

# **RUAHA CATHOLIC UNIVERSITY (RUCU)**



## **FACULTY OF LAW**

The Right to Education of Street Children in Iringa Municipality:  
Law and Practice.

A Research Submitted in Partial Fulfillment of the requirements for  
the Bachelor of Laws Degree (LLB) of Ruaha Catholic University.

By

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AT THE  
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2019.

**CERTIFICATION**

The undersigned certify that she has read and hereby recommended for acceptance by the Ruaha Catholic University a dissertation titled: The Child Act and Education Act do not protect the right of education for Street children in Tanzania in fulfillment of the requirements for the Barchelor of Laws Degree at Ruaha Catholic University.

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Supervisor

Signed on .....day of.....2019

**DECLARATION**

I, Mwinuka Hossana A, declare that this dissertation is my own original work and that it has not been submitted or is currently being submitted to any other University for a similar or any other degree.

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Mwinuka Hossana A.

Date .....

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I wouldn't have completed this research without their encouragement and their faith in me.

## **DEDICATION**

To my family; my parents, Mr and Mrs Mlelwa, my son Nickson and to Godwin.

## ABSTRACT

As a signatory to different International Convention like the United Declaration of Human Right, and the Convention on the Right of the Child, The state has an obligation to provide education to the children and this includes all groups of children without segregation of any kind. Tanzania as a state has to ensure it does not contrary to the Convention in which it signs as the part to it. However the Right to education has to be included in the Constitution of the United Republic of Tanzania, as the mother law of the country.

The Right to education has instigated in the Constitution, cannot be enforced as per Article 7(2) of the Constitution of the United Republic of Tanzania, also the Law of the Child Act of 2009, and does not emphasize the duty of the Government to provide education to street children as a guardian.

This study aim to examine on the responsibility of ensuring the Street children access to education, in Tanzania, Iringa as the case study. To ensure that the right of education is enjoyable to all children of any kind, how this right is implemented in Tanzania, the society perception to the obligation towards the right to education of the Street children, and measures to be taken in ensuring the same.

Therefore this study is divided into four Chapters, Chapter one is concerned with the introduction, background to the problem, Statement of the problem, Hypothesis and significance of the study. Again Chapter two is about the Legal and Institutional framework of the research; Chapter three is about the critical analysis of the legal problem and Chapter four which is about conclusion and some recommendations.

## **LIST OF ABBREVIATION**

CURT	Constitution of United Republic of Tanzania.
CRC	Convention on the Right of the Child
LCA	Law of the Child Act
TEA	The Education Act

## **TABLE OF STATUTES**

### **International Instruments**

Vienna Declaration of the World Conference on Human Rights of 1993.

Convention on the Right of the Child of 1989.

Universal Declaration of Human Right of 1948.

### **Regional instrument**

African Charter on the Welfare of the Child

### **Domestic Instrument**

The Constitution of United Republic of Tanzania of 1977

The Law of the Child Act of 2009

The Education Act

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## CHAPTER ONE.

### 1:0 Introduction

Tanzania as any other society views the children living in difficult conditions as the street children when they are found in street begging money, seeking for jobs at a younger age and who are not in school. In some states views this children as the children who lives in difficult conditions, are under their responsibility to support their daily life by engaging on jobs at a younger age for the wellbeing of their life, instead of going to school to build their stable future life and therefore these children are forced to grow up with this notion of the society as the street children.<sup>1</sup>

There has been a rapidly increase of children in the street despite that Tanzania is the signatory of the Universal Declaration of Human Right, the Convention on the Rights of the Children and other instrument. The conventions which enforce the obligation to the state to ensure the rights to education of the children are affordable. The convention gives power to all the state member to enact the laws which will protect all children without segregation or discrimination of any kind, that all children have to enjoy their rights in the same manner, they are to be treated equally and fairly.<sup>2</sup>

The member state has the obligation to ensure this right for the children is protected in order to adhere to the principles of being a member to the convention.<sup>3</sup> Then the problem is still in the street where most of the children found there lack care and protection from the law since

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<sup>1</sup> J. Benjamin, Toward Effective Implementation of children Right in Tanzania, lesson and Opportunities from Ghana and South Africa, Legon University of Ghana Press, 2006.

<sup>2</sup> *Idem*

<sup>3</sup> The Convention on the Right of the Child of 1989.

the law does not recognize this type of children who are around the street, and the society after terming them as the street children are ignored and sometimes exploit them as they being used by the society in many criminal actions as robbery and other issues.<sup>4</sup>

Regarding the fact that the instruments of Human Rights prohibits segregation of any kind to a human of any kind but still the laws of the state ignoring the same and treat this children with lack of care and protection especial when it comes to the right to education. Knowing that segregating of this kind of children is one among the violation of human right but the laws do not covers their right and as to who is responsible to ensure they enjoys their right. It is a disaster to our country since the great number of these children is increased day after day, and the government is there silent without taking proper actions to solve the problem.

