused MM from development duties undertaken by every other member of the village. They also have been given a bag of fertiliser (once), said to have been provided by UNICEF. For most of the MMs this is not enough since they use their resources to feed the OCHH if necessary and they also spent time visiting, listening to and comforting the OCHH. The tone of the MM is like the families, the MMs see these children as a burden which should not be theirs.

¹⁰⁰ This was the visit by the then Minister for Community Development Gender and Children, the Hon. Sophia Simba.

The NGO which initiated the MM programme had hoped that the district government would take it into its plans for sustainability purposes but this has not happened. In practice the village authorities where the MM are situated recognise them and work with them in identifying the MVC, but as a concept the MM has not been included in the village committees such as the MVCC. This is discussed later.

The OCHH appreciate the presence of MM but they do not see them satisfying their need for care. The MM, although empathising with the situation, have no capacity to accomplish their role satisfactorily, so this has decreased their morale. The MMs expect the village government to do more, as it is the responsible governance institution. This is discussed further in the next section.

5.6. The Village and the OCHH

Villages are legal entities established by the law under the Local Government (District Authorities Act, 1982 Section 22(1) [LG (DA) Act]. As an administrative unit a village is made of a number of households. The households form a hamlet (*Kitongoji* in Kiswahili) which is headed by a chairperson who is part of the village council. A village council, which is a corporate entity, is elected by the village assembly (Section 141 LG (DA) Act, 1982). The village assembly is the highest organ of village governance, formed by all members of a village of eighteen years and above. The village council is vested with executive powers relating to all the affairs and business of a village (Section 142:1 LG (DA) Act). The village administrative structure includes committees and the Village Land Tribunal responsible for reconciliation of land matters. The village has however been termed a site of development or delivery of social services (Shivji, 2010: 130) since it emphasises such services more than any other function. In this section the

discussion is on how the OCHH perceive the feature in the village institutions, beginning with a hamlet.

5.6.1. The Hamlet Leadership

Outside the family the government institutions begin with the hamlet leadership, which is very close to the household as the first level of village governance. In Makete several hamlet leaders took part in the FGD and I also met two hamlet leaders within the hamlets, not in Karagwe. All the OCHH in Makete and Karagwe know of the hamlet leaders, and some of the OCHH have met those leaders. In Makete the hamlet leaders, in collaboration with the MVCC, identify the MVC in their hamlet twice a year. This was evidenced during the study and in the FGD Ndulamo, several children noted the visits made by the hamlet chairperson to check their names and status. In Karagwe none of the OCHH participants in the study has been visited by a hamlet leader for identification, although there is evidence of identification in some villages studied (Bujuruga¹⁰¹). There are OCHH who have met hamlet leaders in their offices simply for references regarding specific issues, such as acknowledgement that they are orphaned (Kakia and sibling), or for a signature on a school form (Kevona and her sibling).

There are OCHH who have reported matters of concern to their hamlet leader. For example the orphaned girl child (Avona of Isapulano village), who felt she was being mistreated by a relative.

¹⁰¹ Bujuruga village is one of the villages in Bugene ward which has several NGO projects (SAWAKA, Palliative Care of Nyakahanga hospital, KZACP) and the identification process is done as part of the projects. In some cases the MVCC conducts the identification and provides the information required.

At hamlet level in Makete it was evident that the leaders are trying to identify the OCHH and to alert the MVCC so as to make sure the OCHH obtain the support they require. In Karagwe this was not so evident. The hamlet leaders in Makete feel overwhelmed by the number of needy children since it is not the OCHH only who have serious needs. There are other children who live with sick parents, or with very old relatives unable to support them. Sometimes the child has to take the role of carer.

5.6.2. The Village Council

Depending on the number of the hamlets, some of the hamlet leaders are members of the village council. The village has a number of committees and functions regarding OCHH and other children living in the village. The social services committee for example is responsible amongst other things for the welfare of MVC, as undertaken by the MVCC. There is a village Land Council which is responsible for settling land disputes at village level (according to Section 167(1)(e) of the Village Land Act 1999). There is a Village Health Attendant (VHA) responsible for health and environment issues and the school committee is for the issues related to the primary school.

The issue of OCHH falls squarely on the mandate of the village regarding welfare related as well as legal issues such as property and protection. The Village Council is aware of the OCHH, although there is an impression that some village leaders are not comfortable to make it known that in their village there are OCHH, this is evidenced by the reaction of VEO in one of the villages in Makete¹⁰² and statement

¹⁰² In one of the villages the WEO was aware that the issue of OCHH was quite big and the village chairperson had given the same information but when I went to begin the study the VEO who had

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of WEO in one ward in Karagwe¹⁰³. In all the visited villages the Village Council has been responsible for the formation of the MVCC who identify the MVC, and coordinates the support brought to the village for the MVC including the OCHH. Some village councils perceive the OCHH as a group of children who bring shame to the village because their existence means that the village does not undertake its responsibility to children. The village councils in Ndulamo and Isapulano have been working with hamlet leaders to help relatives to take the OCHH, but not all have been taken and some are unwilling to go back to relatives. In Isapulano the chairperson gave the example of OCHH who refused to stay with relatives. The relatives have been accused of taking advantage of the situation of the OCHH by using some of their property or taking from them what is given by NGOS.

The village council works as a conduit to receive and extend support to the OCHH, and this is sometimes how it is understood by the OCHH. In Makete the villages under the study have tried to establish activities to support the MVC (OCHH included) but such activities have not been sustainable. For example in Isapulano there had been a designated farm for the MVC. All the adults in the village had to work on the farm and the proceeds were to be used for the children. At the time of the study this farm was no longer in operation. Ndulamo village had made a plan for each member in the village to contribute some amount of money for an MVC fund, but most of the members of the village have not contributed, as they claim to be poor and in need of support themselves. In Ivalalila village however the farm for MVC existed and at the time of the study potatoes were being harvested and stored in the

not been present during the planning stage claimed there was no such problem in the village and that the Chairperson was new and not well informed. (Field notes 10/11/2009).

¹⁰³ In Karagwe a WEO claimed that there were some village leaders who were not ready to tell the truth about having OCHH (interview 53: Appendix 7.1. 25/1/2010).

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village office before distribution to the MVC [Observation and FGD, 6/11/ 2009 and 12/12/2009: Appendix 7.3.]. In the same village the MVC fund had received matching funds from the district because the village had managed to collect. There had been an agreement in Makete District between the District, Village Council and UNICEF, by which a village would be given a matching fund of up to Tshs. 400,000 if it raised the same amount from the Village.[interview 5:Appendix 7.2. 5/11/2009]

The District contributes Tshs. 50,000 per annum. This has not been very successful as many villages have not been able to raise funds. The UNICEF funding ended in the financial year beginning June 2009 [interview 6: Appendix 7.3. 8/01/2010].

All the OCHH participants in the study are aware of the village council and they even know the office, the chairperson, the Village Executive Officer (VEO) as well as some members of the village council by name. Most of the OCHH in the study however do not think the village council has any immediate relationship to them. In the FGD in Ndulamo, Isapulano and Karagwe the children mentioned the Village Council as an institution supposed to follow up criminal matters and to apprehend those who are not abiding by the law and also to supervise development work. In Makete there are OCHH who mentioned the Village Council as a place where they gather to collect assistance from the NGOS (The case of Kiyaya, Kili and Mrahira). The OCHH mention the office more than the function of the office as related to them. There is evidence of OCHH ignoring the Village Council on matters which could have been settled there.

Kili for example, had a problem which he could have reported to the VEO or to the Village Land Council but he did not do so because he claimed to be afraid of the VEO and the village chairperson. There was an obvious lack of trust by the OCHH

in the Village Council as an institution and he did not know of the existence of a Village Land Council. He just claimed ‘wote *wako hivyo hivyo*’ meaning ‘they are all the same.’ This remark came as a reaction when I was trying to ask why he had not reported the matter to the VEO or the Village Chairperson. Kashighwa had tried to report theft to the village chairperson and he was asked to pay two thousand Tanzanian shillings for the matter to be pursued, so he thought that to take any matter to the village authorities was a waste of time. The same was the case of Josechwe in a village in Karagwe, who said he had been consulting the WEO as he did not see any way the VEO could handle the issue facing him [interview 24: Appendix 7.1. 18/01/2010]. In this case the OCHHs seemed to perceive the village council as not being for them.

There is indication that the OCHH are aware that some support from the district for MVC passes through the Village Council but in the FGD Isapulano and Karagwe they claimed that sometimes the village leaders do not deliver the services to the earmarked beneficiaries¹⁰⁴. It was also noted that in some cases the village leadership will choose a few MVC who are seen as outspoken and provide them with the assistance and the rest of the assistance is kept by the leaders.

The villages under this study have put in place a committee specifically to deal with MVC, known as the Most Vulnerable Children Committee (MVCC). The MVCC is supposed to be the arm of the Village Council directly working for the OCHH and other MVC. In the discussion with the OCHH the MVCC did not feature, although I met with members of the MVCC and some of them directed me to the OCHH. The

¹⁰⁴ This view is supported by NGO leaders who participated in the study showing how in some cases the village leaders have diverted the material supposed to be for MVC to relatives. A headmaster in one of the secondary schools visited mentioned likewise that there are children who receive school fees support while they have working parents while children who are orphaned are not supported.

following section discusses the MVCC mainly from what the OCHH did not know and from my personal observations.

5.6.3. The Most Vulnerable Children Committee (MVCC)

The MVCC is an institutionalised community based programme for care, support and protection of the MVC in Tanzania. The programme was initiated nationally in 2003 under the coordination of the Social Welfare Department in collaboration with UNICEF (Mwaipopo, 2005:18). The approach for this programme is said to be the strengthening of the existing care and support practices at the village level and the development of ways to support most vulnerable families identified by the villagers, including OCHH.

In Karagwe the MVCC were formed in all the villages with the support of UNICEF [interview 14: Appendix 7.1. 2/2/2010]. It was noted however that, there has not been much follow up, so not all the MVCC are working as expected. This was evident during the study; the Karagwe MVCCs are not as evident as those in Makete. Some ward leaders in Karagwe claimed to be new to the place, so they were not conversant with some of the issues [interview 36: Appendix 7.1. 21/1/2010], while in some villages there were claims that MVCC had been formed but not sustained [Interview 33: Appendix 7.1. 20/01/2010]. Some NGOs which participated in the study mentioned working with MVCC in their village projects [Interview 60: Appendix 7.1. 1/2/2010 also in a report by SAWAKA 2010]. In a village in Karagwe where the MVCC is in place its chairperson and one member participated in the study and gave an account of the work but complained of the lack of support from the District Council [interview 53: Appendix 7.1. 29/01/2010]. This was well

corroborated by a ward councillor noting the inactiveness of the MVCC due to lack of motivation and follow up [interview 35: Appendix 7.1. 25/01/2010].

In Makete on the other hand, in all the five villages visited, the MVCC are part of the village committees as shown in the village structure posted on the village walls. In three villages (Ndulamo, Isapulano and Ivalalila) the MVCC participated in the study through FGD. The MVCC members are from each hamlet and are appointed by the village assembly which is the highest organ of the village. There is supposed to be a child representative in the MVCC but this was evident in one village only and that child was away in secondary school. The tenure for the committee is not clear. In Karagwe the MVCC members claimed that when they began in 2003 it seemed the Committee was to be perpetual, but they received a memorandum from the District offices some few years later, with an instruction for tenure of five years. In Makete the members of the three MVCC were of the view that they have a perpetual tenure but a member who is inactive, dead or has moved from the village has to be replaced.

The role of the MVCC is to identify the MVC and to prepare plans for their support. The Committee keeps a register of the MVC and each child's needs. In Makete the register is updated twice a year. The village MVC register was available in Ndulamo village in Makete. The village MVC registers are sent to ward offices where they are compiled and sent to the district office, which keeps a district register for MVC.¹⁰⁵ The MVCC also work to mobilise the villagers in their role of taking care of the MVC and supporting by contributing to the MVC fund. The MVCC is also supposed to protect the MVC where any issue infringes upon their rights. Examples given are

¹⁰⁵ I managed to get the most recent list from the Makete register for 2009 and a list compiled by Ndulamo village MVCC July-December 2009. In Karagwe DSWO also provided me with a list for 2008 MVC and a list of CHH in 15 wards out of the 28 wards of the District.

of relatives who grab property of the MVCs or when a child is abused, or in cases of child labour. The MVCC mentioned as one of their roles escorting the MVC to receive support from NGOs or other supporting groups. The MVCC work as part of the village committee and report to the Village assembly all issues related to the MVC.

5.6.4. The OCHH and the MVCC

Although none of the children in any of the meetings mentioned the MVCCs as such some¹⁰⁶ mentioned names of people they have encountered and later I came to learn that such people were in fact members of the MVCC. The main encounter is when the OCHH are requested to go to the village office to collect material donated by NGOs. The MVCC, at least in Makete is talked about so much at district level as a tool for the MVC in the village and I had hoped to find out from the children how they relate to it. However none of the children knew about the committee. I specifically asked the children about the MVCC but they had not heard of it. When I asked for example if they have been registered as MVC, they said they were registered by their hamlet leader. There are however some of the MVCC members who are also hamlet leaders but the children did not know this. Kashighwa in Karagwe noted:

*Huyu baba mwenye miwani anachonisaidia, mimi naishi katika
mazingira hatarishi, wakija wale wanaowasaidia wa mazingira
magumu, anakuja kunijulisha ili wakileta kama misaada ili
isinipite wale wakija anafanya chini juu ananitafuta. Lakini tangu*

¹⁰⁶ For example Kiyaya, Mwire, Kija [Interviews 20, 57 and 73 respectively, appendix 7.2] mentioned Omari, and Mrahira [interview 21: Appendix 7.2] mentioned Festo who happened to be the chairperson MVCC Isapulano and Treasurer of MVCC Ndulamo respectively. The OCHH did not know these people were part of the MVCC.

nije huku sijawahi kusaidiwa tangu 2003 nilikua mdogo sana

[interview 65: Appendix 7.1. 2/2/2010].

[Translation: What I receive as help from the man with spectacles, due to my situation as a child living in difficult environment, is the fact that he makes sure to inform me when those people who bring assistance to children in difficult circumstances come, so that I am not left out. He does all he can to ensure he finds me. However since I moved here in 2003 I have never been assisted. I was very young then].

Kashighwa knew the man in spectacles as a person who would call him when there was assistance. This man is one of the MVCC members but Kashighwa is not aware of the MVCC or other members of the MVCC. This is the same with other MVCC in Karagwe as well as in Makete.

5.6.5. The MVCC and the OCHH

Three MVCC in Makete and two members of one MVCC in Karagwe participated in a focus group discussion (FGD) organised for each group. I managed to understand how the MVCC perceive the OCHH. Generally, the MVCCs are aware of the OCHH in their villages and they view the OCHH as a category of MVC who need extra support. Their definition of child headed household is wide as it includes children who have guardians who have no capacity to support the children, where the children are taking responsibility. Such guardians might be sick parents or very old relatives or negligent parents, mostly drunkards. In Makete as has been mentioned earlier the MVCCs have been trying to persuade relatives to take the OCHH so that there is no

child living without a guardian. They are aware that the OCHHs and other CHH are at very high risk if they continue to live alone. For girls it is worse because men may sexually abuse them, taking advantage of the fact that they are alone.

There were contentions by members of the MVCC participants in the FGD that the OCHH are not easy to deal with:

MVCC: Changamoto kama unavyojua, watoto yatima wana matatizo wanatunzwa na walezi wao, kimsingi wanataka watendewe kama wanavyotaka wao. Kwa vile wao ni yatima wanataka wasibughudhiwe. Na wale wanaojilea tunawaomba waende kukaa na walezi wanakataa [FGD, Isapulano, MVCC,4/12/2009].

[Translation: MVCC Secretary: The challenge as you might know is that orphaned children have problems, they have guardians who look after them, but in principle they want to be treated differently. The fact is, because they are orphans they do not want to be disturbed. For those who look after themselves, we ask them to go and live with guardians and they refuse].

The claim raised was that the OCHH do what they want and it is not easy to convince them otherwise [MVCC FGD 4/12/2010]. The MVCC like the family seems to accommodate what the OCHH want. An example was given of a girl OCHH who refused to live with relatives. When the MVCC tried to convince her to go to her relatives, members of an NGO told the committee to leave the OCHH alone, and let her exercise her discretion. The MVCC left the OCHH to live alone

although they understood it might not be easy for her especially security wise and in terms of daily provisions. OCHH have reasons to refuse to live with relatives and some of the reasons are genuine according to the MVCC. However the MVCC members feel that the OCHH are also very difficult to handle because they are already free from adult directions and have become used to their liberty, so it is not easy to tell them to go and live under the supervision of an adult.

While the MVCC is a big programme initiated to support the MVC in the villages it is not known to the OCHH who are part of the MVC. The MVCCs are acting for the children, but what they are doing is not recognised as MVCC by the children. When the OCHH have specific issues which could be handled by the MVCC they cannot approach it as they do with the MM or other institutions such as the religious institutions. The next section discusses the religious institutions as important institutions in the society and how the OCHH associate with them.

5.7. The Church and Mosque

In Tanzania religion has a central role in the daily lives of people. There are no reliable national data on what percentage of the population follows the three main spiritual traditions: Christians, Muslims and African traditions (Heilman and Kaiser, 2002:691). The 1976 is the last census to categorise people according to spiritual belief. However the Tanzanian Tourist Board estimates 40-45% of the population to be Christians and 35-40% to be Muslim with the rest of the population being traditionalists (Tanzanian Tourist Board, 2010). These figures as well as those of the 1967 census are disputed by some writers¹⁰⁷. In Mainland Tanzania the majority of

¹⁰⁷ For more about Tanzania spirituality please see Lawrence E.Y. Mbogoni, (2005) *The Cross Versus the Crescent: Religion and Politics in Tanzania from the 1880s to the 1990s*, Dar es Salaam: Mkuki Na Nyota Publishers, Bruce E. Heilman and Paul J. Kaiser, (2002) "Religion, Identity and Politics in

people are Christians of various denominations while the people of the coastline and Tanzania Zanzibar are mostly Muslim. The main Christian denominations are Roman Catholic, Evangelical Lutheran Church and the Anglican Church. There are however many other denominations. The Muslims are both the Sunni and Shia.

The church plays a significant role in the life of the people in the districts in this study. Most of the OCHH who took part in the study are members of a church although some are not active members. Only one OCHH from Karagwe was a Muslim and an active member of a mosque. There are OCHH who play very active roles such as being members of a choir and leaders in the youth groups in the church (e.g. Kahoo and Kedi). Most of the OCHH treat the church as a very important part of their lives. In church they are being taught of values which help them to manage their lives. They also obtain support from the church. Some OCHH have been sponsored by the church (and not necessarily from their own church) to undergo technical training.

The church has also taken some children to be placed in an orphanage or boarding school so as to get education (Roman Catholic, Makete, Evangelical Lutheran Church of Tanzania (ELCT) Karagwe), or fostered when it appeared the children were not coping and were at the risk of dying [Observation, ELCT Makete and interview 87: Appendix 7.2. 12/12/2009].

The OCHH seem to appreciate what the church is doing but some of the interventions have caused pain to the affected OCHH. An example is where siblings

Tanzania,” *Third World Quarterly*, 2002, Vol. 23, No. 4 pp. 691-709; [online][http://www.ssrnetwork.net/uploaded_files/4359.pdf (accessed 11/09/2011) and Hamza Mustafa Njozi,(2000) *Mwembechai Killings, and the Political Future of Tanzania*, Ottawa: Globalink Communications.

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are taken away with no communication or visits. This is not an isolated case; a church leader explained the difficulty in enabling the children taken from the village to visit home as lack of transport expenses. Generally the OCHH feel that the church has been helpful not materially only but also spiritually as they get hope from its teachings.

5.7.1. Church Perception of the OCHH

Some of the members and leaders of the church whom I met felt that the OCHH were a problem in the society and the church as part of the society had to intervene. They however felt that society had abdicated its role of taking care of the needy, and specifically of the orphaned children. The church is also trying to encourage its members to contribute to the assistance of the children. One church leader mentioned that the community was aware of the MVC but it has not taken the issue as its responsibility [interview 88: Appendix 7.2. 14/12/2009]. He gave an example of how members of the community could contribute much money for weddings and other ceremonies but were not ready to support OCHH.

The only participant OCHH who has experience with a mosque mentioned that the mosque in his village did not have initiatives to support the needy although he was aware of other mosques in towns which supported needy people. I was not however able to meet any leader of any mosque in Karagwe.

The church as an institution in the society takes initiatives to support the children in need but it also has not been able to handle the problem completely. In some instances the church meets the OCHH not in the church only but also through the

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village office or the schools in the villages. The next section discusses the school as one of the institutions where OCHH spend part of their lives.

5.8. The School and OCHH

Primary education in Tanzania is compulsory and as such there have been education programmes to ensure that every child of school age goes to school. Primary schools are in almost every village and recently there has been a new plan for secondary schools in each ward. School life begins for most children at the age of seven, for seven years of primary school. All the 8 OCHH in the study have been in school, two have dropped out, four have finished primary school, (one of these was preparing to join secondary school and another was joining a technical school while another had just finished technical school). One is still in primary school and one is in his last year of secondary school.

After the family, school is the second place where a child spends most of her/his time which means that if a child has any problems the school should be able to take note and liaise with the family to handle them. In the primary and secondary schools visited in the two districts, the school authorities were aware of the plight of the OCHH and other MVC in the school. The schools had school committees which made plans for the children's affairs. The school committees in Makete for example appoint in each school a teacher responsible for their MVC. This teacher records all the orphaned children in the school and any child with special problems, then reports to the head teacher all the issues related to these children. The head teacher as the secretary to the school committee reports to the village assembly which then makes plans to handle such issues as discussed earlier.

5.8.1. The OCHH School Experience

Most of the OCHH perceive school as very important for their life, although most of them do not have very good experiences with school because they struggle so much to stay there. Some have experienced being beaten for not having pens or exercise books (Kevona and Siblings, Kimako). Some have experienced missing school for long periods searching for the contributions needed there, attending to their other needs such as food or the repairing of houses. There were primary school orphaned children in Karagwe who were not in school because they did not have Tshs. 1,500 (equivalent to 75 British pence) towards school security or volunteer teachers. There are drop outs for various reasons such as finding it difficult to cope with school, heading a household or failure to acquire school materials. One OCHH had this to say:

Mara nyingi sijaenda shule natafuta chakula nikipata ndio naenda shule. Nisipoenda shule waalimu wananichapa, wananiuliza sababu, waalimu wengine hawaelezezi wanasema 'hivyo vimatatizo vyenu msinieze' [Interview 27: Appendix 7.2. 19/01/2010].

[Translation: I missed school many times as I had to have food before I could go to school. When I miss school the teachers punish me, they ask for reasons but others do not understand, they say 'do not bother me with your petty problems'].

Although all the OCHH interviewed mentioned school as very important, it also was explained how difficult it could be for them as they do not have all the materials;

Kevona had this to say:

*Kwenye hizi shida nyingi tulisikika kwa kukosa chakula, kusoma
kwa shida kwenda shule bila kula, unalala darasani kumbe ni njaa*

[interview 27: Appendix 7.2.19/01/2010]

[Translation: In these difficulties we are known for lacking food, studying in distress, going to school without eating and dosing off in the classroom due to being hungry].

This is the same message which came from Kimako, Kahoo and Kedi. They mentioned the many days they went to school on an empty stomach or with no pen or pencil, with torn uniforms or without shoes.

The teachers who took part in the study explained that the OCHH and other MVC are very innovative, hardworking and determined. Examples were given of how such children will be found in the market or in town selling fruits immediately after school and also that most of them perform well in the school despite the struggle they have in attending school.

In Makete where teachers responsible for MVC were found, the OCHH are aware of the MVC teacher who is said to understand their problems. The MVC teacher helps by providing support to the OCHH to meet with NGOs and other people who come to the school to assist MVC. The teacher is also flexible as s/he allows them to go to work during school hours if they ask for permission. S/he is not strict with them

when sometimes they come late to school. This experience is not the same in Karagwe as was noted by Kevona. This is notwithstanding that in Karagwe some OCHH explained how individual teachers could help them with exercise books or pens. The secondary school head masters I met in Karagwe explained how the schools have specific initiatives to support MVC. Kimako however had been expelled from school when his school fees, which should be paid by an NGO, were not received on time.

Sometimes OCHH receive new school uniforms or are taken to town to receive exercise books. The other children think that the OCHH are privileged. This has sometimes created a sort of stigma. It is however a struggle to stay in school which the OCHH think needs to be pursued if they want to change their life. This explains the sadness of the OCHH who are drop outs and those who are trying to get school fees to go back to school. Although there are plans at district level to support the MVCs with school fees this has not worked for many children as is clarified in the next section.

5.9. The Role of the District Council

The district is administratively the highest institution at the local government level, and is managed by the District Council. The OCHH falls under the mandate of the social welfare section of the council's departments. According to one District Social Welfare Officer (DSWO) social welfare was only recently brought under the District Council directly [Interview 5: Appendix 7.2. 5/11/2009]. It is now part of the community development department. Not all the districts have social welfare officers and so the community development officers take up the role of social welfare. In Karagwe and Makete however there are DSWOs who are said to be an outcome of

UNICEF projects in the districts. In both districts there is only one person in the district social welfare office with about five units of work including the MVC. The DSWO is responsible for matrimonial reconciliation and child maintenance issues as well as court and prison support for children and other vulnerable groups [interview 17: Appendix 7.1. 14/01/2010]

The OCHH are known to all the District Councils and the DSWO. By the support of UNICEF the identification of MVC in the districts has been conducted, which has helped to understand the magnitude of the problem. There are specific initiatives from the District Council for the OCHH and other MVC which differ in the two districts as one is still getting the UNICEF support while the other does not. In Makete, with the support of UNICEF the DSWO visits the MVCC at village level regularly but this does not happen in Karagwe, which highlights the difference in the work of the MVCC. The Makete identification process is updated twice a year, which was not the case in Karagwe.

The two District Councils however have a special fund to support the MVC, including the OCHH, identified in the district. The councils do not seem to have the capacity to support all the MVC in the district due to lack of funds. As noted earlier there are several OCHH in Karagwe who have not been able to continue with secondary school for lack of school fees although there is also evidence of OCHH benefiting from the district fund. For example a sibling of one OCHH and one orphaned child participating in the FGD in Karagwe are beneficiaries of such fund. The districts have a policy that no child should be out of school for lack of fees [observation: Karagwe District Council meeting, 27/01/2010]. This has been

very difficult to implement because the schools have to be run using student fees¹⁰⁸. Two headmasters visited during the study however complained that sometimes the fund does not reach the needy children as there have been cases where it has been assigned to children with parents who are working and some even working in the district offices.

The OCHH in Karagwe who have reached a stage in which they need the support from the district seem to be more aware of the DSWO than those in Makete. In Makete however the study noted issues being handled mostly at village level and the MM being in charge. This is why there are OCHH who have encountered the DSWO in Karagwe while none have done so in Makete. The District as the government seems to rely on NGOs and others to provide for the children, which raises the issue of who is responsible and who is supposed to take care of the children who do not have parents.

5.10. The Interrelationships and Power Dynamics

The discussion so far has shown the way the OCHH feature in the setting of the village and the various institutions in place. There is no clear-cut mechanism to which a child who is OCHH can be said to have recourse. The various institutions are not interconnected or coordinated towards the issue. Each institution does what it does in a very disjointed manner. All the support the OCHH mentioned or that mentioned by the personnel in the institutions are mainly provision of needs and not as of right but as charity. From the perspectives of the OCHH the NGOs seem to be

¹⁰⁸ In the quarterly meeting of the Karagwe Council on 27/01/2001 for example, they had on the agenda the number of children who could be supported by the district funds. The Council approved three children for each of the 28 wards which was a decrease in number from the ten (10) normally supported for each ward. The wards have however more MVC in need of school support than the district fund can offer. For example Bugene ward in 2009 had a list of 20 MVC who needed to be supported by the district fund which means that if only 3 were to be supported 17 will not be able to continue with school.

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regarded highly although what they provide have limitations and have not reached all the children and even those reached is in a very small way. The NGOS as noted are dependent on donor funding and they provide support for a specific time and to a number of the MVCs depending on the duration of the fund. The NGOS in some cases expect the District or the village to continue the programme they had begun. For example TAHEA had expected the district to take over the MM programme by making it part of its plans but this has not worked. The district and the village play a role of a conduit for the support from the NGOs. UNICEF is regarded as an important institution by the OCHH but its role is mainly to work with the District and expects the district to be strengthened to proceed. In Karagwe the initiatives begun by UNICEF ceased after UNICEF stopped funding programmes.