### **1:1 Background of the Problem**

Since time immemorial it was the notion of the society that children affairs is the matter of their parents since children were belongs to their parents and the parents regarded children as the source of production of the family and source of labor, during production activities, this kind of parents take an advantage of not sending their children to school but using the children in production activities at home.<sup>5</sup>

The society is silent and since the government is not stable because a lot of powers were in the hands of the society leaders and by that time the society were either under the kings or Chief who left everything concerns children in the hands of his or her parents.<sup>6</sup> and since the

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<sup>4</sup> *Idem*

<sup>5</sup> J.V. Shivji, Constitution and Legal System of Tanzania, A Civics Source Book, Mkuki na Nyota Publishers , Dar es salaam 2004, 160.

<sup>6</sup> *Idem*

members of the society were uneducated the society do not regard education as something very serious instead they use to bare many children to help parents in their farm activities, the children did not attend the schools except the sons of the chiefs or kings children were the productive members of their families.<sup>7</sup>

Therefore the right of these children's is not considered at all. all their rights and privileges were in the hands of their parents, hence this notion resulted to child labor, child discrimination and on other side for the children who lost their parents have no place to live since the society is not in regard of the children, children were sold to the different leaders of different society either for production activities but also girls were forced to get married at a younger age.<sup>8</sup>

This is regarded as torture to the children and hence children forced themselves to run from their villages to township where they enters into this problem of difficult condition, the children found with no place to live or hide, and another reason the children were running from their parents traditions like female genital mutilation and early marriage hence they found in the street begging and not attending schools while at this age they are supposed to be in school.<sup>9</sup>

This impacts led to problem of street children, this group of children mixed with different background and personalities , who lost their parents found with no place to live, and others who escapes the problem of torture and discrimination from their parents or families which they belong found in street with no place to live. Hence this problem becomes large and the society disregards the importance protecting them.<sup>10</sup>

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<sup>7</sup> *Idem*

<sup>8</sup> C.M. Peter, Human Rights in Tanzania, Selected cases and Materials, Mainz Rudiger Koppe Verlag Publishers, 1997, 243.

<sup>9</sup> *Ibid*, 243

<sup>10</sup> *Idem*

Again during an Ancient times, about eighth century B.C, the phenomena of street children was virtual unknown as the result of Ancient Roman law which provided the father with unlimited power over his children, the power enables father to eliminate the unwanted children by assassinating or selling them as slaves, therefore one can argue that street children phenomena was primarily not a problem as today is but it was a source of income.<sup>11</sup>

However during the Industrial Revolution in 1880s there were much increase and development of township and production activities hence industries were in need of supply of labor, street children were used as labor force in production activities as well as industrial small work, hence the children were not attending school they moved from their villages to towns in search of jobs.<sup>12</sup>

On the other hand during the years after the World War one and two and this was found in all African states there was a tendency for children to flock to industrial and towns areas due to increase of immigration of white settlers, additional land confiscation, overcrowding, and landless which led to great poverty and drought hence this factor led to children to lives their homes to urban areas.<sup>13</sup>

Recently after the independence of Tanzania in 1961 the problem of children living and working in the street appear to be more severe phenomenon, it was almost impossible for children to work in the street as vendors, car washers, beggars, as municipal by-laws that restrict this were brutally enforced before the independence but after the independence the enforcement become loose and unpredictable.<sup>14</sup>

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<sup>11</sup> S.Dillon, International Children Rights, Carolina Academy Press, Carolina, 2010, 527.

<sup>12</sup> *Idem*

<sup>13</sup> *Ibid*, 529

<sup>14</sup> *Idem*

Then the world see it as a problem and United Nation enacted the laws for the protection of the children and street children in general as it aimed to protect and care the children over the discrimination from the family and society at large.

The ratification of several laws internationally led to children's right to be taken as serious matters in most of the state and hence Tanzania adopted different protocols on the protection of children's rights, in the constitution this right included in the provisions of part three as basic rights and duties.<sup>15</sup>

From there Tanzania adopted the Convention on the Rights of the Children for the protection of the same, and also Tanzania enacted the Laws of the Child Act of 2009. But the law does not mentioned to whom responsibility is in ensuring the street children asses to education, the fact that this children remains in the street spends their time on the street as the result most of them taken as the labor forces and other used as the property in different business like sexual activities and other.<sup>16</sup>

In this days the terrible human Rights situation for street children has become common phenomenon, there is a lot of violation of street children rights and their recognition and protection as well, street children is denied their rights of education which no doughty is determined to liberate them from their current social setting, for a long time street children have not been able to realize fully their right to education , they have not been able to benefit from children rights also at large and have been actually end up in oblivion.<sup>17</sup>

Education as the mechanism of imparting knowledge and skills from one person to another should be accessible to all, right to education features as one of the fundamental right in

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<sup>15</sup> The Constitution of the United Republic of Tanzania of 1977.