The family expects the NGOs or the village to provide for the children and some have asked the children to live on their own in anticipation of such support. The programmes initiated by the government from the support by donors/NGOs such as MVCC and MM are also not funded by the village or district. The OCHH have to negotiate within the institutions and to see which can help. The friends and the neighbours have a role which is also done in an *ad hoc* manner and depends on each OCHH and how s/he manages the relationship with the neighbours and friends. Where the OCHH have legal issues it is not evident how they are supported. Some have gotten support from the NGOs which have legal programmes but for others their issues have not been dealt with. It is also obvious that the DSWO has no capacity to support all the children in the district with legal issues such as bailing them out when necessary. The courts and prisons expect the social welfare officer to support the Children in such cases but this has not happened and even where there is a MM like in Makete this does not seem to be one of their roles.

5.11. Conclusion

The care of children is supposed to be borne by parents and where there are none then the wider family has been given that role. The OCHH as children in society who do not have parents do not seem to be in the direct care of anyone, although there are a number of governance institutions which could take such a role. Most of the institutions surrounding the child seem to ‘care about’ the children, recognising that the OCHH are in a vulnerable situation and need to be cared for. Most of the institutions in place try to do the ‘care giving’ by providing handouts in a very discontented manner leaving the children with no one to ‘care for’ them. The OCHH are not responsive to such care as is given, as they seldom share in deciding what is appropriate.

The OCHH are being looked at as needy poor who have to be assisted not as people who have rights to be enjoyed. This is evidenced by the handouts every institution is trying to provide. The OCHH understand the institutions in terms of how they provide handouts, which are mostly material assistance given once in a while depending on the capacity of the institution. The institutions on their part regard the OCHH as a burden which has befallen the society, but there is no one who feels an obligation towards the OCHH. In this case, the OCHH seem to be nobody’s child.

In another level the plurality of governance institutions have opened up possibilities for the OCHH to negotiate with some of the institutions such as the family, the village and the school, and obtain some of their wishes. This opening, although positive, has not been matched with consideration of what protection the OCHH require as they take up their rights. It also has not been appreciated at other levels of the children’s governance institutions such as the national or the international.

In a legal setting the child law, the Customary Law, the practice of customs and tradition, the new pluralism MM, MVC teacher, MVCC, child rights framework CRC, ACRWC have not picked the issue in a manner in which the child feels being cared for. The next chapter appraises the laws in place and their relevance in relation to the circumstances facing the OCHH.

CHAPTER SIX

The Legal Framework for the Protection of Orphaned Children Heading Households in Tanzania

*Children are not a private pleasure or a personal burden;
they are 100% of a nation's future¹⁰⁹.*

6.1. Introduction

The previous chapter considered the role of governance within the context of three categories: community, local government and state power institutions. This chapter focuses on part one of the fourth category; the national governance institutions. The chapter reverts back to the discussion on pluralism in chapter three which highlighted the interrelationship of the different governance institutions in a plural setting and how they affect the development and promotion of children's perspectives and agency. This chapter then links the local governance institutions as discussed in chapter five with the national legal framework and builds on the discussion of the way in which pluralism operates within community and national based governance.

The web of the plural setting discussed in chapter five calls for the examination of the legal framework in order to understand the broader context of the law and its role in addressing the situation of these children. This is what has been characterised as 'strong' legal pluralism (Griffiths, 1986) or the autonomous social fields as classified by Sally Falk Moore (1978), discussed in chapter three and narrated in chapter five.

¹⁰⁹ The Commission on Social Justice 1994, p. 31 cited in Daniel and Ivatts (1998) *Children and Social Policy*, MacMillan Press Ltd., p. 14.

As pointed out in chapter three the legal framework in Tanzania is characterised by a ‘weak’ legal pluralism, like most of the post-colonial African States, but here it is considered within the broader ‘strong’ legal pluralism notion. The national legal system is considered from a wider context which includes the relationships of the local governance institutions, as they form part of the plural governance setting. It is argued that for the perspectives of the children to be taken into account the national legal institutions need to be more closely linked with the local governance institutions. One way of doing this is through the understanding of perspective of the children at the local level which might enable the positive initiatives happening at that level being appreciated at national level.

This chapter therefore, examines the state laws including received laws, existing laws, and international law as the recognised legal orders. These laws are examined on the understanding that they interact with other normative orders, traditional beliefs and customs governing what is happening in day to day life. It explores the way in which both the legal principle and the social assumption that children are the responsibility of adults are constructed in the laws, so as to locate the legal arrangements in which the various governance institutions and the state meet the children’s rights. The role of the judiciary is discussed by questioning the welfarist tendency it portrays. It is argued that the judiciary has a potential to adopt a child rights or care perspective in the case of vulnerable children such as the OCHH.

In conclusion the chapter evaluates the standing of the legal framework and shows how the state, even with the enactment of a new law of the child, has yet to address the practicalities of the issue of OCHH and other children in a similar situation. The legal responsibility for the children lies mostly with the family, which does not

necessarily have the will or the capacity to take such a responsibility. There is no concept of OCHH, nor is it legally recognised.

6.2. Policy Initiatives in light of OCHH

The policy framework for orphaned children during and after the colonial period was mainly in relation to institutionalisation for those children who did not have relatives or whose relatives were unknown or too poor to care for them. This policy has been put into effect through the Children's Home (Regulation) Act, 1968. This Act provided for the creation of children's homes (Per Section 5(2)). However, there are very few such institutions and most of them are run by religious institutions as reported in the Tanzania Initial Report to the Committee on the Rights of the Child (CRC/C/8, 2000). Many orphans, we have seen, remain in the care of their extended families, mostly with very old grandparents (CRC/C/8, 2000).

The Government of the United Republic of Tanzania adopted a Child Development Policy (CDP) in 1996 (URT, MCDWC, 1996). The policy followed the ratification of the United Nations Convention on the Rights of the Child (CRC, 1989) in 1991 and the signing of the African Charter on the Rights and Welfare of the African Child (ACRWC, 1990) in 1990, as well as the implementation of the goals made in the World Summit for Children 1990, which engineered the preparation and implementation of the National Programme of Action concerning Child Survival, Protection and Development (URT, MCDGC, 2008: 2). The CDP was revised in 2008 to take into account the socio-economic changes occurring in the country after 1996. These include the impact of HIV/AIDS, globalisation and free market systems as well as moral decay and erosion within society (URT, MCDGC, 2008: Section 4). While the first edition of the policy dealt with three CRC principles only (Survival,

Development and Protection) the revised policy has included Participation and Non-discrimination making five CRC principles. The main objective of the policy is to provide direction and guidance on child survival, protection, participation, non-discrimination and development of the child [Section 41 (iv)].

The revised policy analysing the situation facing children in Tanzania has noted the fact that orphans are among children living in ‘a hazardous environment’¹¹⁰ and for lack of parents they do not enjoy their rights (URT, MCDGC, 2008: Section 11). It further takes note of the need for the protection of orphans against discrimination, property grabbing and child labour. The policy is assumed to provide direction on how to handle matters relating to children with special needs, such as orphans.

The CDP has defined a child so as to ensure smooth provision of the right of the child [URT, MCDGC, 2008, Section 41(i)]. Under its Section 59 (i) the policy defines a child as ‘any person below the age of eighteen years’ and calls for the revision of all laws which are outdated.

The revised policy, has removed the objective which enabled the community to understand the source of problems facing children [URT, MCDWC, (1996) Section (v)] and has replaced it with the mobilisation of the community to understand the rights of the child in a ‘hazardous environment’ and also to provide appropriate services and direct means of care for such a child [URT, MCDGC, 2008, Section 41 (ii)]¹¹¹.

¹¹⁰ Children in a hazardous environment is a term which is used instead of the term children in difficult circumstances as is now used in programmes related to children such as orphans who are generally termed MVC.

¹¹¹ The 1996 policy was an outcome of the Ratification of the CRC by the URT. The revision is on account of various factors such as the HIV/AIDS pandemic, and the implementation of the Global Millennium Goals (URT, MCDGC, 2008 1-2).

The CDP policy statement 51 is on protection of rights. It provides for the care and upbringing of orphans. It has noted the increase of orphans and children in hazardous circumstances due to the HIV/AIDS pandemic. The CDP has provided for initiatives for the Central Government and the Local Government to put in place guidelines for the improvement of social systems for the care of such children. It also calls upon the Central and the Local Government, in collaboration with other stakeholders, to prepare a plan for having a special fund for the support of orphaned children.

At national level the Ministry of Community Development, Gender and Children is the coordinator for the implementation of the policy. Although the institutional framework begins at National level with Central government, the coordination mechanism involves the family, village council, town council, municipal council, city council and regional secretariats. At the local level the community development officers are the main coordinators. The different stakeholders for the implementation of the policy include among others children, NGOs, development partners, the media, the private sector, religious institutions, family and community as well as the Central and Local Government. The policy statement assigns a responsibility to each stakeholder. For example the family and the community are responsible for character moulding, and training in custom and tradition with the aim of ensuring survival, protection and development of the child (URT, MCDGC, 2008, Section 68).

6.3. The Protection and Care of Children in the Tanzanian Legal Framework

6.3.1. Welfare and Rights within the Constitution

The Constitution is the fundamental law of the land with broad policies relating to the welfare of the people. There is recognition within the Constitution of people falling into incapacity for various reasons. Part II of the 1977 Constitution of Tanzania provides for the State authority to make appropriate provision for the social welfare of an incapacitated person (Article 11). Although the Constitution mentions only old age, sickness or disability as examples of incapacity, incapacity of OCHH needs to be addressed by the State authority. Article 11 is part of Chapter 2 of the URT Constitution and therefore outside the Bill of Rights. This part however, sets the fundamental objectives of the Constitution and directive principles of State policy. It is therefore safe to take this provision as one way in which the State recognises the need to take care of incapacitated persons such as the OCHH.

Apart from the above objective the Constitution broadly provides for basic rights and duties under the Bill of Rights (Part III of Chapter One - Articles 12-28). The Bill of Rights does not have specific provisions guaranteeing rights to children as a separate group of individuals like those of the Republic of South Africa¹¹² or the Republic of Uganda¹¹³. However, it is said that children can enjoy such rights like any other

¹¹² The Constitution of the Republic of South Africa No. 108 of 1996 under its Article 28 provides for the rights of children. Specific to this study there is a specific right of a child to family care, parental care or to appropriate alternative care when removed from family environment (sub-Article (b) of Article 28).

¹¹³ The Constitution of the Republic of Uganda 1995 (vide its article 34) provides for the Rights of Children and in seven sections provides for the right of a child to know and be cared for by their parents (1), right to education and this is the responsibility of the state and the parents of the child (2) and protection from social and economic exploitation. Relevant to this study it provides for the special protection to orphans and other disadvantaged children (sub article 7) [Online] <http://www.usig.org/countryinfo/laws/Uganda/CONSTITUTION%20OF%20THE%20REPUBLIC%20OF%20UGANDA%201995.pdf> (Accessed on 27/08/2011)

human being in the country (CRC/C/70/add. 26) which raises the question of how these constitutional provisions are being implemented.

Among the fundamental rights provided under the Constitution and relevant to children is the right to life, equality and freedom of conscience. The right to life is provided for under Article 14 which calls for the right to live and society's protection of a person's life. The OCHH are supposed to obtain society's protection through the Constitution. The Constitution as a broad legal document is implemented through specific laws which provide for the process in the enjoyment of the basic rights and freedoms enshrined within the principles of Constitution. The laws are also expected to be in line with the principles enshrined in the Constitution. The laws in place include codified Customary Law and other State laws as explained in the next section.

6.3.2. The Position of Customary Law within the Legal Framework

There are three main sources of law within the legal system and they all have a bearing on the subject of children. First is the 'received law' which includes the English Common Law, Doctrine of Equity, and Statutes of General Application which were received in Tanzania (Tanganyika¹¹⁴) vide Article 17 (The Reception Clause) of the Tanganyika Order in Council of 1920, as retained after independence by the Judicature and Application of Laws Ordinance of 1963 (JALO/JALA¹¹⁵). The second source is the existing laws which emanate from the State in the form of

¹¹⁴ Tanzania was known as Tanganyika before 26th April, 1964 when it united with Zanzibar to form the United Republic of Tanzania. This study is on Tanzania Mainland which was Tanganyika; it will not cover Zanzibar which is the other part of the Union.

¹¹⁵ The JALO which is now an Act (JALA) makes the English Common Law, Doctrines of Equity and Statutes of General Application as well as the practice and procedure of the English courts part of laws applicable in Tanzania, provided that the circumstances of the country and its inhabitants permit. The repugnancy clause which was provided for by Article 24 of the Tanganyika Order in Council, 1920 that native law was to be applicable only if it was not repugnant to justice and morality was thus repealed.

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statutes. The third source of laws includes the Customary Law, Islamic Law and Hindu Laws. The JALA (Section 9) recognises Customary Law to be a source of law which can be applied by the courts of law in matters of a civil nature but not matters under the Law of Marriage Act 1971.

There are arguments as to what constitutes Customary Law in present day Tanzania (Rwezaura, 1997: 416). This argument emanates from the way Customary Law is portrayed and the different ways in which it can be understood, given the changes taking place in society. Two categories are evident, namely “formal” and the “informal” Customary Law or the codified and non-codified Customary Law. These raise the issue of the applicability of Customary Law in relation to the legal pluralism discussed in chapter three.

6.3.3. “Formal” and “informal” – Codified and un-codified Customary Law

Under Section 9 of JALA Customary Law is understood to be all customs which govern the people in their communities on an everyday basis. However the State has codified some customs relating to inheritance, guardianship of children and other matters under the Customary Law (Declaration) Order (Numbers One to Eight) of 1963. This codification has divided the Customary Law into “formal” and “informal.” The “formal” Customary Law is part of the statutory law while the “informal” Customary Law is not. Even the courts are aware of the divide as argued by Justice Mwalusanya (as he then was), in the case of *Chiku Lidah v. Adam Omari* that:

Our Customary Law (particularly the un-codified law) is a living law capable of adaptation and development. It is not immutable.

(Cited by Peter, 1997:70)

This is evidence that there are un-codified Customary Laws as well as codified Customary Laws and they are both part of the legal system. The question has been how these laws are being used by the courts and by the people in their everyday life. This is discussed in the following sections.

6.3.4. The Applicability of the Customary Laws

The courts have tried to give direction on how to understand the Customary Law and the position of that law in the legal system. The Court of Appeal in the case of *Maagwi Kimito v. Gibene Werema*¹¹⁶ made it clear that:

The Customary Laws of this country now have the same status in our courts as any other law, subject only to the Constitution and any statutory law that may provide to the contrary.

According to JALA (Section 11), the courts are to apply Customary Laws which are in use in the area of the local jurisdiction of the court. The District Councils are supposed to identify Customary Laws which are in use in their area and recommend them to the government so that they can be declared law of the area for use in courts (JALA: 12). The District Councils have not recorded what constitute Customary Laws of their areas (Tanzania Law Reform Commission, 2009). That notwithstanding, the courts ascertain the Customary Law of a certain area by the use

¹¹⁶ Court of Appeal of Tanzania, Civil Appeal No. 20 of 1984 Reported [1985] TLR 132 also (Cited in Peter, 1997: 70)

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of assessors or experts as provided for by the Magistrates Courts Act, 1984¹¹⁷ as well as by calling in witnesses through Section 50 and 51 of the Evidence Act, 1967¹¹⁸. There is a trend in the higher courts to use printed texts of Customary Law¹¹⁹ to ascertain Customary Law of an area (Fimbo, 2007:141). The way in which Customary Law is used raises the question of the possibility of the court accommodating a new milieu created by the OCHH.

The issues of the OCHH which might call for the use of Customary Law include guardianship, inheritance and the ascertainment of customary land tenure. The Codified (formal) Customary Law has been challenged as unconstitutional due to discrimination. These challenges were in place before and after the Bill of Rights. Before the Bill of Rights in the case of *Ndewawiosia d/o Ndeamtzo v. Immanuel Malasi* (1969) the customs which do not allow a daughter to inherit the property of her deceased father were said to have outlived their usefulness. After the Bill of Rights, the same laws have also been condemned for being contrary to the bill of rights as was decided in the case of *Ephraim v. Pastory and Another* (1994).

¹¹⁷ It is said that although the law provides for the use of assessors in the Primary Courts, District and Resident Magistrates Courts, the use of assessors is not that evident in the latter two courts. And the use of experts is also not evident as provided by the Law (See Fimbo, (2007) Customary Tenure in The Court of Appeal of Tanzania, in Peter, CM. and Kijo-Bisimba, (2007) *Law and Justice in Tanzania: A Quarter of a Century of the Court of Appeal*, Dar-es-salaam, Mkuki na Nyota Publishers and LHRC, pp. 139-159 at 147. On assessors before the courts of law in Tanzania see also Kyando, Luhekelo A.A. and Chris Maina Peter, (1994) 'The People's Representation in the Courts of Law in Tanzania: The Need to Retain the Assessors', Volume 20 No. 1 *Commonwealth Law Bulletin*, January, 1994, p. 317.

¹¹⁸ Section 50 (1) Provides that 'When a court has to form an opinion regarding the existence of a general custom or right, the opinions as to the existence of such custom or right of persons who would be likely to know of the existence, if it existed, are relevant. The High Court and the Court of Appeal East Africa have used such evidence in the case of *Mtoro Bin Mwamba v. Attorney General* (1953-1957) 2 Tanganyika Law Reports and in The Case of *Sembetwa Ndatuya v. Maria Kisukari* [1975] LRT No.66

¹¹⁹ Printed texts which have been cited in court decisions in Tanzania include: *The Customary Law of the Haya Tribe* by H. Cory in the case of *Boniface Muhigi v. Philemon Muhigi* (1967) HCD No. 231 and *Deocras Lutabana v. Deus Kashaga* [1981] TLR 122. *Customary Land Law of Tanzania: A Source Book*, by R.W. James and G.M. Fimbo in *Maagwi Kimito v. Gibeno Werema* [1985] TLR 132.

Mwalusanya, J. in the above cited case of *Chiku Lidah* seems to suggest that Customary Law, be it codified or un-codified, has to be seen as a living law and to be applicable, acknowledging that it is not static. The courts have also been directed by Section 5(1) of Constitution (Consequential, Transitional and Temporary) Provisions Act, 1984 to construe the existing laws which include the Customary Laws in such a way that they are in line with the provisions of the Bill of Rights which was inserted in the Constitution in 1984¹²⁰ and became operational in 1988¹²¹. Customary Laws as part of the legal framework are interpreted by courts to measure their compatibility with the Constitution. This depends whether the courts are ready to interpret the Customary Law as a living Law by taking into account the new trends coming from the community, and also whether the concerned parties decide to go to court. As has already been seen the OCHH, in common with many people in the villages, rarely use the courts.

6.3.5. Guardianship and Care under the Codified Customary Law

The Customary Law as codified in 1963 has guidelines under the Law of Persons Declaration (Government Notice No. 279). A father has the duty to maintain and take care of his children born in wedlock. Where the father cannot fulfil that duty by reason of death, disability or poverty then a guardian will be appointed by clan members to take care of the child. The case of children born out of wedlock is the responsibility of their maternal grandfather.

¹²⁰ This was done vide the 5th Amendment to the Constitution of the United Republic of Tanzania of 1977 in 1984.

¹²¹ On the postponement of the Bill of Rights for three years see *inter alia*, Lubuva, D. Z., (1988), 'Reflections on Tanzanian Bill of Rights', *Commonwealth Law Bulletin*, 1988, Volume 14. No. 2. p. 853.

Under the Customary Law custody of a child who is orphaned by the death of a father is left with the father's clan [Rule (2)¹²²]. The clan council is duty bound to appoint a guardian for the child [Rule (2)]. The mother in normal circumstances is not appointed as a guardian: the High Court of Tanzania in the case of *Donatila Exaveri v. Perekinas Twangabo* (1989) held that the guardianship of children whose father is dead lies with the father's clan in accordance with Customary Law. The Customary Law seems to treat children as "the property" of their father and as such an orphaned child remains with the clan of the father. When a child's mother dies after the father the child will already have been taken under the guardianship of the father's clan. The concept of an orphan left uncared for does not arise. In principle then the child is assured of guardianship but in practice, as we have seen, children lack such guardianship. In this case the question remains as to whether the law contributes to the lack of practical guardianship of OCHH, and if so how. The resultant reality for orphaned children has been discussed in chapter one.

6.3.6. Informal – Non Codified Customary Law in Reality

This research reveals the different ways in which a child is regarded under the customs of the Wanyambo and Wakinga in the two districts of the study. As earlier noted both groups are patrilineal and children are socialised in extended families from the paternal side of the clan. Normative orders which surround the OCHH are the issues of the definition of a child, the definition of an orphan, guardianship, work, decision making, especially on matters of inheritance and property, and on some aspects of contract.

¹²² The rule is of the 1st Schedule to the Local Customary Law (Declaration) Order 1963 made in accordance with Section 53A of the Local Government Ordinance Cap. 333.

According to the two ethnic groups¹²³ a person is regarded as a child in two different ways. First, a person is a child due to being someone's offspring and in this sense a person is always a child irrespective of age or status. Respect is accorded to parents at all times by children even when they are no longer young and they are no longer living with parents. This was explained by older people (30-60 years old) both in Makete and Karagwe, although they all claimed that there is a big change as children nowadays can decide to marry without getting blessing from their parents or they can go away and not come back to visit or to support parents. However it is claimed that there are good children who still abide by the custom of being children to their parents at all times.

Secondly, a child is defined according to the capacity the child has to articulate issues and to manage his/her life. A person will be regarded as a child under the guardianship and care of parents until he is given a house, which normally is at the point of marriage. A person can be given a house when he/she shows the ability to manage his/her life. For a boy this means when he can work and can build his house. A girl is regarded as an adult if she has reached puberty and has learned to perform household chores. This however is said to be changing as children are now going to school and remain children until they finish school and become independent. If a girl has reached puberty but is still schooling she is regarded as a child. Adulthood is also associated with marriage so a person who is of marriageable age but is not married is regarded as a child.

¹²³ This is from information gained during the field study through interviews, observation and in Focus Group Discussion (FGD) (November 2009 - April 2010). Further clarification sought from some of the informants through telephone and emails.

Guardianship and care of children is under the immediate family but with support from the extended family if the immediate family has any problems whether of health/ food/ or conduct. It is the duty of the head of a clan to make arrangements where one member of the clan has died and left behind a widow and children. The arrangement for the guardianship of the children and their mother is done by appointing an adult male to take care. Taking care means to ensure safety and proper use of property left for the benefit of the children and the widow, and if the widow is not ready to stay in the household then to arrange for the custody of the children. Where both parents are dead then the custody and care of the children is taken by extended family members who divide the children among themselves.

If the appointed guardian is able to take all the children then he can do so but the other members of the clan are supposed to help him by providing food and other needs. This is still the practice in both the districts, although there are problems, as we have seen.

The term orphan in Kinyambo is *Entabwa* or *Enfuzi* and it means a child whose parents are dead. The children in this position are regarded with pity and people are ready to help them where necessary. In Kikinga the word for an orphan is *Umpina*. That is a child who has no parents due to death. In Kikinga however this word is said to be rarely used. To refer to a child as *Umpina* is seen as an insult. No child can be strictly *Mpina* while any relative remains. This was evident when I was trying to ascertain the word in that vernacular, as discussed in chapter one.

In matters of inheritance, after the death of a male family member who has children and a wife/wives, the clan members are responsible to take care of the property, by

appointing a guardian. If a guardian is unable to fulfil the role, the head of the clan is informed and he can either reprimand him or remove him altogether. However, evidence in the field showed that there are guardians who have not performed their duties, yet have neither been reprimanded nor removed (Interview 12 and 23: appendix 7.2. 13/01/2010 and 17/01/2010 respectively).

Land is the main property and where the land needs to be sold or to be used to build a house or for some other purpose the head of the clan has to be informed as his permission is required. Even where a widow is left she is not supposed to take a decision to sell land without informing the guardian and the head of the clan. All the above customs are practised in both areas involved, although there are changes in that not all clan members adhere strictly to clan council's decisions. There are people who call children 'orphans', against the norms. The enforcement of such customs is also in the family although there is evidence that some people try to resolve some of their family matters outside the family, and therefore use of courts and other institutions.

6.3.7. Laws Relating to Children in Tanzania

The National Laws relating to children's protection were scattered in several pieces of legislation before the enactment of the Law of the Child Act (No. 21 of 2009) in November 2009. Some of the former laws were enacted before independence (Adoption Act, 1955; Affiliation Act, 1948;, Children and Young Person's Act, 1937; and the Penal Code, 1945) and others after independence.¹²⁴ These include the Customary Law (Declaration) Orders 1963, Law of Marriage Act 1971, and

¹²⁴ Tanzania (Mainland) became independent on 09/12/1961.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* Education Act 1978). Some laws like the Sexual Offences (Special Provision) Act (SOSPA) 1998; Employment and Labour Relation Act, 2004; and HIV/AIDS Act, 2007 are more recent. These laws are therefore reviewed to ascertain any role they might play in relations to the OCHH.

6.3.8. The Legal Definition of a Child

The question of the definition of a child is vital when discussing the protection of children's rights. It brings to the fore issues of protection following the laid down principles of the best interest, guardianship, capacity, responsibility and duties owed to children. Defining a child ensures that any rights assigned to the child are granted. The OCHH being a relatively new phenomenon is not legally defined, but these are children as any other children envisaged by law. What differs is the way the principles in the law are applied or not applied to the OCHH in their specific situation.

Defining a child in Tanzanian law has for some time been a central problem relating to the protection and promotion of children's rights, (Makaramba, 1998: 1). A child has been defined differently depending on the context of the law in question. There is interplay between Customary Law at the community and common law at the national level. This section discusses the definition of the child in various laws which preceded the new law of the child which was not in force at the time of the research.

Customary Law defines a child through capacity and attainment of puberty (Makaramba, 1998:2) while the statutory definitions use age. Several laws¹²⁵ assign the age of majority as eighteen years and a person who has not apparently attained that age is a minor, an 'infant' or 'an infant child' (Law of Marriage Act 1971: 1 [LMA])¹²⁶. Some laws have distinguished between 'child' below the age of twelve years and 'young person' between the ages of twelve and sixteen. (Children and Young Persons Act, Cap 13: Section 2)¹²⁷. The Employment and Labour Relations Act (2004: Section 4) defines a child as a person under the age of fourteen but in relation to employment in hazardous sectors a child means a person under the age of eighteen. In accordance with the Penal Code (Chapter 16 of the Laws) a child under the age of ten is *doli incapax* while a girl under eighteen years is said to be incapable of consenting to sexual activities (Sexual Offences Special Provisions Act [SOSPA], Section 4 amending Section 5 of the Penal Code). The Adoption Act defines a child as a person below the age of twenty one years¹²⁸ and the LMA, 1971 includes an adopted child in its definition of a child (LMA S. 1)¹²⁹. However, a man can marry at the apparent age of 18 and a girl at the apparent age of 15 with the consent of a parent (S. 13 (1) & (2) LMA: 1971). Also any person can get married at the apparent age of 14 with the consent of the court (LMA: S. 13 (2)). The issue has been whether a person married at the age of 15 or 14 is still a child.

¹²⁵ Interpretation of Laws and General Clauses Act, 1972 (Act No. 30 of 1972); Age of Majority Act (Cap. 413); Age of Majority (Citizenship Laws) Act, 1970; Citizenship Act (Cap. 452); and Births and Deaths Registration Act (Cap. 108).

¹²⁶ The categorisation of a child as infant and infant child has however been amended by the Law of the Child Act (2009) which has a single definition of a child, but the LMA retains the difference in ages for marriage between girls and boys. (Per Section 162 (b) (i) and (ii))

¹²⁷ This law has been repealed by the Law of the Child Act (2009) under Section 160 (1) (d).

¹²⁸ This Law has been repealed by the Law of the Child Act (2009) under Section 160 (1) (b).

¹²⁹ This section has been amended by the Law of the Child Act, under Section 162 (a).

These definitions and many others¹³⁰ as found in various laws create a very complex context, which makes it difficult to identify an orphan heading a household as a child and to determine what protection is required. The new law of the child, a unified State law, defines a child, as a person below the age of eighteen years (Section 4(1) TLCA, 2009), but different definitions within Customary Law or religious laws still remain.

With the new law in place the major issue is that of practice at community level. The definition at that level continues to follow the customs of the people and there is also a practical problem of ascertaining the age of a child, as children are normally not registered at birth and have no birth certificates. With no proof of age it can be difficult for a child to be protected as required by the law. This situation was evident in the field study where OCHH would mention his/her age and it would be disputed by the authorities supposed to support the child (such as the MVCC). Kili and Kahoo are cases in point. While the MVCC viewed Kili as an adult (above eighteen years) he was of the opinion that he was still a child (of sixteen years). On the other hand the MVCC claimed Kahoo to be a child while she claimed to be an adult¹³¹. Neither child had a birth certificate and relied on information provided by parents who are now deceased.

These different definitions affect children undertaking adult duties including guardianship and care of younger siblings. The complexity increases with the plural systems of law since traditionally age is not a determining factor on when childhood

¹³⁰ For example the Evidence Act, 1967 defines a child of tender age to mean a person below the age of fourteen years. The Criminal Procedure Act, 1985 defines a child as a person under the age of sixteen years. In the Primary School (Compulsory Enrolment and Attendance) Rules, 1979 a child is a person who has not attained the age of seven but is under the age of thirteen.