<sup>16</sup> *Idem*

<sup>17</sup> *Idem*

the Constitution of the several countries however to Tanzania it is the different from the reality, the current Constitution of the United Republic of Tanzania is only right which is political reinforced.<sup>18</sup>

In Tanzania the right to education is simply Constitutionally addressed without legal enforceability, right to education is only resides to citizens just to ensure their children access this right without Government obligation, it is clear in the laws that the parents has both moral and legal duty to ensure that their children right to education, the law of Marriage Act imposes duty to parents to provide all right entitled to their children as further imposes in case of parental separation the court is required to determine categorically as to children right, despite of the existence of these laws the galling dispute is the existence of the claw back in the mother law that whatever right covered in part two of the Constitution is not enforceable in court of law.<sup>19</sup>

The response of the Government towards solving the problem of Street children is that of the reaction for the problem rather than preparing for the problem, the laws which are enjoined to protect children right do not adequately address the problem of street children to education and hence leaving the problem unsolved while understands that those children are unable to afford the education expenses but there are no legal mechanism which have been mounted to remedy the problem.<sup>20</sup>

## **1:2 Statement of the Problem.**

The Constitution Of The United Republic of Tanzania does not provide clearly education as the rights rather it provides it as the policy and it does not clearly explain about who is

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<sup>18</sup> *Idem*

<sup>19</sup> *Idem*

<sup>20</sup> *Idem*

responsible for the street children in access to education, The law of the children Act does not provide for who is responsible to ensure street children access to education, section 8 (1),<sup>21</sup> vests the duty to the parents, guardian or any other person having custody of the child to ensure the child access to education. The problem arises to what about the street children who lives not under any custody, who has no parents or guardian their life is depend on themselves, who is going to be responsible to ensure that this children access to educational right and other rights.<sup>22</sup>

This is very serious problem in this day on the children who lost their parents and who live with no guardian or other escapes their guardian from torture, lose their education right due to lack of care from the government authority simply because the Constitution, does not grant fully this right while the same Constitution of The United Republic Of Tanzania, provides for the basic rights as equality of human being under Article 12,<sup>23</sup> then how will it be enforced while there other group of people whose rights are denied and not considered. Section (1),<sup>24</sup> provides for non discrimination to all children without regarding to gender, age race, religion or anything else, therefore non considering of the street children's affairs is contrary to constitution and the law of the child which provides to the effect that a child must not be discriminated.<sup>25</sup>

Lack of access to education of the street children and lack of care about this rights and other rights in general led to a lot of problem in the society and world at large, since for a child to get better education and care there must be someone who is ensuring this happening either the government or the constitution must provide it clearly.<sup>26</sup>

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<sup>21</sup> Law of the Child Act, of 2009.

<sup>22</sup> *Idem*

<sup>23</sup> *Idem*

<sup>24</sup> *Idem*

<sup>25</sup> *Idem*

<sup>26</sup> *Idem*

### 1:3 Hypothesis

It seems that the Child Act and Education Act do not protect the right of education for street children in Tanzania.

### 1:4 Literature Review.

Makaramba,<sup>27</sup> surveys the right of a child in International law and agreed that large number of International instrument addressed rights of Vulnerable groups, he looks on the difficult faces the children, also he succeeded in providing the rights of the child, also insisting that the best way in which homeless children can be guaranteed their right to education is to make amendment of the Union Constitution so that the said right to be enshrined in an enforceable part of it. This research point out the gaps which are in the laws in Tanzania.<sup>28</sup>

Vostanis,<sup>29</sup> wrote about the causes of the street or homeless children as the result of families abandonment, or others who are orphans, this children's faces with a lot of problems and challenges such as theft, and death in the street, there other children who founded in the street due to social isolation from their parents and lack of personal support, and when this parents dies their children's founds with no place to live or other escapes tortures from their step parents and found themselves in street.<sup>30</sup>

In explaining about the problems faced this children the author of the above book explain the ways in which this children may be protected as they supposed to be under custody and they are supposed to be regarded in their rights as access to social services such as education and

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<sup>27</sup> R.V. Makaramba, *Children Right in Tanzania*, Friedrich Ebert Stiftung Publisher, Dar Es Salaam, 1999, 27.

<sup>28</sup> *Idem*

<sup>29</sup> P.Vostanis, *Homeless children Problems and Needs*, Jessica Kingsley Publishers, 1999,9.

<sup>30</sup> *Ibid* 10

health services, education will help them to develop their mind and understands their rights and duties, of which by this ways and other ways this children's may be protected from one way or the other.<sup>31</sup>

The Researcher point out the gap which is in the laws of Tanzania upon responsibility in ensuring Street children enjoys their right, about who is going to be responsible about the street children access to their rights and duties, example in Tanzania where by the Constitution does not state's education as the right and hence the Law of the Child Act failed to enforce this right due to this problem.