¹³¹ The MVCC was not sure of Kahoo's age so they relied on her appearance, and also because she was not married they defined her as a child contrary to her opinion.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* ends. Although puberty is a mark, the measure is whether a child is capable of performing acts reserved for adults (Ncube, 1998: 19). Are these children adults in accordance to the criteria of the traditional concept, as they are performing adults' roles? Can these children be held accountable under the Education Act (1978) where a child under their care is not attending school? Or can they be expected to take the responsibility assigned to heads of households by the Penal Code? These questions need to be resolved since there is evidence of OCHH as young as thirteen years being assigned the role of heading a household by clan members [the case of Kili in Makete: interview 38: Appendix 7.2. 13/11/09].

The new law had just been enacted at the time of finalising this study so its practicability is yet to be established. Judging from the reality on the ground it is safe to say that having a legal definition is a first step. The next step is to identify the children, consider their capacity so as to ensure they enjoy the protection and care provided by law. The next section examines the laws and how they provide for the care of the children.

6.3.9. Capacity, Responsibility and Care of Children under the Law

The issue of care as related to this study has two faces: on the one hand is the right of a child to be cared for by responsible people, while on the other hand is the issue of children as care takers and their capacity to care for others. Care for children has been defined as:

... the assurance by parents, the community and the State of the provision of basic necessities for the care of the child which would guarantee a reasonably secure development, food, shelter and

clothing and would include facilities for health, education, research etc (LRC, 1994: 24).

The definition relates to care giving. The discussion below indicates that the laws in place mostly impose a duty to care for a child's well being but do not provide protection of the child from suffering arising out of care-taking or the effects of receiving care. The discussion is about the categorization of the laws in place: The laws providing for protection and care specifically, and the laws which on the face of it seem to make the OCHH responsible due to the situation they are in.

6.4. Rights, Duties and Responsibility towards a Child

6.4.1. Laws Providing Protection

The laws which protect children assign duties and obligation to parents and guardians to care for their children and where there are no parents or guardians the State has that role through the courts. There are general provisions of law protecting children from abuse, neglect, abandonment and child labour as well as against any harm as is discussed in the next section. Generally it is clear that children have to be protected and to be placed under the guardianship of an adult.

6.4.2. Parental and Guardians Duties and Obligation to Care

The State laws distinguish between children born in wedlock and those born out of wedlock¹³². The Law of Marriage Act, 1971[LMA] is concerned with children born

¹³² This has been changed by the new Law of the Child which does not categorise children per the marriage status of their parent (Law of the Child Act No. 21 of 2009 (TLCA)). This Affiliation Act however has been repealed by the TLCA, 2009 Section 160 (1) (a).

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* in wedlock while the Affiliation Act, 1949 is for children born out of wedlock¹³³. The parents of both categories of children are duty bound to maintain the children. For children who are born in a marriage it is primarily the duty of the father to maintain them with accommodation, clothing, food and education [LMA, Section: 129 (1)], even where the father does not have custody of the child. This duty shifts to the wife (mother) where the man has died or his whereabouts is not known or where he is unable to maintain the child [LMA, Section 129 (1)]. As this law is concerned with children in a marriage, the children under this study can be covered where there is a surviving parent. The law is also concerned more with maintenance in terms of material things such as food, accommodation and clothing, than with the care of enjoying being with the parent and receiving guardianship and direction.

The law provides for custody of children upon separation or divorce of parents. In such circumstances, the cardinal principle of best interest has to be invoked (LMA 125:2). This law has not gone so far as to provide for the parents' role in preparing for their children's welfare and care in case of a parent's death. The law has been earmarked for revision, as explained by the Minister for Community Development, Gender and Children's Affairs in her response to the committee on the CRC (CRC/C/8, 2000). The law does not focus on the child as having a claim but on the parents and the duty to ensure the child is maintained. Its primary focus is on the financial aspects of care giving. The rest of care is taken for granted. Care in the case of the parents' death is not covered under this law.

For children born out of wedlock, the duty of care owed by their mothers is presumed only, for it is not directly mentioned in the Affiliation Act, 1949. The Law

¹³³ The definition of a child in the Affiliation Act is a child born out of wedlock (Section 2) of the Act.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* is concerned with the woman applying for orders for the maintenance of a child from a putative father (Sections 3-5). The law has provided for alternative custody of a child by a willing person where the mother of a child born out of wedlock is incapable of taking care of the child due to being of unsound mind, in prison or dead [Section.9 (2)].

Care of children extends to the provision of education as provided for under the maintenance of the children in the Law of Marriage and the Affiliation Act. Primary education in Tanzania is free and compulsory for all children between the ages of 7 and 13 (Education Act, 1978, Section 35: 1). If parents and guardians do not abide by their duties to the children, this becomes an offence. The Penal Code (Cap. 16) makes it an offence for the head of family not to provide for his children under the age of 14 years, while the Affiliation Act makes it an offence for a woman to neglect maintaining her child or to desert the child where she is able to offer maintenance wholly or in part (Section 10 Affiliation Act 1949). Under rules made in the Education Act, 1978, it is an offence if a parent fails to take reasonable steps to ensure enrolment of his child and regular attendance until completion of primary school (Rule 4: (1) GN. 129/1979).

The emphasis of these laws is on care giving to the child in the form of maintenance. The issue of care in terms of love in the form of contact/ meeting/visits/custody/ guidance is taken for granted and as such is not provided for in the law.

6.4.3. Implications of the New Law of the Child (TLCA)

The new TLCA number 21 of 2009 is a single document and it provides more clearly than the earlier laws for the rights and welfare of the child and for the duties and

responsibilities towards the child. The Law has removed the differentiation of children according to the marriage status of their parents. Rights and welfare of the child include the best interest of the child¹³⁴, non-discrimination¹³⁵, right to life, dignity, respect, leisure, liberty, health and shelter¹³⁶, rights to opinion¹³⁷.

In very specific terms under part II of the TLCA (entitled Rights of a child) a child is entitled to live with her/his parents or guardians (Section 7:1). The Law provides for the right of the child to grow up in a caring and peaceful environment by living with his/her parents, guardian or family [Section 7(2)]. A parent, guardian or any other person having custody of the child is duty bound to maintain the child (Section 8). The law mentions particularly that this duty give the child the right to food, shelter, clothing, medical care including immunisation, education, guidance, liberty and the right to play and leisure (Section 8(1). Further, the parents are given the duty and responsibility for the child's right to life, dignity, respect, liberty, and health [Section 9 (1)] and they have the duty to protect, provide guidance and care and assurance of the child's survival [Section 9 (3)].

The new law of the child considers a child who has lost one or both parents through death to be an orphan(Section 3,TLCA,2009). The responsibility for such children may be passed on to a relative of either parent or a custodian by way of court order or by traditional arrangement [Section 9(4)]. By the use of the word 'may' in the Section the Law does not seem to make parental responsibility mandatory, for the orphaned children or the responsibility is assumed.

¹³⁴ Per Section 4(2) of the Law of the Child Act, 2009 (Act No. 21 of 2009).

¹³⁵ Per Section 5(10) of the Law of the Child Act.

¹³⁶ Per Section 9(1) of the Law of the Child Act.

¹³⁷ Per Section 11 of the Law of the Child Act.

The law introduces the concept of ‘children in need of care and protection’ and this is dealt with under Part III. What is relevant for the purpose of this study is the fact that an orphaned child or a child abandoned by relatives is said to be a child in need of care [Section 16(a)]. The category of children in need of care extends amongst others to a child who has been neglected, or ill-treated by a care taker [16(b)], a child who has a parent or guardian who does not exercise proper guardianship [16(c)] and a child who is exposed to moral or physical danger. All these categories fit the description of the OCHH in one way or another. Given the fact that a child might fall into any of the situations above, the law has provided for intervention by the social welfare officer who has to apply for a care order/ interim care order or supervision order from the court.

It is an offence under this law for any one responsible for children to contravene the provisions assigning duties towards the children according to Section 14 of the Act and it is punishable by a fine or imprisonment or both.

6.5. State Responsibility to Care

The principle under common law (*parens patriae*) that the state has a duty to protect persons under a legal disability (such as children with no parents) is implemented through legislation. There are two ways in which children who have no parents are taken care of through State laws. There are provisions which enable the courts to assign guardianship either to individuals or to an institution. The roles of the courts and how they fulfil their obligation will be discussed under another section. Suffice it to point out the laws assigning such duties.

6.5.1. Institutionalizing Children

The global policy trend on the issue of care is pushing for non institutionalization as indicated by the Committee on the CRC when deliberating on States parties' reports (Hodgkin and Newell, 2002:286). The committee insisted that institutions should be used only as a last resort (Hodgkin and Newell, 2002:285). Children should be cared for in a family environment even if it is an imitative family or foster care.

The TLCA has repealed the Children's Home (Regulation) Act providing for the creation of children's homes [Section 5 (2)]. Under Part XI of the TLCA institutionalised care is subjected to the approval of the government of residential home [Section 133 (1)]. The institutions can either be government or privately owned. A child who can be admitted to a residential home or institution may be an orphan child who has no family care and has not been fostered [Section 137 (1) (c)].

What is observed from the laws is the fact that children in any circumstance need to be cared for and specifically to be with either parents or guardians. Otherwise they are said to be in need of care and the State has to intervene through the social welfare officer. It is therefore a contradiction to find children who are not under the care of an adult who is either a parent or a guardian.

6.6. General Protection of Children

The laws have provisions to protect children from various forms of abuse or neglect. Abuse includes ill treatment and the use of abusive language. The laws discussed above which are on care and guardianship. Other relevant laws include the Sexual Offences Special Provisions Act 1998 (SOSPA) and the Labour Relations Act 2004.

6.6.1. Protection from Abuse and Neglect

The SOSPA (1998) was specifically enacted to amend certain laws¹³⁸ so as to further safeguard the personal integrity, dignity, liberty and security of women and children (see the long title of the law). Children who are orphaned and head households and children living in such households might be vulnerable to sexual and other abuse, and hence the relevance of this law.

The Act defines a child as a girl or a boy below the age of eighteen (Section 3, SOSPA). The protection provided is against sexual abuse, exploitation and cruelty. According to Section 21 of the Act which adds Section 169A to the penal code, cruelty to children is an offence and includes among other things ill treatment, neglect or abandonment. Any person who has custody of a child and contravenes the above acts commits an offence which carries a five years custodial sentence. The OCHH like other children need protection of this nature, especially due to the fact that there are tendencies for the OCHH to be abused (as noted in chapter five) by relatives or individuals who take advantage of the fact that the children do not have adult guardianship.

6.6.2. Protection against Child Labour

The children in this study can easily be caught up in the labour market and as child labour. The issue is how these children can be protected by law, given the fact that child labour has been seen as a complex socio-economic phenomenon related to the inter-play between the market economy and local cultures and customs (Rwezaura, 1998:258-9). The line between child labour and work is thin but following the global

¹³⁸ Penal Code Cap. 16; Criminal Procedure Act, 1985; and the Law of Evidence Act, 1967

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trends¹³⁹ Tanzania had to amend its labour law which was enacted during the colonial period and did not consider child labour. A new law was enacted in 2004 governing Labour Relations and Employment (The Employment and Labour Relations Act, 2004).

Child labour is covered under part II of the law dealing with fundamental rights and protections. Specifically, Section 5 expressly prohibits child labour by providing that:

No person shall employ a child under the age of fourteen years.

For a child who is fourteen and above, the Act has provided circumstances under which s/he can be employed. Children of fourteen can be employed only in light work which is not likely to be harmful to the child's health and development [Section 5 (2)]. Such employment should also not interfere with the child's attendance at school although a child can participate in a vocational training programme. The vocational training has to be approved by a competent authority on

¹³⁹ The process for reform of the Tanzania labour laws which began in 2001 is associated mostly with external factors: first, the need to respond to the changing market conditions in the Region (SADC/East Africa) and the global economy after privatisation and trade liberalisation. Secondly, the need to align the labour laws with the fundamental principles and rights of the ILO since Tanzania had ratified the eight ILO core Labour Conventions and was a founder member of the World Trade Organisation (WTO) and is subjected to its legal framework. (See Mtaki, C.K, 2005) 'New labour Laws in Tanzania: Implications for Employers, Employees and the Economy', a paper presented at policy dialogue on labour laws in Tanzania, ESRF, [online]
<http://www.tzonline.org/pdf/thenewlabourlawsintanzania.pdf> (accessed on 27/08/2011), Poulsen S.B. Tanzania new Labour regime [online]
<http://www.peoplepower.co.tz/downloads/Tanzania's%20new%20labour%20relations%20regime.pdf> (accessed 27/08/2011) and International Confederation of Free Trade Unions (ICFTU) (2006) Internationally Recognised Core Labour Standards in Tanzania: Report for the WTO General Council Review of the Trade Policies of Tanzania,[online]
<http://www.icftu.org/www/pdf/corelabourstandards2006tanzania.pdf> (accessed 27/08/2011).

the condition of the child's capacity to benefit from the instruction. The benefit the child is to get is not clarified so it can be monetary benefit, which might be necessary but work may affect a child's health or school attendance.

The Act prohibits employment of children below eighteen in a mine, factory or as part of the crew on a ship. Also they should not be employed in any work site where conditions may be hazardous [Section 5 (3)]. The Minister for Labour is responsible to declare and make a list of hazardous forms of work. The Law further makes it an offence for any person to employ a child in contravention of the Act [Sec.7 (a)].

The provisions of this law will have meaning if children can obtain care and assistance; otherwise they might be trapped in employment as a matter of survival. This law, although it was enacted at a time when the problem of children heading households had already been manifested, no specific provision for that category of children was made nor has the law taken into account the socio-economic realities of the time.

The Law of the Child Act (2009) (TLCA) has made specific provisions (under Part VII) on the employment of the child. The main difference from the existing Labour law is the fact that a child has a right to 'light work' [Section 77(1)] 'Light work' is defined as work which is not likely to be harmful to the health or development of the child and which does not prevent or affect the child's attendance at school, vocational orientation or the capacity of the child to benefit from school work [Section 77 (3)]. This law has prohibited exploitative labour for children, night work and forced labour. It has made it unlawful to employ or engage a child in hazardous employment [Section 82(1)] while providing the right of a child to be paid

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remuneration equal to the value of the work done [Section 81 (1)]. The law further provides for the enforcement of the provisions on child labour by a labour officer.

6.6.3. Children who are not under Proper Care

The Children and Young Person Act (Cap. 13) which was operational at the time of my field study, partly provided for children who are found unattended. This Act was mainly for the treatment of delinquent children and young people but it also catered for other related matters. Under other related matters there were provisions which dealt in some ways with issues relating to children deprived of a family environment. In accordance with the definition of a child as discussed above, protection under this law was of children under sixteen years only. Most of the children who head households are under the age of 14 (UNICEF, 2008)¹⁴⁰ which means they were the subjects of this law. The law however was not directed to the care of such children, but provided methods of dealing with children who were not under proper care or guardianship. This Act has been repealed by the TLCA 2009, Section 160(1) (d). Part III of the TLCA provides for care and protection of a child. A child is said to be in need of care and protection if she/he falls under certain circumstances such as being an orphan or is abandoned by her/his relatives (Section 16(a)). For such a child a care order or interim care order may be issued by a court of law upon application by a social welfare officer (Section 18(1) TLCA, 2009). The social welfare officer is expected to take custody of such a child and determine most suitable place. This is a new law which is yet to be implemented.

¹⁴⁰ This age was also proved by the field study although most of the OCHH who took part in the study are now above the age of 16 although they began to head households when they were between 9 and 16 years of age.

6.6.4. Adoption and Care

There was a specific law to provide alternative care for orphaned children and this was the Adoption Act, 1955. This law could offer some solutions to the situation of the children who have lost their parents. The regulation of adoption in Tanzania was through the Adoption Act (Chapter 335 of the Laws, 1955) which was enacted in the colonial era and has been in operation ever since. However it has now been repealed by the new TLCA, 2009. The Adoption Act provided for the adoption of children in Tanzania, and for related matters. The Act defined a child as a person less than twenty-one years old, but did not include a person who was married. The provisions of this Act assumed that the child to be adopted had parents or guardians who had to consent to the adoption (Section 4: a). The adoption order had to be made by applicants who are resident in Tanzania and had stayed with the child for at least three months prior to the application. The order could be made in respect of any child who is resident within East Africa.

Tanzania is not a signatory to the Hague Convention on International Adoption¹⁴¹ which regulates adoption by non-residents. The law barred adoption outside East Africa. An applicant who is not related to the child must have attained the age of twenty five and be at least twenty-one years older than the child to be adopted. The implication of this provision for older children is the difficulty in getting people who have the qualifications to adopt them. An example is of a child aged sixteen who would need to be adopted by a person at least 37 years old.

¹⁴¹ The Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, 29/05/1993 came into force on 01/05/1995.

For safeguarding the interests of the child the court was supposed to appoint a person to act as *guardian ad litem* of the child during the hearing of the application (Section 11:2).

This law was not used much in relation to children who are orphaned and lack care. The Tanzanian government's written response to the committee on CRC mentioned that in 2005 only 54 children were adopted in Tanzania and these were not necessarily orphans who did not have a guardian. The effect of this law on the children under the study is a question to be investigated further- in particular, why it has not worked to the benefit of the children.

The new law of the child which repealed the Adoption Act deals with adoption under its Sections 54 to 66. What is new in the TLCA is in the Sections on 'open adoption' which is adoption of a child by a relative [Section 54 (1) (b) and (3)]. It also provides for the disclosure to an adopted child of the fact that s/he is adopted and her/his parentage (Section 61). Whether the 'open adoption' will work in a situation where the traditional fostering is failing is open to question.

6.7. Responsibility for OCHH

OCHH is not a concept known in law but it is necessary to understand how the laws may affect them. The Penal Code (Chapter 16) and the Education Act, 1978 are such laws in relation to the obligation they assign to people who have children under their care. In the homes of OCHH there are in most cases children who are young and are

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being cared for by an OCHH¹⁴². In this situation it is the OCHH who is taking the role of a guardian (although technically as a child s/he is not obliged to).

The children in such households are supposed to be guided to attend school. This responsibility is assigned by the Education Act (1978) to parents or guardians, who have to ensure that the child attends school regularly upon enrolment to the completion of primary school. As has been discussed earlier in the chapter, it is an offence for any person to prevent a child from attending school regularly until completion of primary education (Rule 4 (2) G.N 129/129).

There is a peculiar situation arising from the obligation and offences above as the OCHH have no guardians but they play a role of a guardian to the children in the household they head. Practically the issue is ‘How does the law reconcile and treat an orphan child who is taking care of younger siblings?’ ‘Who is responsible and duty bound to ensure this child goes to school?’, ‘What happens if the children under the care of OCHH do not attend school, given the stress which might occur due to the age and capacity of the caring child?’ The OCHH are children who are also supposed to go to school, but there are those who drop out of school for different reasons as explained in chapter four. There is no evidence of the law being enforced in the context of the OCHH.

6.8. Judicial Process and Care

Case law is one of the sources of law in Tanzania. The judicial pronouncements from the higher courts become precedents on issues so declared and form part of the law.

¹⁴² From the field study in the eight households there were a total of 12 children aged between 9 and 17 years who were under the guardianship of the OCHH.

According to the Constitution (Article 107A) the dispensing of justice is the authority given to the Judiciary. The Constitution provides for human rights which mean that the courts have the mandate to protect those rights, through the Bill of Rights. The Judiciary has noted and accepted this role, according to Justice Edward Mwesiumo (as he then was) in the case of *Joseph Kivuyo and Others v. Regional Police Commander Arusha and Another*, that:

This [court] is a temple of justice and nobody should fear to enter to battle his redress as provided by the law (Quoted by Kijo-Bisimba and Peter, 2005:12).

This statement is important as it may be relevant to the children of Tanzania. It is also important as the courts may be used to further justice where the laws have not been effective. The judiciary however has been blamed for not taking this role as seriously as it should. , In particular, there is a difference in approach between the High Court and the Court of Appeal with the High Court being more progressive than the Court of Appeal, which remained for a long time pro-State and conservative (Peter, 1997: 715). This is particularly the case with the way in which human rights issues are dealt with. Is there a possibility that children can rely on the courts for their rights?

There have been judgments by the High Court which have been progressive in upholding human rights¹⁴³ but some such judgments have been reversed by the Court

¹⁴³ Noted Judgments are those by High Court Judges Lugakingira, (as he then was), Mwalusanya, J. (as he then was), Mwesiumo, J. (as he then was), Mnzavas, J. (as he then was) and discussed in Kijo-Bisimba and Peter, C.M., (2005) 'Emergence of Bold Spirits' *Justice and Rule of Law in Tanzania, Selected Judgements and Writings of Justice James L. Mwalusanya*, (LHRC) pp. 12-36.

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of Appeal. Thus in *Republic v. Mbushuu@¹⁴⁴ Dominic Mnyajore and another* (Case no. 44/1991)¹⁴⁵ the issue was the right to life and the constitutionality of the death penalty. The High Court held that the death penalty is contrary to the right to dignity in how it is executed; the death penalty is an inhuman, cruel and degrading punishment and therefore it is not constitutional. The High Court proceeded to declare it null and void. The Court of Appeal in *Mbushuu @Dominic Mnyajore and Kalai Sangula v. Republic* (Criminal Appeal no. 142/1994)¹⁴⁶ reversed the High Court decision. While it was in agreement with the High Court that the death penalty is an inhuman, cruel and degrading punishment, it nevertheless held that the death penalty was not unconstitutional since the law prescribing it is preserved by the Constitution and is not arbitrary. If we take this side of the judgment the court is providing for fundamental rights, only the outcome of this case did not uphold the right to life of the concerned by naming the law constitutional. The Court of Appeal of Tanzania was said to have lost a vital opportunity to make history in upholding human rights in the country. (Peter, C.M. 2007: 253).

Nevertheless, in more recent cases dealing especially with women's and children's rights and protection, the Court of Appeal has ruled in line with justice; for example, in *Julius Ishengoma Francis Ndyanabo v. the Attorney General* (Civil Appeal No. 64 of 2001) and *Legal and Human Rights Centre v. Thomas Ole Sabaya and 4 Others* (Civil Appeal No. 88 of 2006). Both cases were evoking the Constitution to challenge infringement of rights provided for under the Bill of Rights and the Court of Appeal ruled in favour of the applicants. In the former case the issue was about

¹⁴⁴ @ this symbol is used in Tanzania in case titles to mean 'alias', that is, otherwise called or named; also known as (Carner, B. (ed.) (2009) Black's Law Dictionary, Thompson Reuters) In this case Mbushuu is also known as Mnyajore.

¹⁴⁵ As reported in [1994] 2 LRC 335

¹⁴⁶ Reported in [1995] 1 LRC 216.

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access to justice where the appellant petitioned for a declaration that Sections 111 (2) (3) and (4) of the Elections Act (1985) are unconstitutional for violating the provisions of Article 13 (1) (2) of the Constitution which is against discrimination. The Court of Appeal in its ruling declared that the doors of justice are supposed to be open all the time even for the poorest men and women in the country. I would suggest that children are included.

It has been noted that judicial intervention has played a significant role in promoting women's rights (Magoke-Mhoja: 2006, 142). This is an indication that there are prospects for the courts to enforce human rights standards, including children's rights. Magoke-Mhoja (2006; 142) notes a trend of the Tanzanian judiciary to use the Constitution and international human rights law as a basis for decisions in protecting the rights of daughters and widows, for example *Ndewawiosia v Immanuel* (1968) and *Peter v. Pastory* (1986) where the Court rejected Customary Law which is discriminatory to women. In the former case the issue was whether a daughter of a Chagga¹⁴⁷ man who had died intestate having no male relative could inherit his property while there are male claimants. The Court ruled against the traditional law which did not allow daughters to inherit their father's property, where there are male relatives, even if those relatives are distant blood relatives but in the same clan. The Court made it clear that such traditional law is outdated and is discriminatory and contrary to the right to equality.

In the latter case concerning the Haya tribe¹⁴⁸ the High Court was of the same opinion that Customary Law which blocks women from selling clan land is

¹⁴⁷ Chagga is one of the tribes in Northern Tanzania under the foot of Mountain Kilimanjaro. They are known for observing their customs which are patrilineal.

¹⁴⁸ Haya people hail from North West Tanzania which is strongly patrilineal.

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discriminatory and against the constitution of the land. After the promulgation of the Bill of Rights in Tanzania in 1988 the court further used it to protect women's rights and a good example is the landmark case of *Ephraim v. Pastory and Another* (1989). In this case Judge Mwalusanya (as he then was) made it clear that the court had to protect women from customs such as that which prevents daughters from inheriting clan lands. Thus this custom had outlived its usefulness. From this trend it is evident that if the courts are moved and presided over by progressive judges they are able to protect children's rights too.

In practice the Tanzanian judiciary has dealt with children's matters mainly when children have been victims of abuse and in matters relating to maintenance and custody. Two cases separated by sixteen years but with almost similar facts on sexual abuse of children are used as examples namely, *Athumani Ally Maumba*, 1989 and *Nguza Viking@Babu Seya and 3 others* of 2005. In Athumani Maumba's case the Court of Appeal endorsed the High Court's view that the court has the duty to protect the children of the country. Justice Kisanga had this to say:

We endorse the view that the courts have a duty to protect the children of this country from sexual abuses by awarding commensurate sentence to the convicted offenders¹⁴⁹.

The High Court had handed a severe sentence to the accused who had sexually abused school children. The Court depicted the accused as a deviant criminal who had to be removed from civilised society so as to let children grow up with dignity. The appeal against this decision increased the sentence. In this case the Court of

¹⁴⁹ Cited in Peter, C.M. (1997) *Human Rights in Tanzania: Cases and Materials*, Rudiger Koppe Verlag, Koln, p. 38.

Appeal not only agreed with the High Court, it also changed the sentence to show more strictness in protecting children. Here the courts are seen to be in agreement to protect children. It is a serious move by the court, and positive indication in favour of the protection of children.

The recent case of *Viking* had almost the same elements as that of *Maumba*, as the victims were also young school girls (aged between six and seven at the time of the crime) who were allegedly lured away and abused sexually by four accused persons. In this case the Magistrates Court had issued a life sentence which was appealed against (*R. v. Viking Nguza*). The High Court confirmed the decision of the Magistrates Court. The appeal to the Court of appeal (*Viking Nguza v. R.*) upheld the High court decision for two appellants while two of them were released. A more pronounced development under this case is the way children were treated as individuals by the court. The children's evidence was taken seriously since a major part of the case was centred on the evidence given by children. The High Court Judge Mihayo when deliberating on the appeal called the ten child witnesses aged between six and ten 'star witnesses.' To use his words, he said:

The entire case could stand or fall on credibility of witnesses, corroboration and identification. The trial Principal Resident Magistrate found the ten star witnesses credible and believed their testimonies. (p.3) (Emphasis mine)

This is an opening for children since children as minors are not in a position to face the court without an adult representing them. If the court is able to take evidence given by children as young as six we do not see why the court should not take cases

where children are claiming their rights. The key issue is how the judicial process can be used to turn the welfarist tendency of the laws into a rights framework so as to enable the OCHH to claim their rights to care and guardianship from the State. The judiciary can also be used to resolve the conflict within the law related to the children's double roles. It should be noted that there is a trend by progressive High Court Judges towards a rights and care based approach. It has to be seen whether other judges of the High Court and the Court of Appeal will follow this trend.

6.9. Conclusion

It is clear that the Tanzania legal framework for children, and specifically for the children who fall within the remit of this area of study, does not take account of the children's reality, given the fact that the laws and policies are not based on addressing the situation of these children. The construction of a child under the law does not seem to address the child who is undertaking double roles for lack of guardianship and care. This is complicated by the different understanding of a child from the legal pluralism context where a child is constructed differently by the different sets of laws.

The legal framework discussed above reveals several inconsistencies in the laws related to the protection of children generally, which may be more complex in relation to children who are not in the ideal situation of having parents or guardians. Although all the laws underscore the necessity of a child being under the care of a parent or guardian this is contradicted by the reality of the OCHH. Most of the laws were enacted during the colonial time and the new laws enacted after independence have not added much in providing for the children in the new circumstances which

were not envisaged by the traditional way of life but are a reality in contemporary Tanzania. Some of the provisions raise practical questions related to the double roles played by the children in the study. They are children who in law need protection, but they are also 'duty bearers' for other children in their households. The law has yet to reconcile this situation and the role it should play is open to question.

The recommendation provided by the CRC Committee when deliberating on the Tanzania 2nd Periodic Report was for the development of a holistic approach to policies, programmes and facilities for children stemming from a rights based approach rather than a welfare based approach (CRC/C/70/add.26). The judiciary has been discussed in relation to its role in directing the State towards a rights based approach for children as it has done for women. The Child Development Policy has provided for a child's rights framework by setting the five children's rights principles. At the time of this study the policy was not in operation nor was the new law of the child, which also has tried to invoke children's rights principles. The situation of the OCHH under the current laws has not been addressed in that the laws have not considered the child as a rights holder, but as a recipient of duties assigned to parents and guardians. The new Law has yet to resolve the situation on the ground as related to the customs and poverty which lead children to hazardous work, abuse and neglect. If the law is to be an answer it must have working institutions in place. This new law of the child seems to have taken the CRC principles wholesale without much consideration of the situation of children in the community. Its implementation is yet another question. Roles have been assigned to different stakeholders to implement the policy and the new Law. The issue of resources as well as coordination is vital. The legal framework and the laws in place need to provide ways to address the situation as perceived by the OCHH.

CHAPTER SEVEN

The OCHH and the International Governance Institutions

‘Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; ... Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere’¹⁵⁰.

7.1. Introduction

This chapter explores part two of category four of the governance institutions: the international or global governance. It examines the process by which the international Convention on the Rights of the Child (CRC) is conceptualised, translated and applied in local circumstances and the role of international NGOs. Using the experience of the OCHH, the chapter addresses questions relating to ‘translation’ of rights and whether it is possible to imagine an alternative way of understanding those rights from the perspective of the children themselves. The two previous chapters indicated how some local and national governance institutions are influenced by the international /global children governance. Chapter six above concentrated on the national governance and indicated the interrelationship with the legal and non-legal global governance institutions such as the CRC and international NGOs.

¹⁵⁰ Eleanor Roosevelt, Co-author Universal Declaration of Human Rights, presentation of *IN YOUR HANDS: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights*. Thursday, March 27, 1958 10:00 a.m. United Nations, New York, [online] <http://www.udhr.org/history/Biographies/bioer.htm> (accessed on 27/09/2011)

Three issues are discussed in this chapter. Firstly, the ways in which rights are translated from the global to the local setting and from adults to children. There seems to be a double top down which raises some dilemmas related to the children's perspectives compared with the local institutions' understanding of the rights. While in some instances the CRC principles seem to be in line with children's perceptives, the same is not true of the local institutions, raising a question as to whether the issue is one of translation or whether there might be other factors. Secondly, the chapter evaluates the implementation mechanism of CRC, the African Charter on the Rights and Welfare of the Child (ACRWC) and the Tanzanian national legal mechanism. It is argued that while the national institutions have in theory adopted the international children's rights principles, in practice they have not been implemented to benefit the children. For example the right to education is provided for in the Education Act 1998 as well as in the new law, but this right is not enjoyed by the OCHH and other MVC since they can not pay some of the contributions required by schools [Observation in the field and Interview, 26, Appendix 7.1. 18/01/2010]. The idea of an ethic of care as discussed in chapter three, is considered, suggesting the rewriting of the CRC in what has been termed as 'caring justice' (Stewart, 2011:62). The role of other actors such as UNICEF and NGOs is discussed to shed light on how they influence the local and national institutions.

The chapter is divided into three main parts. Each is introduced through an anecdote of the children's perceptions which highlights the major contradictions between the rights framework and reality. Most of what is provided for in the CRC seems to have disappeared from sight in the eyes of the OCHH raising questions from their perspective of whether "it is worth the paper it is written on" (White, 2010:58). Part

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one traces the historical development of the CRC portraying the ‘adult-centric’¹⁵¹ nature of this development. The historical development into an international binding instrument is discussed, using the substance of the CRC and its general principles. Thence these general principles are translated into regional documents, in this case the African Charter on the Rights and Welfare of the Child (ACRWC) (OAU, 1990)¹⁵². The general principles are examined within the framework of child protection, provision and participation.

The second part discusses the implementation mechanism internationally, regionally and nationally while evaluating the United Nations (UN) and the African Union (AU) official functions in the form of policy making and regulation of compliance with the CRC and ACRWC. The attempt by UNICEF and some NGOS’s to apply the rights so as to make them real to children at international and local levels is discussed and linked with its influence to the national implementation. The third part addresses three main concepts within the protection, provision and participation rights using the OCHH experiences. It portrays the way children understand and perceive such concepts, with a view to finding an alternative way in which rights can be understood and translated, by resolving the dilemmas within local, national and international institutions.

¹⁵¹ The term ‘adult-centric’ is used to portray the fact that although the theme is children it is the adults without serious consultation with children, who have been negotiating for declarations and conventions, in most cases it was not for the children but for the adults’ concept of the children.

¹⁵² The ACRWC was adopted in July 1990 by the Assembly of the Head of states and governments of the Organization of African Unity (OAU) now the African Union (AU) (Came into force on 29th November 1999). OAU Doc.CAB/LEG/24.9/49 (1990) Text can be found in Van Bueren (1993).

7.2. The Anecdote: Children's Perceptions

One of the questions asked to the OCHH during the study was how they define themselves? 'Are you a child?' My assumption was that they would all answer this question very easily. However, Kechee 14 years old, looked at me and then he looked down after which he answered slowly while brushing his two hands together. *'I do not know if a person who does what I am doing is a child.'* Kevona 17 years old, thinking first said, *'I am a child but a problem child not like other children.'* Kedi, 17 years old said *'I am not a child; I am looking after my house and my sibling, like any other person.'*

When the OCHH were narrating their stories, sometimes their pitch was high, and sometimes it was questioning. Kakia and Kili, when narrating their stories did not see why the village, the relatives and NGO/Church planned and took away their siblings. In one case (of Kili) they asked for his opinion but they did not respect it. In the other case (of Kakia) they did not even ask for her opinion. They have taken the children and they have not been sent back to visit. It was the concern of the OCHH that their siblings might get lost and forget home and their people.

Kimako who is quite softly spoken at one point in his narration raised his voice and said:

I have been beaten for not going to school several times but I had to choose, to go to school or to work for my survival and the survival of my siblings [Interview 49: appendix 7.1. 28/01/2010].

From what the children are saying I have picked three key issues which affect the conceptualisation, translation and application of the rights of the child. Conceptually the CRC defines a child and provides rights for a child. The children in this case are questioning the idea that they are children although they fall under the framework of the child as conceptualised by the CRC. The rights which the children are supposed to enjoy such as protection, provision and participation do not seem to be applicable for them. Two problems observed are how the rights are conceptualised and how they are implemented. In fact the children reject the notion that they are children. They challenge the system either to acknowledge them as children, or to put in place a mechanism to handle their circumstances. This portrays a contradiction in the conceptualisation of the child, and a dilemma concerning their rights. Another dilemma occurs regarding the translation of rights in their present form. There is a possibility of using the care process as advocated for by Sterwart (2011:65) to consider the contradiction and dilemmas arising from the rights framework by learning how to act in response to the situation of the beneficiary (in this case the OCHH).

7.3. The Historical Background to the International Children's Rights Framework

7.3.1. In Search of Children Rights: Paternalism Encountered?

The concern for children's rights internationally is traceable from the League of Nations era when in 1924 a Declaration on the Rights of the Child commonly known

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* as the Geneva Declaration¹⁵³ was adopted. The Geneva Declaration sets five¹⁵⁴ principles in recognition that ‘Mankind owes to the child the best it has to give.’ The Declaration was not binding to the State Parties but called them to take special notice¹⁵⁵ and invited them to be ‘guided by its principles in the work of child welfare’ (Fortin, 2010: 37), while placing the duty to provide the child with ‘the best it has to give’ on men and women of all Nations (Preamble to the Geneva Declaration). ‘Men and women’ were expected to ensure the welfare of the child since there was an unquestionable assumption that ‘children could and should rely upon adults to ensure protection of their rights as pronounced in the Declaration (Van Bueren, 1998:7). Children were still perceived as objects and not subjects of rights, taken to be recipients of treatment and not holders of rights (Van Bueren, 1998: 7.) The language of the Geneva Declaration is placed in the field of child welfare rather than child’s rights (Van Bueren, 1998:7) aiming at the child’s well-being, stressing vulnerability and protective strategies with paternalistic tendencies¹⁵⁶ (Fottrell, 2000: 2). Notwithstanding, the Geneva Declaration is important as the first international document specifically ‘protecting children’s

¹⁵³ The Geneva Declaration was adopted by the League of Nations on 26th September, 1924 [O.J. Spec. Supp. 21, at 43 (1924)]. The text can be found in UN Documents: Gathering a Body of Global Agreements (<http://www.un-documents.net/gdrc1924.htm>) (accessed on 22/01/2011) and in Van Bueren, (ed.) (1993) *International Documents on Children*, Dordrecht/Boston/London: Martinus Nijhoff Publishers. For more on the history of the declaration see Van Bueren, G. (1998).

¹⁵⁴ The principles of the Declaration state that: The child must be given the means requisite for its normal development, both materially and spiritually; 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; the child must be the first to receive relief in times of distress; the child must be put in a position to earn a livelihood, and must be protected against every form of exploitation; and the child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

¹⁵⁵ The League of Nations Doc. Records of Fifth Assembly cited in Van Bueren, G. (1998); 7 Note 53 and in (Van Bueren 1993: 3).

¹⁵⁶ Paternalism has been described as ‘The interference with a person’s liberty of action, justified by reasons referring exclusively to the welfare, good, happiness, needs, interest or values of person being coerced.’ Dworkin, G. (ed.) (1971) ‘Paternalism’ in *Morality and Law*, (R.A. Wasserstrom, Wadsworth Publishing Co.). It is also explained to be ‘[a]n attempt to enhance or secure the best interest of an individual even though the individual concerned may not recognise any advantage in such intervention and may perceive it to be injurious’ Franklin, B. (ed.) (1986) *The Rights of Children*, Basil Blackwell.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* rights' (Fortin, 2009: 37). It provided the foundation for a future international standard in the field of children's rights by establishing the concept of the rights of the child internationally, while providing the first acknowledgement of the connection between child welfare and the rights of the child through its title and drawing attention of States to the exigency of protecting the rights of children (Van Bueren, 1998: 8). Paternalistic tendencies were still observed within the Declaration, but the rights language ushered in 'rights thinking' which was built further in the future developments, as seen in the next sub-section.

7.3.2. A Conceptual Development: Children as Subjects of Rights

One development from the Geneva Declaration was the adoption of the Declaration on the Rights of the Child in 1959.¹⁵⁷ The significance of this Declaration lies in the fact that it was initiated by United Nation States Parties and passed without abstention, which accords it a greater moral authority (Van Bueren 1998: 10). The 1959 Declaration is singled out as 'the first international document to exclusively focus on children as direct possessors of rights' (Ncube, 1998: 6) embodying the 'first serious attempt to describe in a reasonably detailed manner what constitutes children's overriding claims and entitlements' (Fortin: 2009: 38). Both the 1959 Declaration and the Geneva Declaration, 1924 are known as international documents, but at the time most African countries were still colonies. This raises the correctly made arguments that notwithstanding the universalistic tones in the documents, they were not intended to benefit children in colonial domination

¹⁵⁷ The Declaration on the Rights of the Child (1959) adopted by the United Nations General Assembly (UNGA, RES: 1386 XIV). 14 U.N. GAOR Supp. (No. 16) at 19 U. N. Doc. A/4354 [online] URL ([http://www.undemocracy.com/A-RES-1386 \(XIV\) pdf](http://www.undemocracy.com/A-RES-1386(XIV).pdf) (accessed on 22/01/2011).

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (Kaime, 2009: 20) since the pledges for human rights at the time did not result in questioning the legitimacy of colonialism (Bösl, A. and Diescho, J. 2009: 4)¹⁵⁸.

The ten principles in the 1959 Declaration on the Rights of the Child added to the conceptual thinking of children's rights, and the Declaration is said to be the conceptual parent of the Convention on the Rights of the Child which followed (Van Bueren, 1998: 12).

Since this Declaration, children are recognised as being able to enjoy the benefits of specific rights and freedoms (Van Bueren, 1998: 12). The 1959 Declaration did not provide the 'freedom rights' known as 'civil and political rights', other than the right to a name and nationality under its Article 3 which is seen as a limitation on its part (Fortin 2009: 38).

From these early developments in children's rights, from the Declarations to the Convention, the issues of 'protection' versus 'liberation/autonomy' of a child have been a concern. Notable movement in individual countries such as the United States of America, emphasised children's empowerment rather than welfare only (Fortin, 2009: 4) (as discussed in chapter two). A loosely structured international movement claiming human rights for children gained momentum (Fortin, 2009: 4). In 1978 Poland made a formal move by proposing to the UN Commission for Human Rights the creation of a binding international instrument for children (Fottrell, 2000: 3). Ten

¹⁵⁸ Among the 21 governments said to have taken interest in the idea of a new Declaration on the rights of the child in March 1959 two countries only were from Africa namely Egypt and 'Apartheid' South Africa (Van Bueren 1998: 10). When it came to voting in December only three voted: Egypt and two Sub Saharan Africa countries; Ethiopia and Liberia (Bösl and Diescho, 2009: 57) while South Africa abstained (Van Bueren, 1998: 17).

years later a Convention on the Rights of the Child was adopted by the United Nations General Assembly (UNGA).

7.4. The Protection of the Rights of the Child: Universal Binding Treaty

The Convention on the Rights of the Child (CRC) was adopted 30 years after the adoption of the 1959 Declaration on the Rights of the Child noted above. The CRC ushered in a new era in the protection of children's rights in the world.¹⁵⁹ This Convention has received many accolades. Even with some writers who claim to be “intuitively uneasy”¹⁶⁰ with human rights, such as Keith White there is an acceptance that the CRC was a “good thing” and it “makes sense” as a statement of some essential standards and conditions desired for the children of the world (White, 2010: 57).

Such celebrations upon ratification notwithstanding, there are issues related both to its acceptance and its implementation as a universal document of rights for all children. The fact that it took more than ten years in its drafting¹⁶¹ portrays the

¹⁵⁹ In between the 1959 Declaration and the 1989 CRC there have been some other instruments which also matter to children generally and also specific in nature on some aspects of children's rights, these are not discussed in this chapter as focus is on the CRC. They include: The International Covenant on Economic, Social and Cultural rights, 1966, (Specifically Articles 10 on family protection, 12, adequate Standard of living, 13 Right to education). The International Covenant on Civil and Political Rights 1966 (Articles 6 (5), Prohibition of death sentence for crimes committed by children under 18 years, and Articles 10,14,17,18, 23, and 24 on Juvenile justice, family privacy, freedom of thought and protection from discrimination). United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985, The Declaration on Social and Legal Principles relating to the Protection and Welfare of the children, Special reference to Foster Placement and Adoption Nationally and Internationally 1986, and the ILO Convention Number 138 Concerning Minimum Age For Admission in Employment 1973. (The text and excerpts of which can be found in Van Bueren, (1993).

¹⁶⁰ White is in fear that rights can remain on paper and either not guaranteed or not enforced which he argues is better to use a language of a vision rather than a guarantee which cannot be implemented or enforced (White, 2010: 58).

¹⁶¹ As noted earlier it was in 1978 when the Polish delegation to the UN made a move by proposing to the UN Commission for Human Rights the creation of an international treaty for children's rights. The aim was to have a treaty adopted as part of the celebration of the Year of the Child 1979. The Commission established a working group to draft the Convention on the Rights of the Child in

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difficulty in negotiations of such an instrument in a world so diverse in culture, traditions and religion. Matters which slowed consensus included: agreement on when childhood begins and when it ends (Hodgin and Newell, 2002: 3); issues regarding adoption said to be unknown in Islamic societies; and setting limits on the autonomy of the child especially in relation to the right to freedom of religion (Fottrell, 2000:3). There was an obvious need for striking a balance between ‘traditional attitudes, cultural particularities and what were seen as ‘radical proposals for empowerment of children’ whilst considering sufficient protection of children’s rights’ (Fottrell, 2003: 3). The many reservations put forward by State parties¹⁶² intending to limit the scope of their obligations portray the challenges in striking a balance at the universal level.

7.4.1. Wider Scope for Children’s Rights

The CRC encompasses an extensive range of rights in its fifty-four Articles, forty of which carry the substantive rights for children. The CRC like CEDAW covers the whole range of economic, social, cultural, political and civil rights found in the same document, differentiating it from documents such as the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic Social and cultural Rights (ICESCR), 1966 which divide the rights into two sets. The CRC thus reinforces the indivisibility and interdependency of all human rights and at the same time makes a ‘radical departure’ from former

1979. It was not until ten years later on the 20/11/1989 that an internationally binding treaty for children was then adopted by the United Nations General Assembly by consensus.

¹⁶² Forty seven (47) States parties to the CRC ratified the Convention with reservations or interpretative declarations. (Schabas, W. (1996) ‘Reservations to the Convention on the Rights of the Child,’ *Human Rights Quarterly* 18.2 (1996) 472-491: The Johns Hopkins University Press.

international instruments which are seen to address children's immaturity and need for care (Fortin, 2009: 40) rather than the empowerment of the child.

All human beings below the age of eighteen years ('unless the age of majority is attained earlier') are subjects of the rights promulgated in the CRC ((Article 1 CRC).

To ensure that children enjoy the rights provided for in the CRC, the Committee on the CRC which is an organ for the implementation of the Convention underscores the interrelatedness of the provisions of the Convention although it has upgraded Articles 2, 3, 5, 6 and 12 to the status of general principles as expounded in the general comment 4 and 5 [CRC, 2003 (a) and (b)]¹⁶³.

1. The best interests of the child under Article 3 address the issue of paramount attention to be taken in all issues concerning a child. This is a new principle in international law although it is said to be widely accepted in domestic law [Fottrell, 2000:5, Van Bueren, 1998: 45]. This general principle is also one of the two interpretation principles [Van Bueren 1998: 45]¹⁶⁴ the second is number 5 below.
2. Non-discrimination in the enjoyment of the rights by all children is provided for under Article 2.

¹⁶³ Four General principles under Articles 2, 3, 6 and 12 are commonly mentioned although the fifth one under Article 5 has also been noted. In the Fact Sheet No 10 of the Office of the High Commissioner for Human Rights, the four General Principles are addressed under a title 'Universal and forward-looking Principles'. The CRC Committee in its General Comment Number 4 (CRC/GC/2003/4) of July, 2003 notes Articles 2, 5 and 3 as fundamental principles and in the General Comment 5 (CRC/GC2003/5) of November, 2003 Comment 12 identifies Articles 2, 3(1), 6 and 12 as General Principles required for the effective implementation of the whole Convention. The General Comment 4 is specifically on Adolescent health and Development in the Context of the Convention on the Rights of the Child which then gives the issue of 'evolving capacity' due weight, as promulgated in Article 5 of the CRC. Also see Fottrell (2000:4) who mentions 'five key principles that form a backdrop against which all actions of the States are to be measured'.

¹⁶⁴ Presumably the domestic laws mentioned are Western laws as it has been argued that the 'best interests principle is a creature of Western Law' (Kaime, 2009) Note 107 quoting Alston and Gilmour Walsh (1996) *The Best Interest of the Child: Towards a Synthesis of Children's Rights and Cultural Values* 1.

3. Recognition of the inherent right to life which ensures survival and development of the child is provided for under Article 6.
4. Right of the child to expression on matters affecting the child and such views of the child, to be given due weight in accordance with the age and maturity of the child is under Article 12.
5. Appropriate guidance in application of rights under Article 5 requires consideration to be taken of the evolving capacities of the child in the exercise of the rights by the child. This is the second Principle of interpretation.

The principles are supported by a wide range of substantive rights which have been classified in various categories for explanatory purposes [Kaime, 2009:15] and for making the Convention ‘user friendly’ for both children and adults [Van Bueren:1998:15]. Different writers have given different terms for the categorisation such as the four ‘P’s namely, Participation, Protection, Prevention and Provision used by Hammaberg, (1990) and Van Bueren (1998: 15). The difference in the classifications is mainly on the terms but the rights promulgated seem to be the same. For example the ‘survival’ rights are the same as the ‘provision’ rights, as they are concerned with the right to life, adequate standard of living and all the rights which sustain life; right to health, social security, while the protection rights are the rights which safeguard a child against abuse, neglect and harmful labour. The empowerment rights are the same as the participation rights which are the rights to be heard, freedom of thought, belief and religion. The membership category of rights (right to a family, to association) is linked or is the same as the Prevention category while the Prevention rights also overlap with Protection rights.

What has been noted in the text of the CRC as new, controversial and most remarkable (Fortin: 2009) or even as extreme or radical in application to children (Fottrell: 2000: 5) is the extension of the civil and political rights to children (Participation /Empowerment rights). These rights are provided for under Articles 12 – 17 and Article 12 is specifically identified as the most significant in the Convention (Fortin 2009: 42). Under this Article, for a child ‘who is capable of forming his/her view,’ the right to express such views ‘in all matters affecting the child’ is provided (CRC, Article 12 (1)). The other Articles in the participatory category include the rights to freedom of association and freedom of assembly (Article 15) right to privacy (Article 16), and freedom of thought, conscience and religion (Article 14). Due to the nature of these rights (providing power to children) there have been notable struggles in understanding and accepting some of the rights in this category by member States, resulting in many reservations, with Article 14¹⁶⁵ being cited as having the largest number of reservations (Fortin, 2009: 45). This portrays a struggle by State Parties in understanding or accepting the rights of the child within the philosophical and jurisdictional articulation of rights as examined in Chapter Two where the main issue is whether children can be rights holders. This struggle continues even after it has been generally accepted through the CRC that children are rights holders, as manifested in the way the CRC is being implemented by the State Parties. The next section examines the implementation procedure and practice of the CRC which has been in place now for twenty years.

¹⁶⁵ Article 14 of the CRC provides the right of the child to freedom of thought, conscience and religion CRC Text in Van Bueren (1993).

7.4.2. Mechanisms for the Implementation of the CRC

The CRC forms part of the body of international law in the area of human rights of the child which is assumed to be an important mechanism for the amelioration of children's lives in the world. For the lives of the children of the world to be changed by the use of such law, the enforcement mechanism and implementation procedures are vital. Treaty implementation under international law is the obligation of States Parties as subjects of international law, expected to recognise, implement, expand, develop and enforce the rights of individuals within their States (Ncube: 1998: 3). Very few international instruments provide rights to individuals directly which make the way in which implementation is accorded crucial. In most cases there is no legal recourse where a State Party does not adhere to what the human right convention provides; a State cannot be sued by aggrieved individuals from the State unless there is an express provision in an instrument to that effect. This seem to be a limitation since the individual is the subject of the rights provided for but implementation is left with the State as a subject of international law with a free will, there not being binding judicial mechanism for the individual to rely on at an international level other than the moral force exerted by ratifying such documents. It is all the more difficult if the individual is a child.

The CRC follows the same pattern of other human rights treaties with an implementation mechanism based on a monitoring system. Some problems have been noted with the CRC in the area of realisation of the rights propounded at two levels. First, is what Fortin (2009: 46) mention as 'jurisprudential doubts about the true status of some of the rights in the CRC'. This raises the issues regarding lack of clarity in many of the rights, making it difficult to translate such rights into

international or domestic law while impairing the practicability of CRC as a monitoring tool (Kilkelly and Lindy, 2006). The idea of who is a child is one such example which is important since it is a bench mark as to who can benefit from the Convention. The definition of a child provides an upper benchmark (Hodgkin and Newell, 2002: 32) of 18 years old and the State parties can have an earlier age of majority. The situation makes it difficult when implementing the rights as it raises issues of the connection of the age of a child with entitlements of the child to work, compulsory education, labour laws, marriage and autonomy.

Second, the CRC does not have a straightforward formal enforcement mechanism. The main implementation mechanism is through the Committee on the Rights of the Child established under Article 43(1) of the CRC and mandated to examine the progress made by State Parties to achieve the realisation of obligations undertaken in the Convention. The State Parties are obliged to submit an initial report to the Committee within two years of entry into force of the Convention, and after that reports are due every five years (Article 44 (1) (a) and (b)). The reports have to specify measures adopted to give effect to the rights recognised in the Convention and progress achieved towards the enjoyment of those rights as well as factors inhibiting the level of fulfilment of the obligations. This system however is weak, in that it relies on the good will of State Parties. Examples have been cited of some countries submitting reports late (Bösl and Diescho, 2009:58) or not reporting at all or reporting inadequately, with no consequences (Ncube, 1998; 4). Fottrell (2000: 6) has also noted how the State is set as a judge in its own case as this system is *sine qua non* self-assessment by the States Parties.

Another significant limitation to its implementation mechanism is the lack of individual complaint mechanism as provided under the ICCPR and CEDAW. Children must rely on the support offered by non State actors who are able to submit supplementary reports to the committee.¹⁶⁶ In theory then the CRC is seen as a child liberation/empowerment convention, but in practice it follows ‘child saver’ principles. The regional mechanisms in some ways differ from the international structure, as is discussed in the next section.

7.5. Regional Mechanism Protecting Children’s Rights

Some regions of the world have developed frameworks for the protection of human rights that rely on what are argued to be locally appropriate values. The Council of Europe (COE), the Organisation of American States (OAS) and the African Union (AU) (Former Organisation of African Union (OAU)) have adopted regional human rights mechanisms. The COE and OAS do not have specific instruments for children but the COE mechanism, through the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), adopts a language which include ‘everyone’¹⁶⁷ making it possible for children on their own behalf or as co-applicants to use its enforcement machinery (Van Bueren, 1998: 22)¹⁶⁸. The OAS under the

¹⁶⁶ An example is of the support given to Moldovan children aged 11 - 16 to produce a supplementary report to the CRC Committee. Save the Children, (2009) Annual Review, [online] http://www.savethechildren.net/alliance/about_us/mission_vision/index.html (accessed 05/02/2011).

¹⁶⁷ Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 states that ‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention’ and Article 2 which is the first in Section 1 states that ‘Everyone’s rights to life shall be protected by law.’ See online, European Union Court web site URL: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf visited on 01/02/2011.

¹⁶⁸ The cases in point include *Antony Tyrer v. United Kingdom*, (1978), application No. 5856/72 European Court of Human Rights. *Jon Nielsen v. Denmark* and *Lisa Erriksson v. Sweden*(1989) *Series A. no. 144 European Court of Human Rights*, as discussed in Van Bueren (1998:Chapter 3: 67-116) which are decisions of the European Court. The EoU has two main enforcement mechanisms which can be used regionally and these are the European Court which is established by

American Convention on Human Rights (ACHR), (1969) has a specific Article entitled 'Rights of the Child' (ACHR, Article 19) which provides for the rights of a child to measures of protection necessary in the condition of a child¹⁶⁹.

The African regional human rights system is composed of the Charter on Human and People's Rights commonly known as the 'Banjul Charter'¹⁷⁰, the Maputo Protocol to the African Charter on Human and Peoples' Rights¹⁷¹, the Charter on the Rights and Welfare of the Child as well as a Declaration on the Rights of the Child, as will further be discussed. The Association of South East Asia Nations (ASEAN) Charter establishes a Human rights body under its article 14(1)¹⁷². The other Asia and Pacific regions as of now do not have known regional human rights mechanisms, either general or specific to children. Some regional mechanisms ensure that the children's rights are achievable in practice (as has been noted in the case of Europe)¹⁷³ while others, such as the African children's charter, reinforce regional cultures, traditions and values which some argue has led to higher standards of rights (Van Bueren,

the European Human Rights Convention Article 19 and the European Committee on Social Rights created by the European Social Charter 1961 Article 25. This Charter under its Article 7 provides for the rights of children and young person to protection on employment related matters.

¹⁶⁹ The OAS has two specific organs for the enforcement mechanisms, The Inter-American Commission on Human Rights and the Inter American Court of Human Rights established under Article 33 of the American Convention on Human Rights, 1969.

¹⁷⁰ Adopted by the organisation of African Union (OAU) June 27th OAU Doc. CAB/LEG/67/3 re.5, 21 I.L.M. 58 (1981) Entered into force October 21 1986, the Text can also be found in Gandhi, P.R. (Ed) (2004) *Blackstone's Statutes: International Human Rights Documents*, 4th Edition, Oxford.

¹⁷¹ This is the Protocol to the African Charter on Human and People's Rights on Women's rights. It was adopted in Maputo Mozambique in July 2003 and came into force in November 2005. The charter is important to children's rights as it has specific Articles dealing with Children and specifically children rights, such as Article , 13(g) minimum age for child employment, Article 7 on the best interest of the child and Article 18 on the age of marriage among others.[online] <http://www.africaunion.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf> (accessed 12/09/2011)

¹⁷² The ASEAN was established on August 1967 and it has ten members: Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Vietnam, Lao PDR, Myanmar and Cambodia. The ASEAN Charter was adopted in 2007 and came into force in December 2008.[online] <http://www.asean.org/21069.pdf> (accessed on 16/06/2011)

¹⁷³ For more information on the use of the European human rights mechanism for children see Van Bueren, 1998: Chapter 2.

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* 1998: 24)¹⁷⁴. The discussion in the next section focuses on the African regional mechanism.