Kilolelo,<sup>32</sup> explain the crisis of street children as one of the pressing social problem in the world and especially in developing countries, the street children causes is poverty, and society views street children as the threat, rather than as the result of society own failure to provide to them the basic needs and care to the street children since are among of vulnerable group in the world. The growing crisis of street children in Tanzania is the result of family and society abandonment to life and subject of violence and hardship.

In his book he suggested the solution for the protection of the street children as to cooperate with the mission of the office of the high Commissioner for human rights to protect the rights of all children, however the state should cooperate with the private sectors as religion institutions and other sectors in ensuring the same and not let the responsibility to one.<sup>33</sup>

The Researcher concerns on the gap of the laws in Tanzania which does not state the right of Street children in access to education again on who is responsible in ensuring the same.

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<sup>31</sup> *Idem*

<sup>32</sup> *I. Kilolelo, The Crisis of Street Children in Tanzania, Jesuit School of Theology at Santa Clara University, (2014).*

<sup>33</sup> *Idem*

Wringle,<sup>34</sup> argues that, claim for a welfare, right of education is an individual claim which cannot provide for his education and if he does not receive education from other including those against whom he may have special rights, then he is liable to substantial harm, the Author conceptualize the role indebted to the government and other stakeholders in providing the right to education to children.

The Researcher finds that the laws on their responsibility they have to show and stipulate clearly on the responsibility to my concern to ensure this right to education for the street children .

Lugalla,<sup>35</sup> Also examines the dynamic of urban life and street children's health in the era of globalization and structure adjustment in Tanzania, in his books explains the factors that push the children out of their homes, and how the children survives in the street also how the hardship and violence affects their health, as other they are subjected to labor forces and other in criminal actions, however a lot of them has no access to education, and this is due to lack of care from the society in general.<sup>36</sup>

Dillon, views street children as having the needs to be placed in the category of vulnerable group, believes that the best way to deal with an urgent and concrete problem is to give them special attention under which every stakeholder in the society will respect and indeed give due regard to the said problem. Treating street children as vulnerable group will make them be treated separately by human rights law because of their vulnerable position in the society that can restrict their enjoyment of human rights.<sup>37</sup>

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<sup>34</sup> C.A. Wringle, *Children Rights*, London Routledge and Kegan Paul Publisher Ltd, 1981, 193.

<sup>35</sup> J. Lugalla, *Street Children and Life in Urban Tanzania*, The Culture of surviving and its Implication for children Health ,The International Journal of Urban and Regional Research,1999,56,Vol 22.

<sup>36</sup> *Idem*

<sup>37</sup> S. Dillon, *International Children Right*, Carolina Academy Press, 2010, 528.

The Researcher has drawn the different in the countries where the Author deals with, in Tanzania things are different since the society itself has no time to think about this group of children and hence even the laws of the land does not mention them anywhere, with regard to education.

Therefore still education is the most challenges to the street children as one among the factor which cause them to not be under control and care since education right is not clear to them and the law fail to explain to who is responsible in ensuring the street children aces to education.

### **1:5 Objectives of the study**

#### **1:5:1 General Objective**

To examine on the law of the Child and Education Act of Tanzania and ensures the right to education to street children and responsibility is enforced.

#### **1:5:2 Specific objectives**

To examine how Child Act and Education Act are inadequately in address the right of education to the street children.

To examine what measures to be taken in implementing obligation to provide education to the street children.

### **1:6 Significance of the study.**

The outcome of the study helps Tanzania Government to put in place appropriate laws and measures to ensure the street children access to education, this also helps the nation to reduce this problem of street children and ensures this children enjoys their right in one way or the other, the nation is in a good position of eliminating poverty and increase of some criminal action. Also awaken the law makers to make amendments on the laws and make new laws in ensuring the same, enactments of the law which goes together with the condition of the life of today and the increase of the street children with regard to the causes and solution. The study helps the government to find the legal solution towards the street children and how to deal with the parents who careless cause their children to lack education and turn to be street children.<sup>38</sup>

Also the research report is important in fulfilling the partial contribution for an award of Bachelor degree in laws at Ruaha University.

### **1:7 Research Methodology**

Is a way to systematically solve the research problem it include the various steps that are generally adopted by a researcher in studying the research problem along with the logic behind them this includes the source of information and the method of data collection.

There are two methods of data collection, which include the Primary data collection and Secondary data collection.

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<sup>38</sup> C.A, Wringle, Children Right, Routledge and Kegan Paul Publisher Ltd, 1981, 193.

### **1:7:1 Primary Data Collection**

The researcher collects data from different individuals which involve the interview as well as questionnaires, the researcher uses interview as the best way of collecting data reliable and first hand information from the respondents who are affected as the street children as well as the society perception towards the street children.

### **1:7:2 Secondary Data Collection**

The Researcher collects data from library research which involves documentary review from the library at Ruaha Catholic University in Iringa as well as online library.

### **1:7:3 Data collection Instrument**

#### **Interview**

With interview the interview question was either structured or unstructured form, for the purpose of accruing information required the researcher used observation method and face to face interview, this method was more suitable to the respondents like the homeless children and social welfare people.