7.6. The African Mechanism for the Protection of Children's Rights

The Organisation of the African Union (OAU) adopted the Declaration of the Rights and Welfare of the African Child in 1979 during the 16th ordinary session of the Assembly of Heads of State and Government (Van Bueren, 1993: 31). This was followed in 1981 by the African Charter on Human and Peoples Rights (Van Bueren, 1993: 31) and later by the African Charter on the Rights and Welfare of the Child 1990. The OAU Declaration does not feature in much of the children's rights literature although it is one of the early regional children's rights documents. The Declaration seems to have been inspired by the International Year of the Child 1979 (IYC)¹⁷⁵. It made the IYC a basis for the permanent continuation of all the efforts, mobilisation and advocacy for the child undertaken in the IYC (Article 1). Further the Declaration recognises specifically the 1959 UN Declaration on the Rights of the Child as the ground for member States to undertake efforts to review laws relating to the rights of children (Article 2). The Declaration calls upon members to examine cultural legacies and practice which are harmful to the normal growth and development of the child (e.g. marriage and female circumcision) so as to take legal and educational measures to abolish them (Article 4). Interestingly, the Declaration invites international and non-governmental organisations to participate actively in the activities undertaken by Member States at national level as set up in the framework of the IYC (Article 5). As a Declaration it is not binding to the Member

¹⁷⁴ For more discussion on the human rights standards of rights see Van Bueren, 1998 chapters 2 and 12).

¹⁷⁵ The United Nations General Assembly proclaimed 1979 as the International year of the child under its Resolution A/31/169.

States but it was one of the documents considered by the OAU (AU) in the adoption of the binding ACRWC, as can be seen in the Preamble to the ACRWC.

7.6.1. The African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC is the first and so far sole regional binding child's rights instrument. Although it was adopted unanimously it took nine years before it came into force and ratifications have been going slowly compared to that of the CRC¹⁷⁶. As of 2/02/2010, 45 member States had ratified the document of the ACRWC while eight members States are yet to ratify it (AU Web Site: 2011)¹⁷⁷. This lack of urgency raises questions as to the significance of the ACRWC as a document which was supposed to bring recognisable rights to the children in Africa. The ACRWC seems to reproduce most of the CRC rights but careful observation reveals that rights have been framed in such a way as to portray African cultures, traditions and values (Van Bueren, 1998:24, Sloth and Nelson, 2007). It thus addresses harmful traditional practices and urges member States to take appropriate measures to eliminate them (Article 21). The African conception of a community's responsibilities and duties is enumerated by the concept of children's responsibility towards their family, society, and State (Article 31). This is seen as a positive move as it appreciates the potential value of children's contributions (Van Bueren 1998: 24). However it also raises

¹⁷⁶ The CRC was adopted on 20th November, 1989 and came into force 2nd of September 1990, less than a year later. Except for Somalia all African States have ratified the CRC, see Office of the United Nations High Commissioner for Human Rights 'Status of ratifications and signatures of human rights treaties,' available online, <http://www2.ohchr.org/english/law/> (accessed on 1/February 2011).

¹⁷⁷ The Countries which had not ratified the ACRWC by 2/2/2010 are The Central Republic of Africa, Djibouti, Democratic Republic of Congo, Saharawi Arab Democratic Republic, Somalia, Sao Tome & Principe, Swaziland and Tunisia. All of which with the exception of Somalia have ratified the CRC. (AU [Online] African Union Web Site. <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm> (Accessed on 12/09/2011)).

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* questions relating to potential abuses¹⁷⁸, since under the ACRWC children are duty bound to work for the cohesion of the family and to respect parents and elders at all times (Article 31 (a)).

The ACRWC is also seen to have provided emphasis to some of the rights such as the principle of ‘best interest’ which is pronounced by the use of article ‘the’ which gives the principle more weight than the use of article ‘a’ in the CRC. The CRC requires only the best interest to be ‘a’ consideration but the ACRWC makes it ‘the’ primary consideration (Brems, 2001, Murray, 2004). The ACRWC has taken on board the CRC universal provisions, with an African flavour of cultural context. The issue is whether such conceptualisation has managed to make the rights of the African child a reality. Will the African context imply greater rights for and responsibility towards parents in line with customary laws? The enforcement mechanism is a way in which such rights could be made real.

The implementation mechanism for the ACRWC is different from that of the CRC. The ACRWC established an organ to supervise implementation of its provisions in the form of a committee (Article 43), just like the CRC, but with a wider mandate as it receives reports from the member States and can also receive communications from individuals, NGOs, States or other organizations alleging violations of the provisions of the charter (ACRWC, Article 44). The committee can also investigate any matter falling within the ambit of the charter (ACRWC Article 45(1)). The ACRWC Committee has made its first historic decision in March 2011 an outcome of a communication by Nubian Children in Kenya (ACERWC, Communication

¹⁷⁸ Participants to the 3rd Forum of the African Charter on the Rights and Welfare raised this question after a presentation drawing comparison between the ACRWC and the CRC by Dr. Mezmur Benyam entitled African Children’s Charter: Stumbling Forward? Found in the report of the Forum [online] <http://www.crin.org/resources/infoDetail.asp?ID=22208> (accessed on 19/02/2011).

002/09). It found the Kenyan Government to have unlawfully discriminated the Nubian children from access to citizenship.

The Rules of Procedure of the Committee mandate it to issue General Comments and to undertake studies which widens further the powers of the committee in the promotion and protection of the rights and welfare of the African child.

7.7. Obligation and Roles by the State Parties

At the level of the substance of the rights, the regional mechanisms try to translate universal rights to fit the regional situation. The first level therefore is in the translation of the rights of the child. The second involves local implementation through ‘domestication’ of these rights. The States Parties to the CRC and the ACRWC have made commitments to ensure the rights are enjoyed by the children in their States. Article 2 of CRC obligates the States parties to respect and ensure the rights for each child in their jurisdiction without discrimination of any kind. The ACRWC makes the same statement and calls upon members to undertake steps necessary to give effect to the provisions of the Charter (ACRWC, Article 1). The process by the States Parties includes four main steps: accepting the instrument by signing and ratifying, making the instrument part of domestic laws, implementing the rights and reporting to the treaty monitoring body (See Articles, 1, 43 and 47).

The signing and ratification of an international instrument signifies its acceptance by the concerned State. In the process of accepting the Convention State Parties can enter reservations. Reservations to treaties are acceptable under international law and each treaty specifies conditions for such reservations. According to Article 50 (2) of the CRC a reservation which is incompatible with the object and purpose of the

Convention is not permitted. A significant number of State Parties have ratified the Convention with reservations which seem to affect the compatibility with the object and purpose of the CRC. The parties are free to ratify without being forced to accept what they do not agree to be in line with its national laws (Schabas, 1996: 1).

It is possible for a country to ratify a convention without reservation and takes it time to domesticate it. For example Tanzania enacted a law to domesticate CRC eighteen years after it ratified it with no reservations, which calls into question its seriousness in ratifying the convention. The domestication makes it easy for the rights to be claimed at local level and also gives implementation of the rights at local level a legal basis.

7.7.1. The Children's Rights Implementation at the National Level

Children's rights at local level are implemented through structures from national level to the local setting. Notable are specific Ministries for children's issues or departments in Ministries, National children's commissions or children's ombudspersons, special children's courts and prisons. These institutions vary from country to country and countries have also come up with plans and budgets specific to children as part of implementation strategies. Some of the plans are outcome of international or regional programmes such as 'The World fit for children'.

UNICEF has played an important role which has influenced implementation of the rights of the child at national level. Follow up actions under UN Resolution S-27/2 is one such initiative, an outcome of the Special session for children in May, 2002. 26 countries are reported to have completed or drafted new National Plans of Actions for children, 26 countries were in the process of or committed to developing National

Plans of Actions, 13 countries updated existing plans, 35 countries integrated the international commitments into existing National plans and Policies and Poverty reduction Strategy papers and 23 strengthened or set up a committee for children to lead and coordinate the follow up action (UNICEF, 2003).

UNICEF and some international NGOs in their work with national governments and local NGOs try to strengthen national and local initiatives for the protection of children's rights. Campaigns at international levels find their way to the national level. For example the 'Say Yes Campaign' was launched in many countries, Tanzania included (UNICEF 2002:49). At the level of the substance of the law, there are initiatives to create awareness of the rights of the child for people at the local level, including children, by using the CRC popular version prepared in a local language (such as Swahili the Tanzania national language), as well as 'child friendly' versions. Advocacy initiatives are also undertaken in relation to a review of laws, bringing them into line with the provisions of the CRC, as well as preparation and funding of the National Plans of Action for the protection of children.

To take Tanzania as an example, it is one of the countries reported by UNICEF to have integrated the international commitment to poverty reduction strategies (UNICEF, 2003). Related to the children under this study, the Tanzania government initiated a process for a National Plan of Action for most vulnerable children (URT, 2008). The plan was piloted in 21 out of 144 districts in the country (Correll and Correll 2006) and a report on capacity needs estimated only 5.58% of all the Tanzania villages will benefit from the plan of action by the end of 2011 (Correll and Correll, 2006). Although the plan of action is mainly welfare- oriented, looking at the children as vulnerable and in need, when taken as an implementation issue it

highlights questions of resources allocation and inadequate political will to implement the rights of the children. These however are several ways in which States are beginning to implement the rights provided for in the conventions and are followed by the noted reporting obligations. The State and government efforts are in most cases supported by non-State actors, mainly NGOs, as is discussed in the next section.

7.8. Implementation by Other Actors

Although there are a number of organisations internationally and nationally working in the area of children's welfare and rights¹⁷⁹ this section highlights the work of UNICEF and Save the Children, both members of the Global Movement for Children (GMC),¹⁸⁰ to show how they contribute to the official mechanisms and the initiatives to translate the rights for the benefit of the child. These two organisations are also working in Tanzania with the government and NGOS. The following discussion is mainly on the organisations' work with Head of States at the level of UNGA, with the monitoring body (CRC Committee) during the reporting sessions and with National Governments as well as national and local NGOS. In some avenues the organisations have worked with children directly, as will be explained later, mainly to relate the work and the understanding of their rights.

¹⁷⁹ For example Van Bueren lists over 50 active members of an NGO Ad hoc group who have been concerned in the protection of children's rights over time. (1998: note 182; p.421). The Global Movement for children is yet another example which is a Network of many organisations worldwide, coordinated by six major organisations and about twenty three regional organisations with the aims of uniting efforts from organisations, people and children so as to build a world fit for children GMC,[online] <http://www.gmfc.org/en/about-us/introduction> (accessed on 08/02/2011).

¹⁸⁰ The Global Movement for Children (GMC) is a broad coalition of organisations and networks focused on Children and dedicated to improving the life of every child. The Coalition is led at global level by six founding organisations namely ENDA TM (Environmental and development Action in the Third World). Plan International, REDLAMYC (Latin America and Caribbean Network for the Rights of Children and Adolescents), Save the Children, UNICEF and World Vision which came together as a commitment for a worldwide movement for children with objectives of drawing people from all walks of life who believe children rights need be given first priority (UNICEF, 2002: 43) also see GMC web page, URL www.gmaf.org (accessed on 5/2/11).

7.8.1. UNICEF Performing a Bridging Role?

UNICEF is part of the UN ‘family’ created in 1946 with a thin mandate to provide food, clothing and health care to European children facing famine and disease after the Second World War but later became a permanent part of the UN (UNICEF, Home page 2011). Although for a long time UNICEF was concerned with economic, social and cultural rights (Van Bueren, 1998:405) it is now involved in the broader spectrum of rights ‘upholding the CRC to hold every one accountable to the promise given to children’ (UNICEF, Website, ‘Our History’). This change as predicted by some writers might be an outcome of UNICEF’s formal treaty recognition in the implementing provisions of the CRC,¹⁸¹ which encompasses all rights in a holistic approach. UNICEF’s work regarding the CRC is notable in the activities and programmes performed at national and international level (UNICEF, 2002). One major event organised by UNICEF is the World Summit for Children for Heads of States 1990 (The Summit). The Summit is one way in which the heads of States as members of the UN set policies on specific issues, in this case the rights of the child. The Summit is noted for the largest number of representation of the world leaders and for two documents it adopted: the Declaration on the Survival, Protection, and Development of Children 1990 and a Plan of Action for the Implementation of the Declaration. The Declaration sets ten year goals for children’s education, health and nutrition. The outcome of the world summit for children, though very significant politically, has been accused (both the Declaration and the plan of action) of ‘downgrading the participation of children in decisions affecting their own lives’

¹⁸¹ The CRC provides official recognition to the UN specialised agencies, United Nations Children Fund and other UN organs by providing them with the right to be present during the reporting by State Parties to the committee and by invitation from the committee to provide expert advice or to report on the implementation of the CRC (CRC Article 45 (a)). The CRC also mentions other competent bodies in addition to the UN bodies mentioned earlier which can be given State Parties reports which contain requests or indicate a need for technical advice or assistance (Article 45: (c)).

Helen Kijo-Bisimba: *Vulnerable within the Vulnerable: Protection of Orphaned Children Heading Households in Tanzania* (Van Bueren, 1998: 405). The title and the content of the Declaration do not include the rights of the child to participation. It can also be said that the declaration not only disregarded the participation rights within the text, but the Summit in which it was adopted did not involve children. However, children are mentioned as partners in the text of the Declaration stating as follows:

Among the partnerships we seek, we turn especially to children themselves. We appeal to them to participate in this effort (Article 22 of the Declaration on Survival, Protection and Development, 1990).

Children were being sought as partners in a process they were not part of and their participation in the envisaged efforts was not elaborated in that Declaration. However in a follow up event of the Heads of State in 2002 (to be discussed later) children took part in the UNGA as official delegates as well as delegates in the NGO forum (Save the Children, 2004). The question still remains as to whether the children as ‘partners’ or otherwise are participating from their view point or from an adult view point.

As part of the process following the goals set in the World summit for children, UNICEF launched a worldwide campaign as part of the Global Movement for Children popularly known as ‘SAY YES TO CHILDREN’ (UNICEF, 2002). Among the activities of the campaign launched in early 2001 was the review of the work committed by the World Summit for Children, 1990, and the adoption of goals and standards for the period to follow (UNICEF, 2002). This involved mobilising

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support for a ten-point agenda¹⁸² which aimed to ‘change the world with children.’ Changing the ‘world with children’ included obtaining children’s opinion on matters which affected them such as the right to education, right to be heard, HIV/AIDS, security and others (UNICEF, 2002: 72). In this process regional¹⁸³ and high level meetings were held in 2000-2001 in preparation for the UN Special Session for Children¹⁸⁴.

The issue of children’s participation taken as part of the process might have been to correct the non-participation of children in the 1990 Summit, but also to let children participate as an expression of their rights. For example the African Common Position acknowledged the fact that ‘children’s views have not been sought concerning the pressing social, economic and human rights issues that directly affect them’ and it submitted the need and demands of the African children for a special place in all policy-making structures and in the UN Special Session (UNICEF, 2000: 92). Children were part of the regional consultations (UNICEF, 2000: 92), however the regional consultation reports do not mention children as part of the delegates. Mention is of ‘youth groups’, ‘young activists’ and ‘young people’ in the African Forum, South Asia Meeting and the Arab Regional consultation respectively who might not necessarily be children. This again raises the same issue as to whether the

¹⁸² The ten points are 1. Leave no child out 2. Put children first 3. Care for Every child 4. Fight HIV/AIDS 5. Stop harming and exploiting children 6. Listen to children 7. Educate every child 8. Protect children from war 9. Protect the earth for children 9. Fight poverty 10. Invest in children (UNICEF, 2002: 44).

¹⁸³ The following is the outcome: The African Common Position adopted by the Pan African Forum for children May 2001, Beijing Declaration adopted by the East Asia Regional Meeting May 2001, The Berlin Commitment adopted by a meeting of European and Central Asia countries May 2001, The Kathmandu Understanding adopted by South Asian countries May 2001 The Kingston Consensus adopted by Ministers and Government representatives of the countries of the Americas, Panama Declaration by Heads of State and governments of Ibero-American countries, November 2000 and The Rabat Declaration adopted by Arab Regional Civil Society Forum on Children in February 2001 (UNICEF, 2002).

¹⁸⁴ This session was held in New York, 8th – 10th May, 2002 and attended by 7,000 people including Heads of States, Government leaders, NGOS, Multilateral agencies and children and young people [Save the Children, 2004].

implementation of the rights of the child considers the child, or the concerns of adults?

7.8.2. Save the Children Steps for Children Participation

The children's rights to participation although seen by some as controversial, have been given some significance by children taking part in organised forums related to children's issues. Children's actual participation in such forums might be one way in which they can exercise their rights to self expression, but this depends on how the whole process is undertaken. Is physical participation what the children want? Do they participate as children or as representing the adult organisers? This can be looked at as an implementation issue and the effort by the Save the Children to ensure children participate in the UN special session is taken as an example.

The Save the Children International, as a member of the GMC, organised participation of children in the Special Session on Children by the UNGA in 2002. The report of their experience in the initiative helps to illustrate some of the issues raised to the place of the actors in the implementation of children's rights.

Save the Children worked for two years from January 2000 to May 2002 to ensure children and young person should take part actively in the Special Session for children. This effort was aimed at creating a framework of 'good practice' in children's participation that would guide and support those who work with children (Save the Children, 2004: 5). This task involved investing substantial financial, human and organisational resources. Among the steps taken by Save the Children was to produce guidelines on the role of facilitators, child protection and the selection of under - 18 representatives at international meetings. They prepared

‘child friendly’ information to give to the children so as to enable them to understand technical and other information in the Special Session process. They also supported national and regional consultations with children on drafts of the plan of action to be agreed at the Special Session. Save the Children reports a significant ‘step change’ in work on children’s participation during the special session although it did not reach the high standards that were planned (Save the Children, 2004: 5).

The Save the Children report has 12 key lessons in the process of child participation in the Special Session which has been summarised by ‘a word of warning’ on the potential negative outcomes for children participating in high level meetings:

These may include the fact that in an adult-determined process, where the agenda is set and decisions are made by adults, children may find themselves with a voice in the meeting but no real place at the table. In many cases, children’s expectations of such meetings are often the messy reality of political negotiations and international diplomacy. (Save the children, 2004: 3)

From what is reported of the process it is evident that the question of children being able to have their voice heard and their rights understood, from their perspective, is not simple. In most cases it is the views or initiatives of adults which trigger the motion and they expect children to swing with the motion. With all good intentions the Save the Children report does not show involvement of children in the initial work of producing guidelines. The guidelines were produced presumably from what

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Save the Children ‘knows could work for children’¹⁸⁵. The lessons provided by Save the Children indicate an approach which did not begin with the children’s ideas and perspectives and most adults did not seem to be ready for the children’s participation (Save the Children, 2004: 4). 600 children and young people attended the UNGA Special Session 2002 and it is said that they impressed many adult delegates (Save the children, 2004: 4) and were fully involved as they addressed the UNGA, chaired panel discussions, lobbied the government delegates as well as participating in workshops. This seems very impressive, especially as the children had three days Children’s Forum before the Special Session and prepared a statement which enabled two child delegates to present it to the UNGA (Save the Children, 2004:4). However, the 12 key lessons raise major issues which implicate the process by which it was undertaken (top-down), the implementation and the understanding of those rights.

It was noted in the Save the Children report that there was a need for ‘conscious efforts to counteract the inevitable imbalance between powerful, experienced adults and much less powerful and less experienced children in the process and procedures designed by adults’ (Save the children (2004: 6). The statement assumes that the adults are more experienced than the children, which might be true of the technicalities in participating in the UN meetings but not necessarily of the children’s experiences. During the participation process the children felt that the adults did not create an ‘enabling environment’ in which their voice could be heard in genuine participation (Save the Children, 2004: 6). For translation to have effect one requirement is the need to tailor the forms and presentation to the structural

¹⁸⁵ In the Save the Children Home page they assert ‘We know what works for children’ given the 90 years experience in working with children.

conditions of the place where they are deployed (Merry, 2006: 220). It seems the power of adults diminished the children's ability to share their experiences, not allowing them to express their views in matters affecting them. The children were taking part in an 'adult world' in which they had to cope and not in a 'children's world' in which adults had to cope. This is an example of what happens in many initiatives which are for children, even at the local level, and therefore children seem to be disconnected from international structures. The issues are between the adults, and where children are involved it is usually without an enabling environment. The children are not given a chance to provide their understanding of what could make their lives better, although there are efforts by the NGOs at all levels to help them participate. There are however different approaches which bring different results on how the rights are understood or perceived.

The International NGOs (INGOs) work to implement the rights not through the international system only. They also have other activities, campaigns and programmes at national level¹⁸⁶ as well as at local levels. In most cases the programmes are through national and local governments or national and local NGOS¹⁸⁷.

¹⁸⁶ Some campaigns include 'Put yourself in my shoes,' a campaign to draw attention of the hardships faced by millions of children all over the world, (GMC Web page), 'Every one campaign' and 'Rewrite the Future' by The Save the Children, (2009).

¹⁸⁷ There are however some examples of IGOs programmes which have targeted children directly. Example is of the Save the Children initiative in Tanzania which supports children to form children Councils in local government processes(known as children Baraza) Couzens and Mtengeti(2011). The 'barazas' are an example of child -led organisations where children discuss issues that concern them and voice their concerns to local authorities. For more about the children barazas see Couzens and Mtengeti (2011).

7.9. The OCHH and the International Framework

The international governance on children's rights in its top down approach has tentacles at the local level, where the children experience life and are supposed to enjoy their rights. However the way that children understand their situation may not reflect that seemingly promulgated rights by the CRC, and calls for some re-thinking. This section focuses on the understanding of the OCHH.

7.9.1. The Concept of a Child and Child Protection

The anecdote presented at the beginning of the chapter highlights this point. The CRC and the ACRWC have provided the definition of a child who is the subject of the rights pronounced in the documents. The CRC definition under its Article 1 reads:

For the purpose of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

The ACRWC on the other hand defines a child in its Article 2 as follows:

For the purpose of this Charter, a child means every human being below the age of 18 years.

The Tanzania Law of the Child Act (TLCA) in Section 4(1) states that:

A person below the age of eighteen years shall be known as a child.

All the definitions above use the age of eighteen as a standard. Everyone who attains the age of eighteen is not a child. There is however a proviso under the CRC which give leeway in defining childhood. The ‘law applicable to a child’ in a given State can determine the age of majority differently from the age of eighteen. This proviso then seems to lead to the question of who exactly is a child. Van Bueren (1993: XVIII) has noted the need for a more coherent approach to the definition of a child, irrespective of the fact that a universal definition of childhood may not be preferred for lack of flexibility and for being simplistic. The stages taken to come to an agreement of Article one indicate it was a compromise since some countries wanted the age to be lowered and others wanted it to be raised (Van Bueren, 1998: 36). The major reason given by those who wanted to lower the age is the idea that in some countries the social context allows children to perform duties to help the survival of all members of the family (Van Bueren, 1998: 36).

The ACRWC and the Tanzania laws have given a definite definition, which means a child under these laws in Tanzania and the ACRWC is any one below the age of 18. What is the reality of the definitions in the experiences of children at the local level?

The child concept carries with it other basic rights which are the protection of the defined child. The age mark has been questioned by children who seem to be outside the protection mechanism, such as the OCHH who has to work, sometimes is in a hazardous situation. ‘I do not know if a child who does what I am doing is still a child? (Interview 23: Appendix 7.2. 9/11/ 2009).’ The child here does not see the connection of the definition and protection by way of age. For him what he does might be a determining factor unless the age mark can prove to protect him. ‘How can I be a child while I am doing what adults do?’ [Interview 80: Appendix 7.2.

10/12/2009]. ‘I am a child but a problem child; I am not like other children’ [Interview 27: Appendix 7.1. 19/01/2010]. The first statement is an inquiry and the second is an assertion while the third is a fact showing differences in childhood. Does this mean that the definitions need re- thinking? What made the ACRWC and the Tanzanian law depart from the CRC? And can we say the CRC has captured the issue by letting the State parties to decide?

7.9.2. Children and Protection from Work

The CRC makes provision to protect children from economic exploitation and from performing work which is likely to be hazardous, interfere with the child’s education, or harmful to the child’s health (Article 32). The ACRWC under its Article 15 entitled ‘Child Labour’ makes almost the same provision but it omits ‘interference with education.’ and under Article 31 ACRWC provides for the responsibility to a child for a duty to work for the cohesion of the family as we have earlier noted. The TLCA approaches the issue from three different angles discussed in chapter six. Children who are OCHH and children in their situation, work, not as a right or an obligation, but for survival. The children in this case have found work to be a necessity of life. Some of the work can be in the category of hazardous,¹⁸⁸ harmful,¹⁸⁹ and exploitative¹⁹⁰.

¹⁸⁸ The CRC and ACRWC do not define hazardous work, but refer member States to other International instruments. (Article 32 (2) CRC and ACRWC Article 15 (2) make direct reference to the relevant provisions of the International Labour Organisation instruments. Article 3(d) of the ILO Convention 182 on Worst Forms of Labour 1999 defines worst form of labour, among other things as ‘work which, by its nature or circumstances in which it is carried out is likely to harm the health, safety or morals of children’ and R. 190 of the ILO Worst form of child Labour Recommendation 1999 Article II (3) (a) –(e) defines Hazardous work as ‘work which exposes children to physical, psychological or sexual abuse, work underground under water, at dangerous heights, or in confined spaces, work with dangerous machines, equipment and tools or which involves the manual handling or transport of heavy loads, work in an unhealthy environment which may for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations, damaging to their health and work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to

‘If I do not work I will die and my siblings too, I do not choose work, education though important is relevant if I am alive’¹⁹¹. Another child had to leave school and work hard for a year to sustain his life and his siblings; he did not see the relevance of the protection against work and the provision to get education or the meaning of light work. For him Education would be meaningful only if he was alive. He was ready to be caned at school for truancy but continued to work. What would work for the children is to get permission from school to go to work. Otherwise they need provisions which would ensure they stay at school with no need to fend for themselves.

The issue of work was also looked at as a way for the children to make decisions about what they want for themselves. Children work not necessarily because they have no parents or guardians. Some children work because the parents do not provide them with what they ‘want’. They can get what they ‘need’ but not what they ‘want’. ‘Parents decide on what they see is important and buy for you, but if you work you decide to buy whatever you want for yourself (This is if your parent or guardian does not take away your proceeds) [FGD, appendix 7.3. 6/12/2009].

the premises of the employer. The texts can be found online URL, <http://www.ilo.org/ipecc/facts/ILOconventiononchildlabour/lang--en/> (accessed 16/02/2011). The TLCA defines Hazardous work to mean any work which places a child at risk of suffering physical or mental injury (Section 3).

¹⁸⁹ Harmful work is mentioned in the CRC Article 32 in relation to child’s health or physical, mental, spiritual, moral or social development. The ACRWC does not mention the word harmful but under its Article 15 prohibits work which interferes with the child’s physical, mental, spiritual, moral or social development, the same as is under the CRC.

¹⁹⁰ The CRC and ACRWC protect children from economic exploitation (Articles 32 and 15 respectively) but there is no definition of what constitutes economic exploitation. The TLCA under Article 78 (3) defines exploitative labour as including the labour which deprives the child of his health or development, exceeds six hours a day, inappropriate to his/her age or receives inadequate remuneration.

¹⁹¹ This child began to work when he was about nine and when he was 12, he lost both parents. He worked in all types of work such as carrying planks, transporting logs of timber, cutting logs and in masonry sites. (From interviews (2009) but also by observation during field work, October to December 2009 and in FGD November and December, 2009).

The international framework makes a blanket protection against child work categorised as child labour. The regional framework makes protection against child labour and gives duties to children and the national framework uses the international and the regional frameworks and adds the right to 'light work'. The children on their part challenge the whole protection mechanism, in relation to their need for survival and the rights to make decision.

7.9.3. Children's Views on Participation

Although the CRC does not mention participation rights, some of its Articles, as noted earlier, have been categorised as participation rights. The CRC provides the right of a child to form views and to express such views freely on matters affecting the child (Article 12). The ACRWC in its Article 7 provides the same right but adds the right for the child to disseminate his/her opinion, subject to the restrictions prescribed by law. The TLCA provides a child with the right of opinion and right to express such opinion and to be listened to as well as the right to participate in decisions which affect the child's well being (Section 11). Children acknowledge they have the capacity to form views and they can express such views. This contention is witnessed by the experiences of the OCHH who on a daily basis make important decisions about their lives, sometimes as young as nine years. What is at issue in this area is whether the relevant adults listen to the views so formed. As in the case of the children attending the UN Special Session mentioned above the children find their right to expression is not taken seriously by adults. A child who had been taking care of siblings for three years was given a chance to decide whether he accepted his siblings being taken away from the village ostensibly 'to get better chances in life'. He did not want the children to be taken away because he wanted

them to stay as a 'family'; he was concerned with the whole issue of their safety and identity. He suggested that they be supported where they were. The adults who heard him did not listen to him. They thought he was 'stupid;' he wanted to lose a life opportunity for the siblings, he was not serious. Some adults said he was not responsible although he has been taking responsibility for his siblings for three years.