### **1:7:4 Research Design**

Research design denotes a plan that shows the approach and strategies employed by the researcher to obtain the relevant data which fulfill the research objectives and answer a set of tasks and questions, thus an arrangement condition for collecting and analyzing data in a manner that aims to combine relevance to the research purpose.

This research uses the case study approach within Iringa Municipal within Iringa region in Tanzania as the study area. The selected areas saved the purpose of the research and yield the intended the intended outcome simply because it deals with the street children right to education.

This study is designed in a way to collect the important data within the Iringa municipal and determination of the sample size.

### **1:7:5 Population and Sampling Design.**

Sampling may be defines as the selection of some part of an aggregate or totality on the basis of which a judgment or inference about the aggregate or totality is made, in other words it is the process of obtaining information about an entire population by examining only a part of it.

#### **Sample Size.**

This is the cross sectional study considering the short period of time accorded, the sample size is, the sample size is selected randomly to ensure every participant in a targeted has equal chance in participation regarding their experience so as to avoid bias.

The researcher sample size include the total of 205 respondents, 100 male and 105 female, among them 80 are homeless and street children, 100 are people surrounding this homeless and street children, 5 are police officers, 5 are people from different carriers, 5 are student from different courses, and 10 are the people from different Non Government Organizations responsible for orphans. The table is clear shown in chapter three.

#### **1.8 Scope of the Study.**

This study is confined to Iringa municipality, therefore the finding is not generalized to other municipalities or district in Tanzania similar, the study is solely concerned with the right of the street children to education in the area that who is responsible to ensure this children enjoys this right to education, along with the causes for the street children how they acquire this title of

street children, how do they affected in the street and how to help them in the area of what should be done in order to help this children.<sup>39</sup>

Iringa municipal is selected because of the areas in town which are found with street children as beggars and others who are just in street doing different activities in order to help them in their daily life.<sup>40</sup> Therefore Iringa is one among the towns in Tanzania and so it represents most of the towns in the nation, and that means this street children are found in all towns in Tanzania, though it is reported that Iringa is one amongst the city which has a lot of street children number compared to other areas, also is one among the city which most of the children did not asses their right to education due to lack of parental care and ignorance of their parents or guardian towards educational right.<sup>41</sup>

### **1:9 Limitation of the Study.**

In this research it encountered several limitation like, the difficulties in distinguishing street children from children who were engaging in child labor, there was a category of the children who spend most of their time on the street doing petty business while at night they return home.

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<sup>39</sup> *Idem*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Idem*

## **CHAPTER TWO**

### **LEGAL AND INSTITUTIONAL FRAMEWORK.**

Legally there is different laws and institutions which tries to explain the child's right putting an emphases on the best interest of the child, which aim to ensure that no child is to be segregated from his or her right and also emphasized as to equal treatment for both the children but the law is still silence when it comes to the street children, how are they going to enjoy their right, who will going to ensure that this children enjoys their rights, example of the street children found lost their parents and other runs from the improper treatment from their parents or can be guardian and even from different institution which are there to protect homeless children. The following below are some of the international instrument which covers the same.

#### **2.1 International Instruments**

##### **2.1.1 The Convention on the Rights of the Child of 1989.**

This Convention was ratified on 20<sup>th</sup> November 1989, where Tanzania is a signatory county, Tanzania adopted the same and declares as the part of the convention, and therefore it has to be bounded by the laws of the convention as a state part to it. The convention explain that a child who is temporally or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment shall be entitled to special protection and assistance provided by the state.<sup>42</sup> This is according to Article 20 (1) of the

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<sup>42</sup> Article 20 of the Convention of the Rights of the Child of 1989.

Convention, also when you read sub Article 2 of the same Article, puts emphasize as to any state part has to ensure alternative care for such a child by its state laws.<sup>43</sup>

Again Article 2 of the same convention emphasizes on the non discrimination to children of any kind, including sex, color, ethic, social original, property and disabilities, or any other status,<sup>44</sup> therefore the children has to be treated fairly, has to be given their rights equally without discrimination of any kind so the laws has to ensure that the street children and homeless children receives this rights has to make sure this rights reaches the children of this kind. Lack of the specific provision which explain to whom responsibility is may be regarded as segregation to this street children and the international instrument of which Tanzania is a signatory part to it denied this kind of segregation, as the part state Tanzania has to implements the obligations of the convention and the laws of the convention.<sup>45</sup>

### **2.1.2 United Nation International Children Emergency Fund.**

This is an international instrument which was created by the United Nations General Assembly on 11<sup>th</sup> December 1946.<sup>46</sup> For the aim of providing food and healthcare to children in countries that has been devastated by the second world war. After its introduction to United Nation general Assembly followed with the introduction of the Convention on the Rights of the Child in 1989, then UNICEF is there to ensure the enforcement of the convention on the Right of the Child. Therefore this instrument protects the rights of the child in one way or the other by promoting education on how to deal with children and is the international instrument which in