The adults did not want to listen to the concerns raised as they thought they knew better. What they termed stupid, irresponsibility was their way of understanding the issue. They did not listen and did not make time to understand the child who was expressing a view on a matter which affected his life and the life of his siblings. Although the rights have been implemented in the community by providing the child with the opportunity to express his views, the community did not respect his rights to the extent of listening and taking his views seriously. If children were to re-write the CRC they would wish to stress the fact that it is the child's views which have to be considered seriously. The CRC provision that such views are to be given 'weight in accordance with the age and maturity of the child' provides adults with a means to overlook the views of the child. In the above scenario the OCHH had been making decisions for the children for three years after the death of both their parents but when it came to a decision to take them, which was thought to be for their interest, his views were not taken into account and the comments against his views depended on whether he was mature enough to weigh the interest of his siblings. In most cases adults assume they know better and they may use the question of age and maturity to decide that a child cannot exercise the right to be listened to seriously.

7.9.4. Children's Views on the Implementation of the Rights

In implementing the rights at local level, as has been noted above, the Tanzanian government has a plan of action for most vulnerable children (MVC) which is used by the local government and there are NGOs at that level that work for the children as explained in chapter five. The interventions are meant for the best interest of the child but from the experience of the OCHH some of what is taken to be the 'best interest of the child' might not be the child's perception of 'best interest'. This is seen in the different approaches taken for interventions.

(a) Children and Adult Guardians

It is an agreed assumption that children need to stay with adults to receive care and nurturance. According to the Customary Laws and the traditions in place in most of Tanzanian society as well as in the new TLCA which provides for the right of a child to grow up with parents or guardians [Section 7(1)], when children lose parents, arrangements are made for them to have adult guardians who stay and look after them. The CRC provides this under Article 20 and the ACRWC provides under Article 25 for children 'deprived of family environment' to be provided alternative care arrangements. In implementing this at family level relatives take orphaned children from their parents' homes to live with them and they can be divided among the relatives if they are more than one. NGOs/ FBO can make arrangements for the children to be taken to an orphanage so as to benefit from care and education. Experience from the OCHH shows that the children find being separated from siblings very hard and painful; they prefer to stay together if it is possible for those who take them and if not possible to let them stay in their parents' home and for the adult to visit them. Children from such circumstances had strong opinions. Some

children rejected outright being taken by adult relatives, others who were taken returned home after some time and those who were separated cried when they narrated what happened to them. A Village Chairman in one of the research areas explained how a girl whom they wanted to resettle after the deaths of her parents refused categorically and stayed alone although they thought it will be very dangerous for her to stay alone [Interview 64: Appendix 7.2 4/12/2009]. This also shows changes which might be an outcome of the application of children's rights. For adults in the village to allow a girl child to defy their orders and for them to accept her way is a new approach. This may be an outcome of the awareness of children's rights although there also may be other contributory factors. As one member of the MVCC commented 'what can you do now with all these claims for children's rights, you let them do what they want (MVCC, FGD, appendix 7.3. 4/12/2009).'

(b) Children's Aspirations

It has been easy for those intervening to decide that for children who have no parents and are in need the solution is to take them to technical schools so they can acquire employment. This has been challenged by children who thought they have a right to decide their own career path. One child was taken to a technical school but returned; another mentioned during discussions that she was not ready to take the stereo type jobs earmarked for orphaned children such as 'house girl' or tailoring. From observation and discussion with the children what seemed evident is the need to begin with the children, to listen to them and establish what they want. They know how they would wish their rights to be addressed.

7.10. Conclusion

The international framework for children's rights in its official form and in other forms has been mainly a matter of adults from the global terrain working for children at the local level. The efforts to translate the rights from the top have not addressed the issues of children such as those in this study. From the children's point of view, there is a contradiction arising from the way the rights have been conceptualised and the reality of their lives. While the CRC provides rights which children are supposed to enjoy, in reality some children do not enjoy such rights. There are also problems which are associated with implementation, at the level of making the rights understood and applied. Providing the children with the rights to choose and then leaving them to suffer is a contradiction. These situations need to be resolved. The adults try to make children participate in exercising those rights and make interventions which they (adults) think are in the best interest of the children. Children at the local level have experiences which provide them with a different understanding of what they want and how they want it. It is then necessary to listen to children more and to think of how to translate and hence re-write the rights from the children's perspectives. The perspectives of the children can be considered within the ethic of care which is relational and allows reflection on the people in such relationships and how to adjust or keep away from injustices. The need to revise the CRC can thus be linked with the care process.

CHAPTER EIGHT

Conclusion: Re-thinking Children's Rights from Children's Perspectives

8.1. Introduction

This thesis has dealt with issues related to the protection of vulnerable children who suffer as a result of undertaking double roles as children and as adults. In this case the OCHH are seen as the most vulnerable among the vulnerable in society. The suffering experienced by the OCHH is taken to be an injustice against the children who are within a society with a multitude of governance institutions. Although it has been noted that vulnerability is conceptualised to depict weak, defenceless and voiceless people (Merry, 2007: 195) this thesis has challenged such a depiction by focusing on the perspectives of the children concerned and how they relate to and understand the governance institutions which surround their every day lives. The emphasis has been on the children's perspective in relation to all issues of law and policy. The ethic of care informed my methodological approach in the use of the four aspects of care identified by Tronto (1993) (caring about, care taking, care giving and care receiving) with their associated values discussed in chapter three of the thesis. Children are taken to be active social actors and 'not just passive subjects of structures and processes' (James and Prout, 1997: 8). The key questions raised by the OCHH provide the focus for this concluding chapter. These questions raise two wider analytical issues. The first is a regulatory dilemma of how to deal with the children who, on the one hand, are vulnerable and, on the other hand, are exercising independence and wish to retain such independence. The second is the manner in which plurality of governance institutions still fails to provide protection for the

OCHH. In understanding the perspectives of the child the thesis reveals three main areas of concern affecting the OCHH as children in society: conceptualisation of the situation of OCHH, application of laws and rights which the OCHH have as children and practicability of various legal and policy initiatives supposed to protect the OCHH. Recognition of the ethic of care can be used to re-think the justice system and to re-imagine the intergration of children's perspectives in the governance institutions at all levels.

This chapter is structured as follows. After this introduction, it reflects upon the findings related to the understanding of children within the context of children's rights framework and the challenge posed in regard to the conceptualisation of the rights in relation to the situation of the OCHH. It moves on to address issues relating to the implementation of the rights within the international children's rights framework and the difficulties revealed by this study in relation to the enjoyment of such rights by the OCHH. In particular it reflects on the key research finding that while there is a maze of governance institutions in place, none seem to be responsible for taking care of OCHH and these institutions lack systematic coordination. It is argued that network governance discussed in chapter three if well coordinated, can work in protecting the OCHH and other children and that the children need to be included in the networks and their voices be heard. The following section assesses the methodological and theoretical frameworks used in the study and points to new areas for research on this subject. The final section draws together the overall conclusions from this study and makes recommendations.

8.2. The Children's Rights Framework: Re- think/ Re-construct?

In a book partly entitled *Re-imagining Political Space in a Globalising World*, Nancy Fraser¹⁹² has put forward in her arguments and conclusions a multitude of 're's such as 're- map', 're-conceive,' 're-imagine', 're-think', 're-frame', 're-consider' and 're-read,' to tackle social justice. My thesis has adopted a children's perspective to understand the various governance institutions that are designed to protect children and their rights including rights to care and justice. From this perspective, the "res" seem to be one way of handling the different questions raised.

The first major finding is that OCHH is a reality and not a myth. These children exist in Tanzanian society. Although they are children, the OCHH must adopt roles which are traditionally for adults. Their situation has put them outside the realm of the child as recognised by the international child rights framework as well as the regional and national legal frameworks. While the legal frameworks define a child according to age (below the age of 18 CRC article 1) and provides rights for the defined child the OCHH does not fit within such a definition as they have questioned whether they can be said to be children since they do not enjoy the rights earmarked for children. The OCHH are not under the guardianship of adults in a family environment as is provided for by the rights framework nor are they ensured their rights to protection or provision.

Chapter two dealt extensively with the various ways childhood is constructed, chapter five and six portrayed the way laws are formulated and implemented and chapter four shed a light in the ways adults perceive children. By adopting a child

¹⁹² Fraser, N. (2008) *Scales of Justice: Reimagining Political Space in a Globalising World*, Cambridge: Polity Press.

focused approach, by listening to the OCHH, the study reveals the limitations of a purely 'top down' analysis of these developments and the need to re-think, re-construct, re-consider and re-imagine the whole framework in light of the children's perspectives.

Why re-think? The OCHH are a new category of children not defined by law nor are they a recognised category in relation to the customs and traditions of the people of Tanzania, as observed in the research areas of Karagwe and Makete. In theory children are supposed to be under the guardianship of an adult but in practice the OCHH are not. The different interventions in place have not taken into consideration the children's views or perceptions. The idea of protecting children and protecting their rights has been argued and defended by adults culminating in the attempt by the UN Convention on the Rights of the Child (CRC), 1989 to universalise childhood governance seeking an 'ideal' childhood which is said to be 'good'. The OCHH simply do not 'fit' in the current framework.

Why re-construct? First, although the OCHH are children like any other children the roles they play and the situation facing them is not the same as that of a child as recognised in the CRC, the ACRWC or the Tanzanian laws. The CRC as noted above defines a child by providing an age limit with a proviso which leaves it to the State Parties to decide who a child is. The ACRWC and the TLCA define a child by a firm age while the customary laws of the people have a different way in which a child is defined related to what is perceived as maturity and ability to perform certain activities. Secondly, the rights provided by the CRC are not enjoyed by the OCHH. Most of the rights as envisaged in the CRC are directed to the 'ideal' child of the CRC and not the OCHH. Care as a process has been considered as a means by which

the rights can be re-thought. As argued by Held (2006) if care can be promoted based on a shared responsibility it can be more viable in addressing issues which can not be addressed by human rights which entail more sound detection. A model from this contention is proposed later in the conclusions.

The challenges of translating international rights into local settings has been addressed by scholars most notably perhaps by Merry (2006), who argues for the ‘vernacularisation’ of the rights in order to make them applicable at the local setting. However the present study reveals that the problems created by the situation of the OCHH goes beyond ‘vernacularisation’ of rights because the rights are limited by the conceptualisation of the international children’s rights law as echoed by the Regional and National children’s rights legal orders. Legally there is no concept of OCHH with the consequence that there is no provision for responsibility towards such a child or rights which fits the reality of the OCHH’s experience. The position of an OCHH raises a fundamental conceptual question. Can s/he be said to be a child? Is s/he an adult? In this case the CRC and the ACRWC and the national law on the child have to re- think their definition of a child and to re-consider the rights provided in the light of the OCHH reality. Technically, the OCHH are children but the circumstances in which they practise their childhood are not as envisaged by the law or the customs, whether Western, Global or African. The OCHH needs the child’s rights framework to re-evaluate the working of its norms to either let the child be a child by providing what a child is expected to be provided with, and/ or to treat the ‘child’ as if s/he is an ‘adult’. At practical level it could also be argued that if the

current rights frameworks were implemented there could be a chance for the OCHH to expect protection by having a responsible adult or the state taking care.

(Re)- imagine? The OCHH have been in households for several years trying to manage their lives and to portray a ‘successful’ child with agency. The research findings reveal that the children have been forced into the situation they are in. There is no system which has prepared the children (OCHH) to enter the adult undertakings of heading households as societal customs require because legally they are not expected to perform such duties. From their perspectives they are struggling and it is not easy, but they have found ways to manage and would wish to maintain such a control and autonomy. Should children be given such control and autonomy? Under what circumstances should control and autonomy happen? Can we imagine a governance of children which would entail legal recognition of the action the children are taking for their households? The children have challenged the idea that they are vulnerable and that they must be under the care of adults in order to survive. The research reveals that children have ideas of coming together as groups to share issues and to work out solutions. Such initiatives are necessary and need support in terms of resources and mentoring. However the challenge is to imagine the means under which the capacity portrayed by the children can be tapped to enhance children’s rights to autonomy/empowerment without abandoning their need for protection. There is therefore a need to re-imagine children’s empowerment rights such as the right to association, expression and organisation.

Some of the OCHH would wish to have adults taking care of them but they have recorded mistreatment, abuse and property grabbing from the adults who should be caring for them, which has made them shy away from accepting adults’ support. The

current circumstance calls for a system of support for children who find themselves in this situation where the parents are dead, and where society is not in a position to take over the parents' role. The State has an obligation to ensure that children who head households and children in their households obtain the required support to enable them to continue with their lives exercising autonomy but without experiencing their present suffering.

8.3. Implementing Children's Rights: the Challenge of the Social Reality of the Child

While there is therefore a need to rethink conceptual understandings of child rights to encompass OCHH, the second issue raised in the study is the way the current international rights framework is being implemented. At international level, although the CRC is said to provide empowerment for children, its implementation mechanism falls short of such empowerment as it has not provided a mechanism in which a child can communicate directly to the CRC committee when the rights of such a child are infringed. The mechanism for its implementation is generally weak as it is dependent of the State Parties' will to act.

The CRC could take the example of the ACRWC which allows individual communications from children or their representatives. This has proved to work as noted in the recent decision by the African Committee of Experts in the Rights and Welfare of the Child (ACERWC), on the communication by the Nubian children in Kenya against the government of Kenya. The children in this case were empowered to face the committee and to challenge the situation infringing their right to

citizenship. The CRC has the potential to become a child empowering instrument if it follows this example.

The second level of implementation is by State Parties after ratification. At national level although the Tanzanian government has ratified the CRC and the ACRWC with no reservations, it only enacted a law to enforce the CRC eighteen years after ratification (1991-2009). The TLCA (2009) seems to have taken the CRC principles without consideration of the local situation which calls to question the practicability of such principles. This does not portray a serious commitment in the implementation of a ratified instrument. At the time of the study the new law was yet to be operational; however there is no evidence of a systemic implementation in protecting the rights of the children. The Programmes initiated as a response to the UNGA special session for children (2002) try to support the children as a category of Most Vulnerable Children (MVC) which indicates the way the State is handling the issue. The programme of the MVC portrays how the State has abdicated its role handling it over to the family and/or the NGOS. The family has been weakened by several factors including poverty, HIV/AIDS and other social-economic issues. The NGOS are sporadic in their interventions and therefore most children have not been supported, or are only supported in an insufficient and irregular manner.

There have been interventions in place to support some of the children; however the children have noted the insensitivity in what exactly happens in 'care receiving.' At the community level some initiatives have been taken which the adults think are appropriate, without considering the wishes of the children or even consulting the children. Where the children are consulted it is usually mere tokenism, as what they suggest is never discussed, listened to or followed up. Lack of coordination, lack of

‘political/social will’, corruption and poverty have been noted earlier in this thesis as issues which hinder even the small earmarked interventions from reaching the children. The only system envisaged to work is through responsible governance institutions as part of networks and they work best when they are coordinated as is portayed by the diagram in section 8.5 below.

8.4. Methodological and Theoretical Implications

The thesis adopted a methodology which was designed to capture the perspectives of children and their understandings of the institutions in place. It was important to begin with the OCHH in order to understand what they found relevant to them and establish their understanding of the assistance which theoretically was supposed to be in place for them. Thus, although the children’s voice has been given precedence, their experiences were triangulated by interviews with the adults who surround them within the various governance institutions and who provided their understanding of the issue. The participants at the wider policy level shed light on how at that level the children are perceived. This element of the research was necessary since from the eyes of the OCHH that level was far away and would not otherwise have been captured. Although a number of participants took part in the study the analysis has focussed mainly on the perspectives of the eight OCHH. The eight OCHH were found in different settings and although these had been identified by NGOS and the village authority there are many who are unknown to the NGOS or the Village authorities. It is important to note that the eight OCHH are a small sample undertaken as part of the particular qualitative methodology adopted for this research. My fieldwork and other sources revealed that there are thousands of children in similar situation in the districts of this study, in Tanzania generally and in other parts of

Africa. This study could not reach OCHH who were unknown to or were not receiving assistance from the NGOS or the government authorities. This necessarily limits the scope of the conclusions which can be drawn but points to the importance of undertaking a study of OCHH who have not encountered the institutions such as the OCHH in Arusha, Dar-es-salaam and Karagwe noted in chapter one. Such a study would provide additional insights into issue of governance of children.

The thesis has revealed the limitations of children's rights theories to protect the children and to protect their rights. It has demonstrated the value of the ethical care thinking which is concerned more with 'relationships', 'networking' and 'context.' In this case the OCHH's protection and protection of their rights has to be defined from the context in which they are positioned and responsibility for them must take this into account, rather than approach it in an abstract manner. Childhood governance has been analysed from a legal pluralist perspective. The OCHH are within multiple governance institutions, which is both an advantage and a disadvantage. The OCHH on the one hand are left as 'nobody's child' or on the other hand as 'no child.' None of the governance institutions takes contextual responsibility for the OCHH and the OCHH perform roles which are not for children. On the other hand the various institutions provide an opportunity for the OCHH to have different recourses where necessary. An OCHH may decide to stay in the household of the late parents because s/he is aware of support which s/he can receive from the church or the school or NGOs. The support however is not in a rights framework in that the children are not in a position to make claims; these are provided as charity. The thesis is arguing for the balancing of the child's rights to autonomy and their rights to protection by the use of the ideas of the ethic of care which sees each person as responsible.

8.5. Recommendations and Conclusions

The key aim of this thesis was to understand the social and legal context of OCHH from their perspective and use this understanding to tackle their suffering. I asked the OCHH what they would want to see in relation to their situation and who should do what? The answers to these questions provide the basis for the recommendations to the various institutions which can be summed up in the following manner.

At implementation level the mechanism in place for the enforcement of the children's rights need to be strengthened by adopting individual communication procedure which will allow children or their representatives to make claims to the CRC committee as is implemented by the ACRWC as noted in section 8.3 of this thesis.

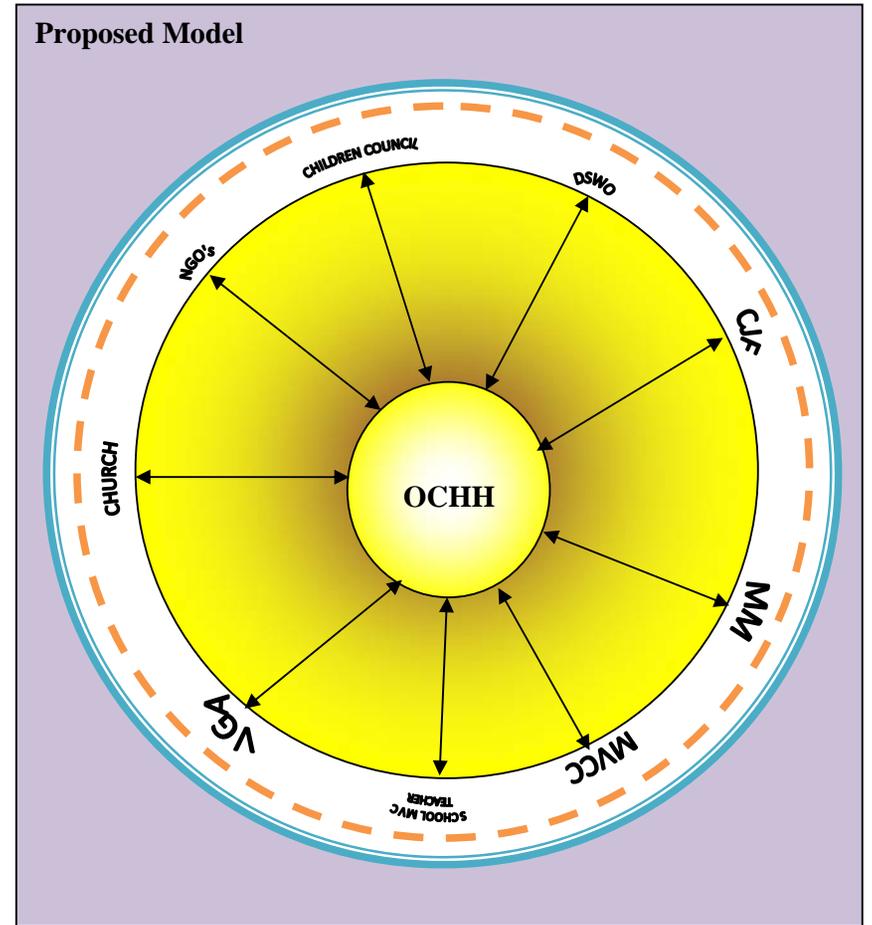
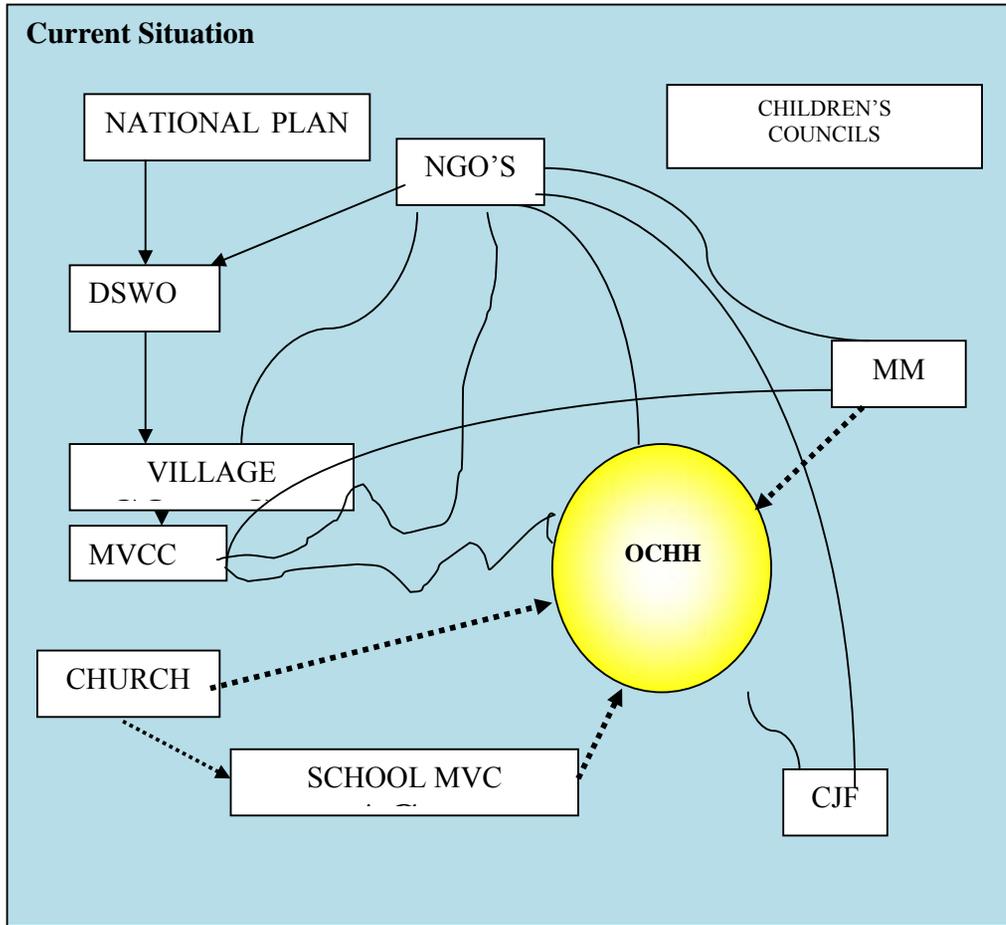
At practical/local level the plans and processes invoked by any institution for the benefit of the OCHH have to be sensitive to the wishes of the OCHH. The OCHH are human beings with feelings and the act of separating them after the death of parents increase grief and affect them psychologically. The OCHH as any other children need material support as well as psychosocial support. At policy level initiatives should not be to target an individual child but to underscore the contextual arrangement at community level and the community be assisted in how it handles the issue of the children who are most vulnerable.

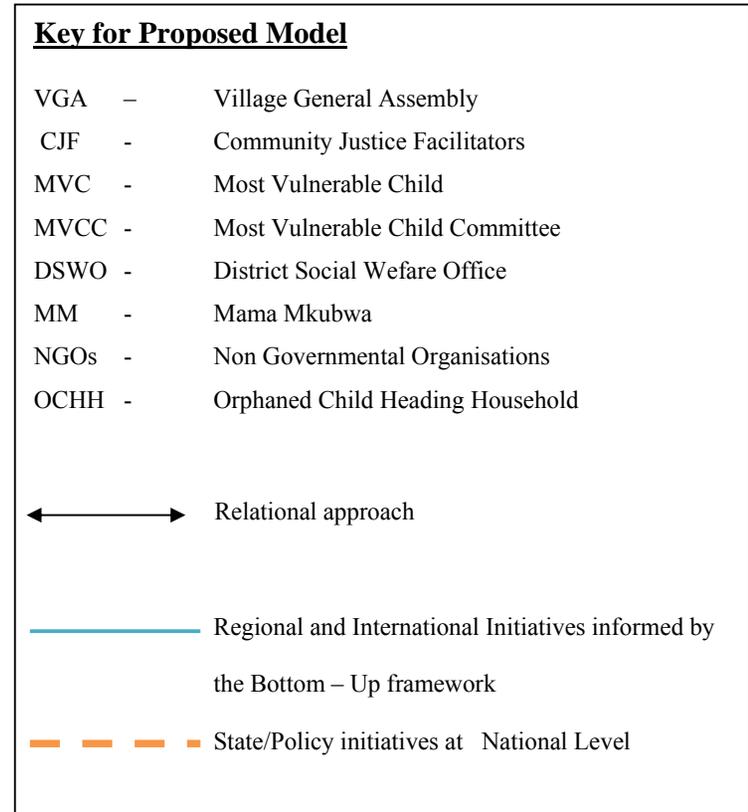
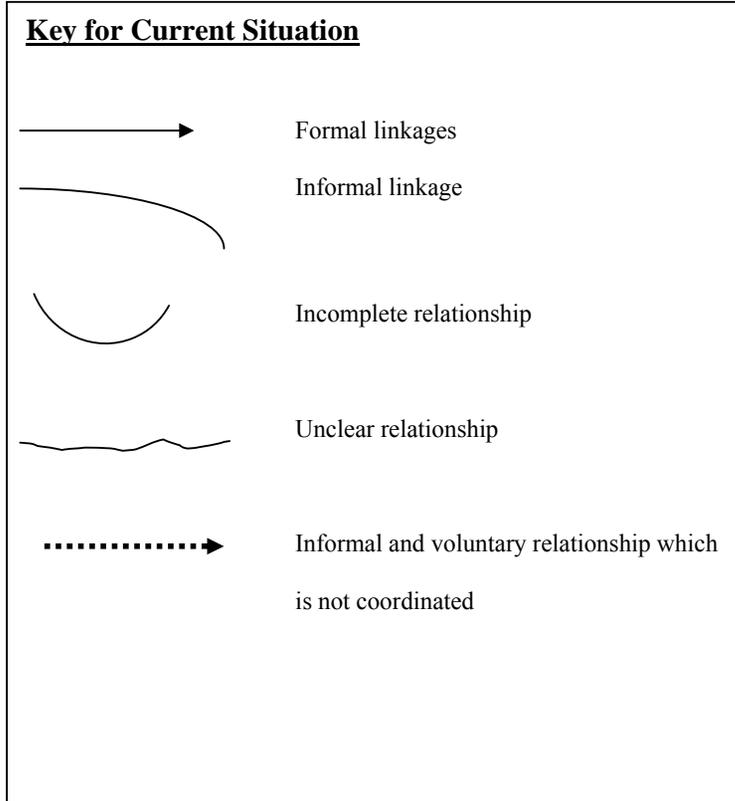
At conceptual level there is a need to take into account the situation facing the OCHH and children in their situation so as to re-think the children's rights framework in the light of re-drafting the rights afresh. This re- think needs to be informed by understandings drawn from the debates relating to the ethic of care and

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to relationship between justice and care approaches. What is envisioned can be summed by the following model which is differentiated from the current situation as depicted in figure 4 below and explanation which follows.

Figure 4 Networking Model





The Current Situation

The current situation begins with the international framework of rights and is picked by the regional framework which is not so pronounced although it has strong provisions and implementation mechanism as discussed in chapter seven but not depicted on the diagram (Figure 4). At national level there is the Law of the Child which is new and a plan of action for the protection of MVC (as shown on figure 4, Current Situation), which has been sent down to the village level as shown by the arrows from top -down. At the village there are several actors, each trying to support the child from what it finds fiscible and from its own capacity and not involving the child but taking for granted what the child wants, also trying to use the rights framework's definition of the child and rights of the child. The top down plan does not capture the webs of relationships such as MM, neighbors, friends of the OCHH, MVC teacher and others, although the different institutions try to connect with the actors within the plan or the OCHH. What is proposed therefore, is for the current situation to be understood in a more relational way and the State to take responsibility so as to make available an apt framework of caring relationships. In this way the OCHH or any other child in need will be in a position to understand the faremwork and to be understood in the web of relationships while utilising the framework.

Proposed Model

The proposed model invites the perspective of the child at the centre to be the focus of all the various institutions around. Since each institution will have the knowledge of the child from its angle, the bigger circle depicts networking and sharing of what

is known from the child as seen in the darker colour of the circle near the OCHH. The arrows in the diagram have two sides which mean each institution provides what has been negotiated by the OCHH in a relational approach. Although the lines are straight from the child towards an institution and vice versa, the outer circle depicts working together for the realisation of the child's needs. The model also depicts a wheel with an outer and inner ring. The ring will only revolve if all the parts are in good shape. In case one of the parts of the ring is not working it will result into the whole ring not moving. In practice this means each part has a role to ensure the ring as a network functions. For example the OCHH has to be empowered to be able to provide her/his perception of what is provided by each institution. This can be done by an institution which has such a capacity. For example the Community Justice Facilitators (CJF) or NGOS can take such initiatives. The Village General Assembly (VGA) can have a role of receiving policy initiatives observed within the network and send them to the district level and follow up feedback. All the institutions would need training on how to work with the OCHH and the roles they have in the network. Institutions which lack motivation for lack of resources such as the MM can be assisted through initiatives within the network and by advocating policy initiatives from the village level to the national level and beyond.

From the research experience this model will work if there is a political will and resource mobilisation at all levels. Currently each institution in place has its own resources and uses them independent of the others and in some cases there has been duplication of efforts but not consistent to the needs of the OCHH. The initiatives which have been put in place in a small way need to be enhanced and strengthened. The OCHH who have encountered the MVCC see the importance of this initiative. The MM is another institution which if strengthened can cater for the need of the

OCHH and other vulnerable children in a village. The Children Justice Facilitators (CJF) initiated in some of the Wards has the potential to take up a role to support the OCHH in case of legal issues arising from property grabbing, abuse, or fabrication of criminal cases against the OCHH by unscrupulous relatives or neighbours. The web of networking can be made into a form of ‘ombudsbody’ for children at different levels. Representatives from MM, MVCC, CJF and child representatives should form the body with authority to oversee the way children fare in a village. This should include consideration on how they should be supported after death of parents, when they have any legal issues and where they have difficulties with guardians or in their households. This body at village level can be coordinated at district level by the department of social welfare with a body at district level which should also include representatives from the institutions at that level such as NGOs, the faith-based organisations, courts, police, prisons and children. At the national level through the Ministry of Community Development, Gender and Children (MCDGC), Ministry of Health and Social Welfare (MHSW), the Commission for Human Rights and Good Governance, national NGOs, a National children’s ‘Ombudsbody’ be coordinated to structure what is happening at local level and work out policy and resource issues. If the Tanzania government can work out this body from the villages to the national it can be a pioneer in Africa for such initiatives towards vulnerable children and all the children in the country and in the continent where the problem is so pronounced.

The children have to have a body of their own which they can decide to invite mentors or supporters. The initiative in place in the form of children ‘*Baraza*’ has to be strengthened by encouraging children from the village or hamlet levels to form such ‘*Baraza*’s. These have to be initiatives by the children not forced on them. Examples of children groups seen in Muleba and in Karagwe can be replicated in

other areas and not for children who go to school only but to all the children who wish to take part.

In Conclusion the thesis underscores the dilemma, in which the OCHH, as children, are supposed to get protection from the laws in place and the institutions available, but they also are in need of autonomy and to make decisions about what they feel is good for them. In resolving this dilemma I pick up the challenge posed by the OCHH that the rights framework has to start with the OCHH's social reality. At a practical level it is vital to listen to the OCHH. Without leaving the OCHH to suffer, the rights system has to be a continuum balancing the rights and the protection of the OCHH. The ethic of care is taken to be the best way of implementing the children's perspectives and taking up the social responsibility of the different governance institutions at all levels from the local, national and international. Although the child lacks the traditional primary carers; the parents, she/he can be supported by the alternatives which are in place. Policy makers need to appreciate and use the bottom up approach so as to maximise the effectiveness of caring relationships by taking account of the children's understanding of what they would need. The OCHH will be treated with dignity if they are to be responsible members of the ethic of care networks; in particular taking account of and valuing the relationship between cared for (OCHH/MVC) and care giver (governance institutions) through an attentiveness and by linking the elements of care to the governance institutions around the child. In the process of re-imagining and re-thinking children's rights the governance institutions at all levels need to underscore the significance of the ethic of care in engaging children's perspectives without providing them with absolute power or being paternalistic.

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List of Legislation

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Appendices

Appendix: 1

FORM 1 A: Focus Group Discussion (FGD) Guide

In the focus group discussion the OCHH will be asked to begin with introduction in which they choose a secret name to be used in the study report and this name will be shared with the Researcher only after which they introduce their real name and the place they come from.

The discussion will begin by explanation of the research objectives and the objective of the FGD. The children will be asked for their consent to participate in the FGD. This will be to make sure they want to proceed as they will have made consent as participants in the research generally. The researcher will ask the children for their opinion on how to proceed.

The children will be divided into groups. Each group will be given an assignment. One group will be asked to prepare a role play which will picture an OCHH and the roles s/he perform in a day from morning to evening. The group will also be asked to compose a song with a theme of the role play.

The other group will be asked to role play any struggles of the OCHH which s/he faces in most of the time and how s/he sorts them out. They also will have to draw a line of people they consult in case they have any problems or issues they need assistance. After each group has presented a discussion will follow the main issues which have been observed.

What is the difference of the roles the OCHH is performing different from other children in the village?

What is their view of what they are doing and their situation?

What is their understanding of children's rights? Are they aware of children's rights?

What roles are normally performed by children in the village? What roles are for adults?

When a child performs adult roles does s/he remain a child or s/he acquires the status of an adult?

What can be done to support OCHH? Who is supposed to be responsible for the OCHH?

Can the children opt to stay in foster homes if asked to? Why? What about an orphanage option?

The children will also be asked to show in order of priority where they can go if they have a serious problem (Depending on what had come out of the role play they will be asked e.g. if someone bully them or their siblings, if someone have taken their property, if they are sick and do not have medicine or money to buy medicine, if they have no school uniform, if they need a registration certificate for registering a child in school.

In Makete the role of Mama Mkubwa will be discussed and the children will be asked to share how they were chosen and how they support them.

Appendix: 2

FORM I B: Guide to Drawing Pictures /Photo Taking

(i) Drawing

A child will be asked to draw a picture of anything he/she wants in her surroundings.

After the picture has been drawn a discussion will be raised on why he/she has drawn that picture and what it means. From the picture more questions will be raised in trying to understand the situation of the OCHH.

(ii). Photo graphing

A child will be asked to take a photo or video using a digital camera or a cam coda of anything he/she wants in the household or otherwise. The picture/photo will then be discussed. The issues to be raised are related to why s/he has chosen taken that photo and how it relates to his/her life as an OCHH. Many more questions will be raised from what the photo as it relates to the situation.

Appendix: 3

FORM 1 C: Observation Guide

In order to be able to observe the OCHH and their surrounding one way will be to visit them in their homes and stay there for some time. Given the nature of the situation of the children the observation will take place during activities which are happening by taking part to such activities. Activities can be cooking, washing clothes or household utensils, weeding, fetching water or firewood. If the children are going to do some work or any other activities walking with them in places they go to do work or play or in other gathering such as in churches or community gatherings etc. What will be observed is how the OCHH relate to each other in the household and in the village or school with other children and adults and how the others relate to them. This will also be a way of familiarizing with the children and the situation they are in.

Observation will also be on how the village works generally and the other institutions in place. This will entail visiting and taking part as observer in meetings, social activities and visits in various places in the villages.

During the observation everything which happens will be noted and written afterwards as filed notes.

Appendix: 4

FORM 1 F: Semi -Structured Interview Guide

The OCHH will be asked to narrate their stories prior to the death of parents up to the situation they are in currently. However the following information will be expected. When they finish uninterrupted narrations some questions will be asked to ensure all information is gathered .This interview will be tape recorded and the researcher will also be taking notes.

1. Basic information

- Location- Hamlet, Village, ward, District
- Age, Gender
- Whether registered or not
- Level of Education
- Number of children /people under care

2. Circumstances prior to the death of Parents

- Where they lived with parents
- What was the situation like when with parents
- What caused the death of parents
- If illness, do they know what type of illness and how did they know about it.
- Which school did they go then?

3. Circumstances immediately following the death of parents

- What happened after the death of parents?
- Who got in charge of the burial issues
- Was there a will left by the parents
- What property did the parents leave
- Was there any distribution of the property? If so who did the distribution?
- What plans were made for the children? And what happened? Were they consulted?

4. Current situation

- What changed after the death of parents in where they lived and where they live now?
- What roles does the OCHH play for the household
- If of school age going how does s/he find combining the roles and school
- What happens if s/he or others in the household gets sick?
- Where do they get money and other resources which they need
- What are the main challenges they face
- What are the things they are happy about and they enjoy doing?
- What do they miss most for not having an adult in the house?
- Have they encountered any problem which they had to report or being reported to the police or court? What happened?

5. Social and other support

- When they have a problem who do they face?
- Where do they seek assistance when there are issues to resolve

- Who visits them and how often? If they get visitors how do they feel?
- Do they play? At what time where and by whom?
- Are they aware of any institutional support for children in their status?(By the Village , NGOS, Church religious institutions ?) and if they have accessed such support.

6. OTHERS

- If they were asked to suggest other ways of living what could be their suggestions and why/
- Do they see any different between them as OCHH and other children in their locality or school? What is the main difference?
- Are there any roles which they perform which are not supposed to be performed by a child?
- What other information do they want to share?

Appendix: 5

FORM 1 G: Adult Participant Interview Guide

The adult participants in the study are mainly those who are connected to the OCHH or who are expected to be connected to them and they will include people in the different institutions at village, district and national level. The main information sought from them is their understanding of the issue and any way in which they deal with the OCHH.

The participant will be asked to provide explanation and after which more clarification questions can be asked.

1. What is your understanding of the issue of OCHH?
2. Is this issue a problem which you are dealing with?
3. What is your opinion as to the magnitude of the Problem?
4. What is the difference between the OCHH and other children?
5. What interventions are in place specifically for the OCHH
6. What are the problems which need to be handled to support the OCHH?
Who is supposed to handle such problems?
7. Can you explain your role in dealing with the OCHH/MVC in the community? What are the challenges if any?
8. For members of Different committees and MM Can you explain how you are appointed and the length of tenure if any

Appendix 6

Profiles of the Eight OCHH in Makete and Karagwe

Introduction

I hereby provide profiles of the eight OCHH participants of my study, to introduce them as they shared their life stories. I regard these children as my heroes/heroines because of the way they undertake their roles. The fact that they could share their stories not in agony but with pride is very important. Each story is unique from each unique child. What combines the whole as one part of a story I am telling is the fact that these are children who are challenging the traditional institutions for the protection of children. There is a need to take the voices of these children seriously. The order in which the profiles are provided is by age from the youngest at the time of the study to the oldest. I am referring to all of them as OCHH although I understand there are those who are above the age of the child according to the law and also some of them had mentioned that they are not children. I have used pseudonyms which have specific meaning from my language related to the way I could summarise the situation of each child.

(1). Kechee

Kechee is a double orphaned child. At the time of the study he was fourteen years old and was in standard six. I was introduced to Kechee by the MVC teacher in the school. He had been heading the household for two years when I met him. Kechee looks very confident and determined. Kechee looks younger than his age although

when he talks he sounds older, not from his voice but from his mannerisms and ‘wisdom.’

His father died when he was too young to remember. He was raised by his mother until her death when he was twelve. She was Mkinga by tribe, as was his father and Kechee is also of the same tribe which is patrilineal. They lived in a village in Makete where his father was working in the timber business and his mother in growing food crops, such as maize, wheat and potatoes. She also had planted fruits such as plums and apples. Kechee does not know the cause of his mother’s death but he knows that she was sick for more than a year and was hospitalised several times before her death.

Kechee has relatives: his elder brother, his two elder sisters; one is married and another in a boarding school. He has a maternal uncle. There are other relatives who form their clan but he does not regard them as near relatives. The members of the clan met after the death of Kechee’s mother, and made arrangements for their upkeep. The clan wanted to know where he and his unmarried elder sister wanted to stay after the death of their mother. They both chose to remain in their mother’s house. Some few months later his elder sister who had finished primary school got a chance to go to a technical school away from home. Kechee was then asked to live with his elder brother, which he did for a very short time before deciding to go back to their home. He explained that he did not find it convenient as there were issues related to food and work. He did not get enough food and he worked for long hours, which was not appreciated. He however retains a relationship with his brother who visits him since they live very near each other, about two hundred metres apart. He also receives support from his married sister who brings him food occasionally.

When the plots of land have a lot of weeds she helps him to weed. The other sister also provides help when she is on vacation as she does all the work on the plots of land. Around their three roomed house there is land on which he has grown vegetables and potatoes. As head of the household he normally ensures the plots of land are maintained and the surroundings of the house are clean.

Kechee keeps guinea pigs and chickens. At the time of the study he had five guinea pigs and four chickens. He however explained that he has sold other guinea pigs and has bought himself a radio.

Outside family circles he receives support from friends and neighbours. One neighbour specifically has been mentioned as providing him with food when he has no food at all and his relatives have provided none. His friends are helpful. When he has missed school they provide him with their exercise books to read what was taught. They also encourage him when he is not feeling well after missing school. The MM visits him from time to time to see if he has any problem but she has not assisted him materially.

In school the MVC teacher is very supportive and understanding. She has registered him in the MVC register and this has helped him to receive a sweater from an NGO and school uniform and several exercise books from the Roman Catholic Church. He also has been provided with a medical insurance card by an NGO he named TAHEA. He used the insurance card twice when he had an accident and broke his leg.

Kechee finds it very hard to live alone and head the household but he said it was the only option he had. He however knows his sister (who is two years older than him) will soon be home so this seems to be a temporary situation. He also is of the view

that by staying alone it will be easy to be noticed by those who help orphaned children. He is hoping to be assisted with iron sheets which he needs to repair the house which is leaking.

The major challenges he faces are: Loneliness, chronic food shortage, being overwhelmed by work in the plots of lands, especially when it is time to weed, missing school when he has to work to get money. He also is troubled with the many contributions needed in school such as the contribution to buy a computer and examination contributions. Each time another child is bereaved they have to contribute money for condolences. His elder brother sells the timber trees without consulting him and does not give him any proceeds from the sales. He has tried to ask him but when he asks he is given a token amount to silence him.

Kechee is of the view that it is not appropriate for children like him to look after themselves but in the circumstances he has no choice. What is needed is more support and sensitivity towards needs and schooling. Although he is a child Kechee is not sure if his status is that of a child or an adult due to the activities he is performing.

(2). Kashighwa

Kashighwa was fifteen years old at the time of the study. He looks younger but he is very confident and positive, predicting changes for the better in the near future. He was introduced to me by a member of the Village's MVCC. He is a paternal orphan and Mnyambo of Karagwe. His father was Mnyambo, as is his mother. His father died when he was too young to remember. His mother remarried and she moved to another village. He and his immediate older brother went with their mother to live

with the step father who had other four older children. He began primary school when he was living with the step father, who died when he was in standard three. They had to go back to the land of his father where his eldest brother was living. The brother and his wife are said to have mistreated his mother as well as Kashighwa and the other brother. Kashighwa was taken by his sister who lives in Bukoba town. He experienced mistreatment, reproach and use of abusive language. He decided to return to Karagwe where he found his mother had remarried and had moved to another village. At the age of about nine years old he and his eleven years old brother decided to build a small hut on their inherited land and moved in.

Life was very difficult so his brother could not take it; he decided to go to a big town to search for work. Kashighwa was left alone in this hut which has a very small door with no windows and the door is made of an old iron sheet. His hut is roofed with grass and in need of repair as it leaks during the rains.

He was not ready to go with his mother nor to go to town with his brother or to live with the older brother. 'I'd rather sleep on an empty stomach than facing harassment from a step father' he said. At one point the house fell so he had no choice but to go and live with a neighbour. After the rainy season he got some assistance from the neighbour to rebuild his small hut and moved in for the second time. He has not seen his mother for a long time.

Kashighwa could not continue with school because he had neither money nor capacity to make the required transfer from one school to the other. He had no school uniform, nor money to pay for other school needs. He has put up a small farm for his food but it is still in the making. He is hopeful that when the banana plants have

grown he will not be in need of food. Security wise he has a problem as people broke into his hut and stole his only spare shirt and two sheets. He does not see how he can be assisted legally as he does not have money to report to the village authorities. The idea of going to the police is out of place as the police station is very far from the village.

He does not trust his brother who had earlier mistreated him. He does not trust his mother who has remarried a second time. He cannot trust the village authorities as they keep breaking promises to help him. He has lost contact with his other brother who ran into the town.

Kashighwa is a believer in Islam and he goes to the mosque every Friday but the mosque seems to be only a place of worship. He has not told anyone in the mosque that he needs help. He is of the view that everybody is looking after his/her problems.

Challenges facing Kashighwa is the stigmatisation he faces from people around him including his elder brother who think he can become a thief as he does not have proper care. He also is lonely and he is anxious about when next he will get food and repair of his leaking house.

Kashighwa appreciates assistance he receives from some good neighbours who provided him with food when he had none. Some neighbours provide him with work such as cutting grass, collecting firewood and he earns some money (500/- shillings) which helps him to buy kerosene. When he was staying with a neighbour he got some food assistance from the village authority but this stopped when he moved back to his own house.

Kashighwa has claimed that the government has to look after orphaned children, especially those who lack support from relatives.

(3). Kili

Kili is a very soft spoken person and he is quite shy and needs to be probed before he can talk. He however raises his voice when he wants to stress a point he is making. Kili was introduced to me by the Village Executive Officer. At the time of my field study he was sixteen years old. Kili has been a double orphaned child since he was twelve years old. His father and mother died in the same year after being ill for several years. Kili is Mkinga as both his parents were Wakinga from Makete. They live in a village in Makete where his father was in the timber business and his mother working to grow crops for food and for selling in the market.

Kili has two young brothers and one young sister. He also has other relatives, paternal and maternal uncles and aunts and several cousins. After the death of both parents the relatives met as a clan and decided to divide them. Kili was taken by a cousin and his sister was taken by their maternal aunt and the two brothers were taken by their maternal uncle, as their paternal uncle is a widower and has three young children to look after. However, after a very short time he and his three siblings had to go back to their household as they were advised it would be easy for them to get assistance. He then became the head of the household of four children, the youngest being three years old.

Kili had left school at year three when his parents were sick, and after their deaths he had the tasks of working so as to maintain the household. After three years of heading the household his siblings were taken away as an outcome of the visit of the

First Lady of Tanzania and the wife of the USA Ambassador to Tanzania. When he was asked if the children should be taken away he did not agree because he thought he needed to be with them. He did not feel comfortable to let them go where he did not know of their safety. He was promised that they would visit during school vacation but this did not happen. Although he was the one who was heading the household when it came to the official taking away of the children he was not involved. There were forms which had to be filled for the removal of the children from the village to an institution. These forms were signed by the MM, the Village Executive Officer (VEO) and their paternal uncle.

Kili has encountered some problems with the property left by his parents. One person in the village claims to have lent money to his father which had not been repaid, so this person decided to take part of their land with timber trees. Kili has not been able to resolve this problem as he is not aware of any legal mechanism related to the issue. He is also not comfortable to take the matter to the VEO. Kili is not aware of the MVCC and he is not sure if there is any one in the village who will be able to help him.

His household has received some support from NGOs. One NGO he named as TAHEA had helped in the repair of their leaking roof by providing iron sheets. The same NGO has also provided them with food, a bed, mattress and blankets. His siblings received school uniforms and other school necessities from school. He was sponsored to go to a technical school but he did not go, partly because he was concerned for the welfare of his siblings and partly because he was not sure he could cope as he is illiterate.

He has tried hard to maintain the household although it has not been easy to ensure they had adequate food all the time. The big challenge he faced was the separation from his siblings. This seemed to be very hurtful until I helped him to locate and visit them. Kili says he is a child with an adult thinking. He also thinks it is important to work so as to survive if there are no adults in place to take the responsibility. He does not think taking away his siblings was help.

(4). Kevona

Kevona is a Mnyambo of Karagwe. She is a double orphaned child, very talkative, assertive and with a sense of humour. Kevona was introduced to me by a member of one NGO which had supported the household and a church leader in the area. When I was in the field study Kevona was seventeen years old. Her father and mother were both Wanyambo. Her father was a civil servant working with the Karagwe District Council while her mother was a petty trader selling fish in the market. Her father died in the year 2002 when she was only eight years old. She does not know the cause of his death but he was sick and hospitalised before he died. Her mother died two years later in 2004 when Kevona was ten years old. The mother had gone to do business in the big town of Bukoba and was brought back very ill and died soon.

Kevona has five brothers, three are older than herself and two are younger. She has two sisters, one is older than her and married, and one is younger than her. She also has a step brother who is the oldest of the siblings. She has a maternal grandmother who lives far away and two maternal aunts who also live in other villages.

Kevona has been living in a child headed household for seven years and there have been changes in the roles of the heads twice. After the death of their father and their

mother's decision to go away to do business in a big town, they stayed with their elder brother, who was eighteen years old at that time. After the burial of their mother the brother went away and they were left with the next elder brother who was fifteen at the time. Kevona and her younger sister of about two years were taken to live with relatives. She went to live with their clan elder. She did not stay long because she said she experienced discrimination and also inadequate food. The clothes given to her after her mother's death were taken by the wife of the clan elder and when she complained they rebuked her. The uncle also could not provide her with school needs which he said were not his business. She always had to go back to her brother who was at their home, but was not in a position to help as he had to feed himself and two other brothers who were still going to school. She then decided to return back home.

She stayed with the three brothers, one of whom was the head. The head was two years older than her. When her brother finished primary school he became an apprentice in masonry. After one year he also left the home and she faced the role of heading the household as she was the next sibling. Although she headed the household for six months only prior to the study she shared her experience from the perspective of a child in OCHH and also as OCHH. She explained the problems she had faced in the six months as a head of a household which were the same as what faced her brother who was heading the household before her. When her brother was around he used to look for food although they did not have food regularly but it was his responsibility not hers. When he was not around it was her duty. The most difficult time is when the food situation in the whole area is bad due to the dry season when the bananas which are their staple food cannot be found easily. It is not easy to

beg from other people. In the village there is not much work to get money and she and her young brothers go to school.

Kevona has been receiving support from neighbours giving them leftover food or bananas to cook and water as well as clothes. She is also thankful to their cousin who is taking care of their younger sister. Although the young sister wants to come and stay with them they have told her to stay with the cousin as her situation there is better than theirs. Another support which they received recently was a house which was built from support under a project of KZAP a church NGO. Kevona however was not aware of the NGO she insisted it was 'Mzungu' (White person) who had provided it.

The challenge they have with the new house is of security. She says people think that they have support from the 'Mzungu' so she is afraid they might break into the house. She and her young brother have passed to go to secondary school but the challenge was how she could go to a boarding school and leave the two young brothers. The first problem was the need of food and transport for herself and her siblings. At the time of the research the Village Health Attendant (VHA) had applied on their behalf for assistance from the KZAP through the local church. The Church and the VHA took the role of guardian for Kevona and her brother as that was a requirement by the sponsors. Their application was successful. The Church leader and the VHA helped Kevona to be transferred from the boarding school so that she can go to the same school as her next young brother. The youngest brother was also examined and was admitted to a boarding school. So the only people to remain in the household will be herself and her next brother.

Kevona knows that the government has not provided the support it should. The school did not have a special programme for orphaned children. When they had problems due to lack of money or food the teachers never listened to them, they were punished if they did not have school shoes, exercise books or pens. She however acknowledges receiving support from specific teachers who provided pencils or exercise books which she or her young brother did not have. Kevona said she is a child but a problem child but she will not settle for stereo type work designated for orphaned children. She also would wish to live with her youngest sister who lives with a cousin and who she sees during school vacation only.

(5). Kedi

Kedi is very charming, assertive, and confident and seems to be empowered as well as very determined in life aspirations. I was introduced to Kedi by a Priest who knew her. Kedi was seventeen years old at the time of the field study. She is a double orphan in Makete. She is Mkinga by tribe as both her parents. They lived with their parents in a village in Makete. She does not remember much of her father. She was told by her mother that the father had a mental illness for a long time. Her mother worked on their plots of land to feed them, and had to perform other casual labour as well as petty business, to provide for their school needs. Kedi has two brothers and one sister. One brother is older and is married and the sister is also older and is married. Her young brother is about two years younger than her. Her father died when she was only four and her mother died eleven years later when she was fifteen.

Kedi has several relatives, including four maternal uncles. Three of them are married and two have more than one wife. The fourth is engaged. She also has three paternal

aunts. They all live in a nearby village. All these relatives met during the funeral of the mother and asked Kedi and her young brother where they would like to stay. She decided to stay at their home and they did not object. They pledged support and occasionally they bring them soap or food. None of the relatives has interfered with the property left behind by their parents, a three room house made of burnt--bricks and thatched by grass, and plots of land which are used for food crops such as potatoes, peas, maize and wheat.

When her parents died she was still in her final year of primary school. She had to organise herself so as to do more work than when her mother was alive, on the plot of land as well as with casual labour on Saturdays so as to earn money to buy needs such as salt, oil and clothes. After she finished primary school she received a scholarship for a technical school where she attended for two years. She studied tailoring and she is expecting to get a sewing machine from the school which will assist her to start a business.

Kedi claims that when her mother died she was not a child as she had reached puberty and her mother knew that she had left a woman who could take care of her house and the young brother. Her mother had told her to make use of the plot of land for the sake of her young brother. She decided to stay in their household because she was aware that orphaned children may be mistreated by relatives. She is of the view that even very young orphaned children should not be taken to live with relatives, who do not appreciate anything an orphaned child does and sometimes do not give them enough food. She gave the example of her friend who had stayed with a relative and had to move out after she experienced mistreatment. She also said that if orphaned children are left in their house and suffer they will be seen by the

government authorities and be supported or they can be taken like those children who were found in a pathetic situation and were taken by The First Lady Mama Kikwete.

Kedi acknowledges support from her near relatives, her brother, sister and uncles. They promised support so occasionally they provide soap or cooking oil, and clothes (She used a Swahili expression that 'wanatutupia'). That expression shows that it is not something which is systematic it is only coincidental.

Although Kedi portrays very positively that she is not a child but an adult she mentions struggles. In her narrations she would use words such as 'It not easy for a person of my age to do all these things'. Or she would say 'I have enough problems looking after myself and my young brother unassisted'. She also explained how she had been so scared when they began to live alone she had never been able to sleep where they used to sleep with her mother. When she goes to the plots of land she cries a lot as she remembers her mother. She has moral support from her friends and from the church. The MM also visits her and gives her words of encouragement. She managed to stay in the technical school from encouragement she received from her church elders. She is a church member and she is very proud that she is a 'born again Christian'. She said this has helped her so far as she has avoided temptation and became very hard working.

Kedi understands that orphaned children in the village are being given some support but she has not received any. Her young brother is lucky because he received exercise books several times. She mentioned that her young brother was also given a health insurance card. She did not mention who provided the card she said it was from 'Uyayima'. She connotes orphanhood as an institution.

Her main concern is the idea that orphaned children are being mistreated by relatives and are not valued. When she went to the technical school she left her young brother with her sister in law but he had to return home and stayed alone for all the two years she was away. Kedi is registered as a MVC in the village register and the MVCC understands this. Although she said she is not a child she also claimed that she is not old enough to get married. She thinks she has enough troubles being head of a household and is not ready to add more troubles.

(6). Kakia

Kakia is a double orphan. She is very polite, soft spoken but very optimistic and determined. At the time of the field study she was eighteen years old. She remembers that she was living with a distant relative in another village far from where her grandmother lived. Her mother had sent her to work for the relative so that she could be taken to school. She was not taken to school so when she was ten years old she ran away from the relative and managed to go back to her maternal grandmother. When she returned her mother was sick and was being supported by an NGO. She was then registered to begin school by the NGO which was supporting her mother. Her father was a civil servant working with the police force. She was told that her father got very sick and was taken to his place of origin in Kigoma region where he died and was buried, when she was nine.. Her mother died when she was twelve.

Kakia has two siblings, a sister two years younger than her and a brother five years younger than her. After the death of their mother the maternal relatives met and decided to divide them. Her young brother was taken by an uncle who lives in another village. Kakia and her young sister were left in their maternal grandfather's

house to live with their maternal aunt and uncle as their grandfather and grandmother were already dead.