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<sup>43</sup> *Idem*

<sup>44</sup> *Idem*

<sup>45</sup> *Idem*

<sup>46</sup> The United Nations International Children Emergency Fund of 1946.

large percent provides for the different aids to the kids who live under poor condition or orphans and other kinds of environment.<sup>47</sup>

However the instrument does not provides for the rights of these street children as to who is responsibility to ensure they are educated and enjoy this right of education.<sup>48</sup>

## **2.2 Regional Instruments.**

### **2.2.1 The African Charter on Human and Peoples Rights.**

This is among of the regional instrument which Tanzania is a signatory part of it, therefore it was adopted in Nairobi on 27<sup>th</sup> June 1981, and entered into force on October 21<sup>st</sup> 1986. Under this law especially under Article 17 sub Article 1, explain that every individual shall have the right to education,<sup>49</sup> again Tanzania as the part to it has to ensure this rights reaches to every individual, the fact that the Constitution of Tanzania itself does not clearly shows the right to education to Tanzania is the reason enough to prove that there is a problem in education system of Tanzania.<sup>50</sup>

This problem affects the young generation in one way or the other since the generation lack education for the future life, children has to be trained since they are still young, and when it come to street children things are more worse since even though if the law will needs them to be in school then problem will come as to whom responsibility will be to ensure this children are getting education, as the signatory part to this Charter Tanzania has to ratify its laws to ensure they are abide by the laws of the treaty to which it signed.

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<sup>47</sup> *Idem*

<sup>48</sup> *Idem*

<sup>49</sup> Article 17 of the African Charter on Human and Peoples Rights.

<sup>50</sup> *Idem*

## 2.3 Domestic Laws.

### 2.3.1 The Constitution of the United Republic of Tanzania of 1977.

As the Mother country the Constitution of the United Republic of Tanzania does not clearly provided the said right rather it provides the right to education to the extent that every person has the right to asses to education and be free to pursue education in a field of his choice up to the highest level according to his merit and ability,<sup>51</sup> therefore as the mother law it was suppose to state clearly this right and impose the responsibility to the one who is going to take care and ensure this right to education is enjoyable to street children and homeless children who either lost their parents in one way or the other or runs inhuman treatments from their family members.<sup>52</sup>

The constitution provides for human rights in the preamble of it, that means it insist for the protection of the human rights, and non implementation of it that means segregation of people's rights and Tanzania is the part to the convention of protection of human right, therefore to not include right of street children to asses to education and the one who is going to ensure this right is enjoyed may be regarded as the denial of street children's right to asses to education.<sup>53</sup>

### **The Law of the Child Act.**<sup>54</sup>

In this law the right of child education is provided under section 8(1) and (2) where it provided in the manner that the parents or guardian or any other person having custody of the child to ensure that child asses to education, however under sub section 2 of the same section it

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<sup>51</sup> Article 11 of the Constitution of the United Republic of Tanzania.

<sup>52</sup> *Idem*

<sup>53</sup> *Idem*

<sup>54</sup> The Law of The Child Act no 21 of 2009.

provides in the manner that no person shall deprive a child access to education,<sup>55</sup> in that regard it means this laws recognize the basic needs of the children, that they are supposed to get this right again the problem is what about the street children who either lost the parents or having no person to take care of their basic needs due to poverty and other reason who is going to ensure this children enjoys their right to education.

This law was enacted to protect the children from destruction of their right and therefore it emphasizes on the best interest of the child but it does not explain the right of the street children in accessing education and in which manner so in this regard still this children did not enjoy their educational right because there is no person who will make an emphases on it and ensure they are attending to school.

### **2.3.2 The Law of Marriage Act.<sup>56</sup>**

The law provides the duty to maintain the child under section 129, that a man has a duty to maintain his infant children whether they are in his custody or the custody of any other to ensure this children gets educational right, and hence problem still be to the street children who the law does not recognize them as to who is going to ensure this children gets educational right, and left aside the most reason of street children is caused by lack of parental care especially in marriage issues in case there is separation or divorce, once this parents enters to conflict and children are aware of it, they may be found runs from their family homes to the street and incase this parents do not reunite or solve their problem this children result to street children since other children found difficult to live with one side parent and hence he or she may finds the safe place to hide.<sup>57</sup>

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<sup>55</sup> *Idem*

<sup>56</sup> The Law Of Marriage Act, Cap 29 of 2002.

<sup>57</sup> *Idem*

Marriage break up is the great source of street children another reason which may be resulted from separation or divorce may be the custody of the children in case one among the parents who is given the custody of the child fail to take care of them it can cause this children to run to the street and acquire the status of street children or it can be caused by the harshness of that parent until the children runs and so many other reason.