The aunt left after a few months and they were left with the uncle, who did not care for them at all. They are living in a house which is two in one. The uncle lived in one part and they had their own part. They realised they had to look after themselves. They began to work selling fruits in the market to get money for food and other necessities. A Councillor in their ward identified them as MVC and they began to receive support from NGOs in terms of school fees and school uniforms and when her young sister passed the primary school exams she was supported with school fees to go to secondary school. They were also introduced to a lady who is the District Social Welfare Officer (SWO). The SWO helped her to get a place and sponsorship for a tailoring course. The sister of her maternal grandmother is another source of support especially on psychosocial issues. She encourages her and her sister and guides them although she cannot live with them as she has a big family. She also provides them with food when they are in need. At the time of the field study her young sister was living with this grandmother as life had been a bit tough.

Kakia noted how she struggles so much in getting food, clothing and other necessities. She had to try and get a place in a vocational school in the town of Bukoba where her aunt had asked her to go. There she realised that the aunt just wanted her as a house maid. She then had to go back home. She got a job in a small restaurant where she got money which helped her to buy vegetables which she sold and got money to pay for her uniforms in the technical college. "*Sijui kama kuna mtu amepitia maisha magumu kama haya akiwa mdogo hivi*". Meaning, 'I do not know if there is anybody else who has experienced such a difficult life while so young.'

She had to go to the hamlet leader to get a signature to verify she is an orphaned child so as to be supported at district level. This she had to do in secret, as told by the person supporting her. There are so many orphaned children and it is not possible for all to be helped so they have to be secretive. The fact that their mother was known to the Councillor who took pity on them, made it possible for them to get support.

(7). Kahoo

Kahoo is a very soft spoken person but very easy to talk to. Kahoo is a double orphan and Mkinga by tribe. When I met her during my field study she was eighteen years old. She was introduced to me by the MVCC treasurer. Both her parents were Wakinga from Makete. When she was very young their family lived in Mbozi, a district in Mbeya Region, where her father worked in the timber business. Her mother was a petty trader selling vegetables in the market. Her father, she was told, died from tuberculosis, but he was sick for only one day. There are other assertions that he was bewitched. Kahoo was nine when her father died. Thereafter her mother decided to return to Makete and worked on their plots of land planting crops for food and for selling. Her mother got sick; she had mental illness for one year; and died when Kahoo was thirteen. Kahoo has one elder brother, two elder sisters and two young brothers. They had been seven in their family. The first brother died from HIV/AIDS in 2005. The two sisters are married and live in the same village and one of the younger brothers was taken to an orphanage, while the last born stays with Kahoo.

Kahoo has relatives who live in the village. She has one paternal and one maternal uncle. She has one paternal and one maternal aunt. She also has a paternal

grandmother and maternal grandfather. She does not talk much about the relatives. The relatives took responsibility when the mother was sick, sending her to hospitals. When she died they buried her and made plans for the young children. After that some would bring her soap or food, but not frequently.

Kahoo refused the offer to live with her paternal grandmother or her brother and sister in law. She anticipated harassment and mistreatment. Her two young brothers at the age of four and six were divided between her brother and sister but after two weeks they both returned home to her. She continued to work on the plots of land her parents had left. She was still in the second year of primary school.

The six years old brother was taken by a priest to an orphanage to a place she did not know. The village authorities, the MVCC and her relatives arranged for the child to be taken. Kahoo was not consulted. "They just came and said 'he is needed to go to school'." The child known as Zawadi was taken away and he never came back for six years. When he came it was for one night only. This was a very painful experience for Zawadi and for Kahoo who wept when she narrated the issue. If consulted, she would not have agreed with the idea of the boy being taken away. 'It is not good for the child to go away for so long with no contact at all. If they are helping they should let him visit during school vacations'. She said.

She has been able to maintain the house and to look after herself and her young brother who was at the time of research eleven years old. It has not been very easy especially when she was going to school, working and looking after her young brother. When she was in standard four (at 15 years) she had to drop out of school. It became too tough for her. She could not cope with the stress of working, going to

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school, searching for food. She however went back to school after two months. She has been in pain for many years especially when she remembers her parents but mostly Zawadi who was away in an orphanage. She has been receiving some support from her sister and brother. An NGO gave her a bed and mattress and health insurance card. Her young brother has not been given health insurance card but fortunately he has not been ill. The district authority provided the household with iron sheets when they had to rebuild their house. The MM visits her occasionally as she lives nearby. The role of the MM has been to see if they have any problem which needs attention. The MM has not given her any material assistance. She receives moral support from her friends who are also OCHH and from her church where she sings in the choir.

(8). Kimako

Kimako had a very painful and sad look when I met him, he however is very proud of what he has achieved so far. He was introduced to me by a member of an NGO which has been supporting his household. He is Mnyambo of Karagwe and a double orphan. His father was a tailor and he worked in a small town away from their village and came home fortnightly during weekends. His mother worked on their plots of land which had banana trees and she planted beans and maize. Both parents died in 2002 and the cause of death is unknown as they did not go to hospital. Kimako has five siblings, one elder sister who is married and two young brothers and two young sisters. He also has a maternal uncle and two maternal aunts but no paternal relatives.

After the death of their parents their maternal relatives and a burial society made arrangements for their upkeep. Kimako was taken by an aunt and his young siblings

were all taken by their maternal uncle. After some time Kimako realised his siblings were suffering from lack of food as they had to look for their food and to cook, while going to school. It became very difficult as there was no food. The four of them had to sleep in one room, the room was leaking with no bed or bedding. His uncle had five wives and none was ready to look after the children. Kimako decided to go back to his father's land where the house had already fallen down and the banana farm had weathered away. He had to begin afresh to build a house and to plant bananas. He then moved his siblings in. His uncle discouraged him, wanting him and his siblings to leave school and work for their survival. He did not agree with his uncle. He then had to work so as to maintain the household. For one year he did not have good school attendance. He was punished whenever he showed up in school. His siblings had the same problem. Especially when they went to school with no shoes or with torn uniform they were being punished. He had to ask friends to help him with school notes which he read after work at night.

Kimako passed to go to secondary school. This was a challenge as the school is far away and he did not have money for transport and fees. He had to rent a house and to leave his siblings behind. He got support for school fees from the church he goes to for the two first years. The third year an NGO paid for his school fees. He had to beg for food from 'good Samaritans' in the village. Sometimes he gets it sometimes not. The same NGO has helped to build a more secure house for the household. Although there are no beds or other furniture at least there are no leaks or dust.

Kimako has not received any support from the government. When he was in primary school he and his young brother were registered as orphaned children. He however thinks it was for getting statistics only as he did not see any result. His young brother

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was also registered in the village as MVC but this did not mean anything. He thinks the government should take care of orphaned children like him and his siblings. He began adult life before he was ready. He has suffered a lot. He knew he was a child but a problem child, with responsibility. (*Mtoto mwenye majukumu*) He cannot say with certainty when he became an adult.

Appendix 7

List of Persons Interviewed and or Visited During the Research

7.1. Karagwe: List of People Interviewed¹⁹³

NO	DATE	NAME	GENDER/AGE	TITLE/ORGANISATION
1	09/01/2010	JASINTA RWEHIKA*	Female/Adult	Health Coordinator WVT Kagera Zone
2	11/01/2010	ANGELA MUTASHOBYA*	Female/Adult	Orphaned Children and PLWA Coordinator WVT Kagera Zone
3	11/01/2010	PELLAGYA KATUNZI*	Female/Adult	Counsellor Kagera Zone WVT
4	11/01/2010	EWAHO*	Male/CHILD	OC/G Kaagya Village Bukoba
5	11/01/2010	MCHEJA*	Male/CHILD	OC/G Mbuna Village Bukoba
6	11/01/2010	ENATI*	Male/CHILD	OC/G Nshozi village Bukoba
7	11/01/2010	NATETE*	Male/CHILD	OC-G Bulugo Village Bukoba
8	11/10/2010	HENA*	Female/CHILD	OC-G Bushangala village Bukoba
9	11/01/2010	SEANI*	Female/CHILD	OC-G Ibosa Village Bukoba
10	12/01/2010	DR.BENSON BAGONZA	Male/Adult	Bishop ELCT Karagwe Diocese
11	12/01/2010	VENANT THOMAS MUGENYI	Male/Adult	Coordinator ELCT AIDS Control Project Karagwe
12	13/10/2010	PUTA	Male/C/ADULT	F/OCHH
13	14/10/2010	COL.FABIAN MASAWE	Male/Adult	District Commissioner Karagwe
14	14/10/2010	CONSOLATA KAMUHABWA	Female/Adult	District Executive Director Karagwe
15	14/01/2010	ERNEST KAHABI	Male/Adult	District Planning Officer Karagwe
16	14/01/2010	ADEODATA AUGUSTIN	Female/Adult	District Community Development Officer Karagwe
17	14/01/2010	MARY KASHAJA	Female/Adult	District Social Welfare Officer

¹⁹³ This List includes people in Bukoba and Muleba where some information was sought in the general situation at Regional level. These will be in asterisk one for Bukoba and two for Muleba.

				Karagwe
18	14/01/2010	ERASTO KAMIHANDA	Male/Adult	General Secretary ELCT Karagwe Diocese
19	14/01/2010	REV. EMMANUEL NGAMBEKI	Male/Adult	Assistant to the ELCT Bishop Karagwe Diocese
20	15/01/2010	METHODIA GOSBERT	Female/Adult	Village Health attendant Kishao
21	15/01/2010	EV. ENOCK MUHAMBWA	Male/Adult	Evangelist Rukajanga ELECT Parish
22	16/01/2010	MCHEJA	Male/CHILD	Paternal OCHH Kayanga ward
23	17/01/2010	KAKIA	Female/CHILD	OCHH Kayanga ward
24	18/01/2010	JOSECHWE	Male/CHILD	OC-G Kituntu Ward
25	18/01/2010	JATEKA	Female/CHILD	OC-G F-OCHH Kituntu
26	18.01.2010	SELESTINE KIBOGOLA EDWARD	Male/Adult	Guardian of Orphaned Children
27	19/01/2010	KEVONA	Female/CHILD	OCHH Bugene ward Karagwe
28	19/01/2010	ERAVONA	Male/CHILD	OC/in OCHH Kishao village
29	19/01/2010	NDIMA	Female/CHILD	OC-G Nyakahanga village
30	20/01/2010	NICHOLOUS RUBAMBURA	Male/Adult	WEO Kayanga Ward
31	20/01/2010	MSHA	Male/CHILD	OC Ndama Village
32	20/01/2010	LEVERIAN ISHENGOMA	MALE/Adult	Chairperson Kishojo Village – Kihanga Ward
33	20/01/2010	LEVITUS CHUMA	Female/Adult	VEO Kishojo Village Kihanga Ward
34	20/01/2010	ANGELA LEVERIAN	Female/Adult	Village Health Attendant Kishojo
35	20/01/2010	NANDIMA	Female/CHILD	CHH Kishojo Village
36	21/01/2010	JUSTINE MALISELI KAIHULA	Male/Adult	Kayanga Ward councillor
37	25/01/2010	ARISTIDES MLIRO	Male/Adult	Bugene Ward councillor
38	25/01/2010	OWOKUSIIMA KAIHULA	Female/Adult	Ward Community Development Officer Bugene
39	25/01/2010	AUDAX M. MCHAULA	Male/Adult	Ward Education Coordinator Bugene
40	25/01/2010	RESTITUTA BALTAZAR	Female/Adult	Assistant WEO Bugene
41	25/01/2010	GERALD	Male/Adult	Ward Tribunal member

		KAJOHORA		Bugene
42	25/01/2010	PETER MUSHUMBUSI	Male/Adult	Head Master Bugene Secondary school
43	25/01/2010	CASMIR KAJUMULA	Male/Adult	Head Master Bugomola Secondary School
44	25/01/2010	SHUBI BEYANGA	Male/Adult	RELATIVE of OCHH
45	26/01/2010	SEMHO	Male/CHILD	OC-G Ihembe Ward
46	26/01/2010	REV. SIMON KAHWA	Male/Adult	Lead Pastor Ihembe
47	26/01/2010	ALTO MWANGO	Male/Adult	Project Accountant Rugu ADP, WVT
48	27/01/2010	AREKIE	Female/CHILD	OC in OCHH
49	28/01/2010	KIMAKO	Male/c/Adult	OCHH Kamagamba Village Kiruruma Ward
50	28/01/2010	NEREMAKA	Female/CHILD	OC-in OCHH Kamagamba Village
51	29/01/2010	MELANIA BITAKWALE	Female/adult	Executive Secretary KARADEA
52	29/01/2010	ALPHONSE MUSHANGERA	Male/Adult	Deputy Executive Secretary KARADEA
53	29/01/2010	AUDAX BYEKWASO	Male/Adult	WEO Bugene Ward
54	29/01/2010	JOHN KIMWAGA	Male/Adult	OCD Karagwe
55	30/01/2010	LEVERIAN PAULO	Male/Adult	Father of CHH Rugera Village
56	30/01/2010	AMELIA LEVERIAN	Female/Adult	Mother of CHH RUGERA VILLAGE
57	31/01/2010	NIRENDIMA	Female/CHILD	Child in a CHH Kishojo Village
58	31/01/2010	EVONSHA	Male/CHILD	Child in OCHH Kishao Village
59	01/02/2010	HARIKA	Male/CHILD	OC / Paternal/G Bujuruga Village
60	01/02/2010	LIVINGSTONE BYAKASO	Male/Adult	Program Coordinator SAWAKA-Karagwe
61	01/02/2010	SUDI ABDALA HARUN	Male/Adult	Field Officer WOMEDA Karagwe
62	01/02/2010	JUMA MASISI	Male/Adult	Executive Director WOMEDA Karagwe
63	01/02/2010	GODSON	Male/Adult	Program Officer WOMEDA

		BYAMUNGU		
64	02.02.2010	ERAMOSHA	Male/CHILD	CHH Bujuruga -Bugene
65	02/02/2010	KASHIGHWA	Male/CHILD	OCHH (Paternal) Bujuruga
66	02/02/2010	EMANUEL KAHESI	Male/Adult	MVCC Chairperson Bujuruga Bugene
67	02/02/2010	GERVAS BENEDICT	Male/Adult	MVCC Member Bujuruga
68	03/02/2010	LETICIA LUGAKINGIRA	Female/Adult	District Magistrate Karagwe
69	04/02/2010	LUDOVICK MSONELLA**	Male/Adult	Customer Relations Ruhita ADP service Secretary In charge WVT
70	05/02/2010	LYDIA LUGAZIA**	Female/Adult	Team Leader Kwa Wazee Muleba
71	05/02/2010	JOVINATA JOSEPH**	Female/Adult	Child Facilitator KWA WAZEE Muleba
72	05/02/2010	MBAHA**	Male/CHILD	Muleba OC/G
73	05/02/2010	NEZO**	Female/CHILD	Muleba OC/G
74	05/02/2010	EWAWO **	Male/CHILD	Muleba OC/G
75	05/02/2010	EREWAHO**	Male/CHILD	Muleba OC/G
76	05/02/2010	IRAWE**	Male/CHILD	Muleba OC/G
77	05/02/2010	HARIKA**	Male/CHILD	Muleba OC/G
78	05/02/2010	NIWAHO **	Female/CHILD	Muleba OC/G
79	5/02/2010	NREMI**	Female/CHILD	Muleba OC/G
80	05/02/2010	NIREWAHO**	Female/CHILD	Muleba OC/G
81	05/02/2010	NOVAT NDETABULA PANCRAS**	MALE ADULT	Muleba (Hamlet Chairperson)

FEMALE AD 16	Female CH	14		30
MALE AD <u>31</u>	Male CH	<u>17</u>	M/c/AD <u>2</u>	<u>50</u>
TOTAL 47		31	2	80

Orphan Children Heading Households (OCHH) -4

Child Headed Households (CHH)-2

Orphaned child with a guardian (OC/G) -17

Orphaned child in OCHH (OC/In OCHH)-4

Former OCHH (F/OCHH)-1

Children Orphaned not categorised as children (C/O/NC)-2

7.2. Makete: List of Participants Visited/ Interviewed

NO	DATE	NAME	GENDER/AGE	ORGANISATION/TITLE
1	05/11/09	HAWA NGHUMBI-	Female/Adult	District Commissioner
2	05/11/09	IMELDA ISHUZA	Female /Adult	District Executive Director
3	05/11/09	PETER NGANYANYA	Male /Adult	UNICEF Coordinator
4	05/11/09	ELIAS SIMBA	Male/Adult	District Planning Officer
5	05/11/09	LEONCE PANGA	Male/Adult	District Social Welfare officer
6	05/11/09	EZEKIEL SANGA	Male/Adult	TUNAJALI Coordinator
7	05/11/09	MARIAM TOROKA	Female/Adult	TUNAJALI OVC Coordianator (Njombe)
8	05/11/09	MWAJUMA MSHANA	Female/Adult	TUNAJALI Regional Coordinator (Njombe)
9	06/11/09	SELEMANI KIWONE	Male/Adult	Ward Executive Officer Iwawa ward
10	06/11/09	WILLY MELKON SANGA	Male/Adult	Village Executive Officer Ndulamo Village
11	06/11/09	LILIO TWEVE	Male/Adult	Ndulamo Village Chairperson
12	06/11/09	FESTO MAHENGE	Male/Adult	Ndulamo village MVCC Treasurer

13	06/11/09	FRED CHAULA	Male/Adult	Village Chairperson Ivalalila Village
14	06/11/09	CHRISTOPHER P. CHAULA	Male/Adult	Village Chairperson Luvulunge Village
15	06/11/09	MAJUTO LUMANYISO MBWILO	Male/Adult	Village Executive Officer Luvulunge Village
16	06/11/09	YORAM AMBANGILE	Male/Adult	Head Teacher Isapulano Primary School
17	06/11/09	MICHAEL SANGA	Male/Adult	Village Executive Officer Maleutsi Village
18	07/11/09	YASALINA SANGA	Male/Adult	TAHEA Iwawa Field Officer
19	07/11/09	JEVICK STANFFAS	Male/Adult	TAHEA Lupalilo Field Officer
20	07/11/09	KIYAYA	Male/CHILD	Orphaned Child/G from Isapulano Village
21	09/11/09	ZAIDA MAHENGE	Female/Adult	Mama Mkubwa Ipulo Ndulamo
22	09/11/09	NAHUMU TWEVE	Male/Adult	Head Teacher Ndulamo P/S
23	09/11/09	KECHEE	Male/CHILD	OCHH Kiduga Hamlet Ndulamo
24	09/11/09	NATERA	Female/CHIL	F/OCHH Ndulamo
25	09/11/09	NAINKWA	Female/ CHILD	OC/G –F/OC in OCHH Ndulamo
26	09/11/09	NAVWASI	Female /CHILD	OC/G-F.OCHH Ndulamo
27	09/11/09	MRAHIRA	Male /CHILD	OC/G Ndulamo
28	09/11/09	KILI	Male/CHILD	OCHH Ndulamo
29	10/11/09	JEMA KYANDO	Female/Adult	MVC Teacher, Ndulamo P/S
30	10/11/09	KISHWIRA	Female/CHILD	OC/G -Ndulamo
31	11/11/09	CLEMENCE N.R	Male/Adult	WEO Bulongwa
32	11/11/09	DIWANI MAHENGE	Male/Adult	Bulongwa Ward Councilor
33	12/11/09	VENANCE SALONI SANGA	Male/Adult	MVCC Member Ivalalila
34	12/11/09	SOFIA SANGA	Female/Adult	MVCC Member Ivalalila
35	12/11/09	BRUNO SANGA	Male/Adult	MVCC Member Ivalalila

36	12/11/09	YAKOBINA CHAULA	Female/Adult	MVCC Member Ivalalila
37	12/11/09	VICTORIA MBILINYI	Female/Adult	MVCC Member Ivalalila
38	13/11/09	ILINASI MBAGALA MAHENGE	Male/Adult	Uncle to OCHH
39	13/11/09	ROSEMARY MAHENGE	Female/Adult	Mama Mkubwa Kiduga
40	14/11/09	NCHAIDI	Male/CHILD	OC.G Ndulamo
41	14/11/09	MCHEJA	Male CHILD	OC/G Ndulamo
42	14/11/09	KIVISO	Male/CHILD	OC/G Kwayuta Ndulamo
43	14/11/09	KEHO	Male/CHILD	OC/G Mbosa Ndulamo
44	14/11/09	NISUMBA	Male/CHILD	OC/G Kwayuta-Ndulamo
45	14/11/09	NACHA	Female/CHILD	OC/G Stendi Ndulamo
46	14/11/09	TUIVAE	Male/CHILD	OC/G Ndulamo
47	14/11/09	REREHA	Male/CHILD	OC in OCHH Mbosa Ndulamo
48	14/11/09	MRISHA	Female/CHILD	OC/G Ndulamo
48	14/11/09	GHAMBA	Female/CHILD	OC/G Kilanzi Ndulamo
50	14/11/09	NAMHOO	Female/CHILD	OC/G Ndulamo
51	30/11/09	IMANI MAHENGE	Male /Adult	Village Chairperson Isapulano Village
52	30/11/09	ESAU DESTURI	Male/Adult	VEO Isapulano Village
53	30/11/09	JOYCE KAVAVILA	Female/Adult	NURSE Isapulano Dispensary
54	30/11/09	LINA SANGA	Female/Adult	Nurse Isapulano Dispensary
55	30/11/09	TAMARI KAWANGA	Female/Adult	Nurse Isapulano Dispensary
56	01/12/09	SEKELA KYAMI	Female/Adult	Head Bulongwa children/s Home
57	02/12/09	MWIRE	Female/ CHILD	F/OC Isapulano
58	02/12/09	AVONA	Female/CHILD	F/OCHH Mapokeo Isapulano
59	02/12/09	RIRIKANA	Male/CHILD	OC-G Isapulano
60	02/12/09	KAHUJA	Female/CHILD	OC-Maternal Isapulano
61	02/12/09	HAIWA	Male/Child	OC-G Isapulano
62	02/12/09	JOYCE KYANDO	Female/Adult	TUNAJALI Volunteer Iwawa

63	04/12/09	ERASTO MAHENGE	Male/Adult	MVCC Secretary Isapulano Village
64	04/12/09	OMARI MAHENGE	Male/Adult	MVCC Chairperson Isapulano Village
65	04/12/09	ROSE LUVANDA	Female/Adult	MVCC Treasurer Isapulano Village
66	04/12/09	MBONA CHAULA	Male/Adult	MVCC Member Isapulano Village
67	04/12/09	TINAUS LUVANDA	Female/Adult	MVCC Member Isapulano Village
68	04/12/09	MAINESS LUVANDA	Female/Adult	Mama Mkubwa Mapokeo H. Isapulano
69	04/12/09	HELENA TWEVE	Female/Adult	Mama Mkubwa Mapokeo Isapulano
70	04/12/09	LUSTIKA CHAULA	Female/Adult	Mama Mkubwa Usalama Isapulano
71	04/12/09	CATHERINE ANDREAS	Female/Adult	Teacher Isapulano Primary school
72	04/12/09	MARGARETH SANGA	Female/Adult	Teacher Isapulano Primary School
73	04/12/09	KIJA	Male/CHILD	OC-G Stendi Village
74	04/12/09	SIJETI MAHENGE	Female/Adult	OC Relative Isapulano
75	05/12/09	MGHENJI	Female/CHILD	Friend to OC/G
76	08/12/09	ASP JOSEPH KATE	Male/Adult	Ag. OCD &OC-CID Makete District
77	08/12/09	SP GASPER W. LUKUVI	Male/Adult	Superintendent of Prison Head of Prison Makete
78	08/12/09	A/I ALOYCE KAJERA	Male/Adult	Assistant Head of prison &Prison Doctor
79	08/12/09	AIDA CHENGULA	Female/Adult	Executive Director MASUPHA
80	10/12/09	KEDI	Female/Child	OCHH Ndulamo
81	10/12/09	GLORIA MAHENGE	Female/Adult	MVCC Secretary Ndulamo Village
82	10/12/09	LETICIA S. MAHENGE	Female/Adult	Mama Mkubwa Ngiu, Ndulamo Village

83	10/12/09	ESTONIA MAHENGE	Female/Adult	Mama Mkubwa Mbosa Ndulamo
84	10/12/09	LIJA MAHENGE	Female/Adult	Mama Mkubwa Utimbe Ndulamo
85	11/12/09	ISAACK MWIHUMBO	Male/Adult	Head Teacher Shukrani Vocational Training Centre
86	11/12/09	KAHOO	Female/CHILD	OCHH Ndulamo
87	12/12/09	ROSE MAHENGE	Female Adult	Parish Priest ELCT Ndulamo
88	14/12/09	FR. ALEXANDER MLOLWA	Male/Adult	Parish Priest Roman Catholic church Makete
89	14/12/09	ABRAHAM P. SANGA	Male/Adult	CHAC Makete District
90	14/12/09	WILLIAM YOTAM	Male/Adult	UN Volunteer HIV/AIDS
91	14/12/09	MERICK ENOCK LUVINGA	Male/Adult	District Lawyer Makete
92	15/12/09	MERICK L. DIMOSO	Male/Adult	Regional Community Development Officer -Iringa
93	16/12/09	HON. PAMELA MAZENGO	Female/Adult	Resident Magistrate Makete/Njombe
94	16/12/09	EZRA KYANDO	Male/Adult	Community Mobiliser SUMASSESU Makete
95	17/12/09	BITON B.SANGA	Male/Adult	Chair person Iwawa Ward tribunal
96	17/12/09	PETER ADAM SANGA	Male/Adult	Secretary Iwawa Ward Tribunal(IWT)
97	17/12/09	EXAUD LAMECK MBILINYI	Male/Adult	Member IWT Maleutsi
98	17/12/09	AIDA WILIAM NGONGO	Female/Adult	Member IWT Ludihani
99	17/12/09	ESTER NAHASON TWEVE	Female/Adult	Member IWT Ivilikingo
100	17/12/09	NDONGA KIBIKI MAHENGE	Male/Adult	Member IWT Ndulamo

No. of Children 28 Female- 14 Male 14 OCHH = 4 F-2 M-2

Adults 72 Female 32 Male 40 F/OCHH=4 All F

TOTAL 100

7.3. Dar es Salaam: Meetings/ Interviews

NO	DATE	NAME	GENDER/AGE	TITLE/ORGANISATION
1	07/10/2009	PROF. PALAMAGAMBA KABUDI	Male /Adult	Dean Faculty of Law UDSM
2	14/10/2009	NAKACHEJA	Female /Child	OCHH in Dar-es-salaam
3	17/10/09	DR.RINGO W.TENGA	Male /Adult	Senior Lecturer UDSM
4	07/01/2010	THERESIA SHAYO	Female/Adult	SOS mother DSM
5	07/01/2010	TEWAHO	Female /CHILD	F/C/in OCHH Now in an Institution for Orphaned Children
6	08/01/2010	PHENNY KAKAMA	Male/Adult	Child Protection Specialist UNICEF Tanzania
7	09/02/2010	DR. SENGONDO MVUNGI	Male/Adult	Senior lecturer UDSM
8	12/02/2010	DR. ALEX LENGEJU	Male /Adult	Village Director SOS Children's Village Tanzania Trust
9	26/02/2010	HON. MATHIAS M. CHIKAWA (MP)	Male/Adult	Minister for Justice and Constitutional Affairs Tanzania
10	03/03/2010	HON.NATALIA KIMARO	Female/Adult	Justice of Appeal Tanzania Court of Appeal
11	05/03/2010	HON. PROF. DAVID K. MWAKYUSA (MP)	Male /Adult	Minister, Ministry of Health and Social Welfare Tanzania
12	19/03/2010	HON MAMA SALMA KIKWETE	Female/Adult	Tanzania First Lady and Chairperson WAMA Foundation
	19/03/2010	DAUD NASIB	Male /Adult	Executive Secretary WAMA

13				Foundation
14	22/03/2010	HON. MARGARETH SITTA (MP)	Female/Adult	Minister, Ministry of Community Development, Gender and Children Tanzania(MCDGC)
15	22/03/2010	TUKAE E.NJIKU	Female/Adult	Director Children Development, MCDGC
16	24/03/2010	PROF. CHRIS MAINA PETER	Male/Adult	Law Professor, University of Dar es Salaam

7.4. Focus Group Discussion (FGD) Groups

NO.	Date	Group	Place	Number of participants
1.	12/11/09	MVCC Ivalalila	Ivalalila Village Makete	05
2.	14/11/09	OCHH and Orphans with Guardians	Ndulamo Village	16
3.	4/12/09	MVCC and MM Isapulano	Isapulano Village Makete	08
4.	5/12/09	Former OCHH and Orphans with Guardians	Isapulano Village Makete	07
5.	6/12/09	OCHH, Children in OCHH, Former OCHH and orphans with Guardians	Ndulamo Village Makete	14
6.	17/12/09	Iwawa Ward Tribunal	Iwawa Makete	06
7.	11/01/2010	Orphan Children WVT Beneficiaries	Rural Bukoba, Kagera	06
8.	25/01/2010	Bugene Ward Officials	Bugene ,Karagwe	05
9.	31/01/2010	OCHH, Children in OCHH, former OCHH and CHH	Kayanga, Karagwe	09
10.	5/02/2010	Tukubali kufundishwa, orphan children Organisation	Rushwa, Muleba	10