### **2.3.3 The Employment and Labor Relations Act.<sup>58</sup>**

Under this law it prohibits the child from being employed under the age of fourteen years, also it emphasizes that a child of that year can be employed only to do light work, which is not likely to be harmful to the child health and development and does not prejudice the child attendance at school,<sup>59</sup>Therefore this means that this law recognizes that a child under that age is supposed to be at school for the better of his or her future but again the problem is still to the street children that who is going to ensure that this children are at school enjoys their right and in spite this are the ones used as the labors in different function in the street, the children does so in order to help themselves for the foods and shelter as well as some other needs which they lack as their basic needs.<sup>60</sup>The act tries in greater level to prohibit the child labor and the child who mostly engage in this labor activities are street children due to the lack of the needs which they wanted to get money to assist them in their daily life.<sup>61</sup>

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<sup>58</sup> Employment and Labor Relations Act of 2004.

<sup>59</sup> *Ibid* section 5

<sup>60</sup> *Idem*

<sup>61</sup> *Idem*

## **2.4 Institutions Responsible for the Children's Right in Tanzania.**

### **2.4.1 Ministry of Empowerment Social Welfare, Youth, Women and Children.**

This also is an international instrument which was formed in 2014, of which Tanzania Government committed to supporting children in need when it created a National Coasted Plan of Action for Most vulnerable Children in Mainland and Zanzibar. Therefore since Tanzania is the part of this instrument has to abide the laws of the treaties which sign, and help the great percentage of the population of the child who most of them lost their parents and other has no place to live or to hide, Most of them are around the street finding for the food and shelters, of which this cause them to enters into criminal actions, and this be the result of not being in school, again this instrument does not explain the position as to who is responsible to ensure the right to education of the street children.<sup>62</sup>

### **2.4.2 Ministry Of Community Development Women Affairs and Children.**

This institution was formed in October 1996, for the great aim of developing the child policy of development of which by promoting the same the institution explains the rights of the child under chapter one page 12 of their policy and also the institution tries to explain in the manner that to whom responsibility of ensuring the children development is, then the institution emphasizes on the protection of the children from different inhuman and other.

The following are the function of this institution.<sup>63</sup>

The protection of the child provides and ensures the parents exercise their rules to child, implementing the policy of child development, also it deals with different issues that hinder child development, and it has the responsibility to take measures for the child survival.<sup>64</sup>

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<sup>62</sup> *Idem*

<sup>63</sup> Child Development Policy, Dar Es Salaam, 1996.23

Therefore from what people can understand is that, child development and rights is for both children including the street children, and child development that means growth in different fields including education, health and others but this institution does not shows on how it deals with the street children, how the street children are enjoys their right of access to education and who is responsible to ensure this rights is real enjoyable to this children.<sup>65</sup>

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<sup>64</sup> *Ibid*, 34

<sup>65</sup> *Idem*

## CHAPTER THREE

### 3.1 DATA FINDING AND ANALYSIS

This chapter explores the research findings part. It is sought to present the respondents' and interviewees' views on the right of education of street children, the way they think the problem can be solved, the way the already children on the street can go back to school, the legal mechanisms which if adopted can liberate street children from their current social setting and so forth. In this light therefore insights will be provided on the way forward towards making sure that street children can fully enjoy their right to education.

### 3.2 The Law and Protection of Children's Right of Education

The Law of the Child Act provides that it shall be the duty of parents or guardian to make sure that he or she maintain and provides education and guidance to the child in his or her custody<sup>66</sup>. Further the law goes on providing that a child shall have the right to among other rights, education<sup>67</sup>. The law suffers from discrepancy in that it does not provide how the street children will going to enjoy the right to education, who will going to ensure them as any other children enjoys the right to education .

Section 8(1) and Section 9(1)<sup>68</sup> Further the law places the whole burden to the parents and guardian to ensure that children gets education without even giving special attention and care to those who cannot do so due to their economic status. Street children fall within the group

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<sup>66</sup> Section 8(1) (e) of the Law of Child Act, 2009

<sup>67</sup> *Idem*

<sup>68</sup> *Idem*

which the government ought to give special care and attention in making sure that they also enjoy the right to education. Going against this ambit the law has outlawed from the gist of various international and regional instruments. The gist of the protection and promotion of children's rights lies on the best interests of the child.<sup>69</sup>

The Law of the Child provides that the best interest of the child shall be the primary consideration in all actions concerning the child whether undertaken by public or private welfare institutions, courts or administrative bodies<sup>70</sup>. Further, with regard to the problem of street children, the law doesn't even have a provision naming them and their right of education. One of my respondents remarked that; the government when enacting the LCA did not deal with the recommendations of various NGo's which were perfectly drafted to suit the disadvantaged group in the society. He went on saying that, it has been the practice of the government to ignore the views of various stakeholders when it comes to matters that has direct bearing to it in making sure that it takes the responsibility of dealing with those matters<sup>71</sup>.

The Education Act<sup>72</sup> provides for the provision of compulsory education to children and imposes that responsibility to the parents. This piece of legislation is an import of the derogation clause in the Constitution<sup>73</sup> which allows laws to be made which at times becomes prejudicial to the interests of the society it serves. The law has therefore been drafted in a manner that doesn't involve the government directly in taking part to make sure that street children enjoys their right of education. The Act for instance provides that it shall be compulsory for every child who has reached the age seven years to be enrolled for primary education. It goes on enunciating that

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<sup>69</sup> *Idem*

<sup>70</sup> Section 4(2) of the Law of Child Act, 2009

<sup>71</sup> Legal Officer of the Legal and Human Rights Centre, Mr. Onesmo O. October 2011.

<sup>72</sup> [Cap 353 RE 2002]

<sup>73</sup> Article 30 (2) of the Constitution of the United Republic of Tanzania.

without prejudice to sub section 1 of section 35, no child of the age of seven or above shall be refused enrolment in a school<sup>74</sup>.

The Constitution further provides for the right of education<sup>75</sup> but the same is put in an enforceable part and hence make it impossible for one to move the court to determine the violation of such right. The Constitution also relieves the government from taking active part in educating its citizens. The Education Act on one hand does stipulate on compulsory education but it does not require it to be free. The Constitution also doesn't provide for free education. The two laws instead place the whole burden to parents<sup>76</sup> and hence going against the CRC and many other international legal instruments which requires education at elementary stages to be compulsory and free for all.

This is a serious problem in so far as street child and even other children from poor families are concerned. It has been established through case laws and international legal instruments<sup>77</sup> that those who cannot afford to pay for themselves should be helped by the government. For instance, in the case of *James Plyler Superintendent, Tyler Independent School District v. John Doe*<sup>78</sup> the court emphasized on the need to strictly construe provisions relating to the right of education where there is a danger of total deprivation of the said right. It was therefore held that, the absolute deprivation of education should trigger strict judicial scrutiny, particularly when the absolute deprivation is the result of complete inability to pay for the desired benefit. So long as there are opportunities of endowing children their right of education, the same should be done without unnecessary delays, and courts should be strict in interpreting

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<sup>74</sup> *Idem*

<sup>75</sup> See Article 11 of the Constitution

<sup>76</sup> Section 35 (2)

<sup>77</sup> Article 28 of the Convention on the Right of the Child.

<sup>78</sup> 457 U.S. 202 (1982)

provisions to this effect (emphasize mine). This case is very important in so far as the funding of education by the government to those who are unable to pay is concerned.

The government has the responsibility of making sure that those who cannot afford to pay for school especially street children and other marginalized groups are adequately enjoying their right of education. See for instance Article 28,<sup>79</sup> Article 26<sup>80</sup>. On the part of the Law of Marriage Act provides that the parents shall make sure that they provide to their children various social amenities including food, education, and health services. Here the law also relieves the government from its obligation to take part in educating children as per international legal instruments. The law further does not mention special groups like street children and therefore make them remain the victims of violation of their rights. From the above analysis it can be concluded that the laws are there but what they provide for is not what they were expected to provide. The Constitution provides the right to education in an enforceable part and is not free and compulsory, while on the other hand the Education Act provides for compulsory education but it does not make it to be free and for all.

The Law of the Child Act does not provide for the right to education. That means there is no specific provision providing for such right and therefore it merely imposes responsibility to parents and guardians to provide the right of education which is nowhere provided.

Under the Law Of Marriage Act, the primary responsibility of educating children rests on the parents and guardians.<sup>81</sup> There is no specific provision providing for the right of education. All laws relieve the government from its responsibility of educating children and they do not specifically mention street children and their needs.<sup>82</sup> In common parlance one can

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<sup>79</sup> *Idem*

<sup>80</sup> Universal Declaration of Human Right.

<sup>81</sup> The law of the Child Act of 2009.

<sup>82</sup> *Ibid*

therefore sum up that the laws providing for the right of education suffers adequacy of coverage and they operate to the detriment of the street children, hence the first hypothesis is proved to be true.

### **3.3 Enforcement of Laws and the Public Perception to Street Children**

The government has entrusted the police officers, and social welfare officers to enforce the laws. Various views have been put forward as to the responsible persons and how they manage to properly discharge their roles. For instance in section 18(1) of the Law of the Child Act provides that a court may issue order or an interim care order on an application by a social welfare officer for the benefit of the child.<sup>83</sup>

The law goes further and provides that the care order shall remove the child from any situation where he is suffering or is likely to suffer significant harm and transfer the parental rights to the social welfare officer<sup>84</sup>. The Social Welfare Officer has also the duty to make sure that he or she takes necessary steps in ensuring that the child is not subjected to harm<sup>85</sup>. This has also been a mere sham in so far as the enforcement mechanism is concerned. It has been argued that the social welfare officers have never discharged their duties as required by the law<sup>86</sup>. Section 20 (d) It is therefore trite clear that the law puts the responsibility to the social welfare officers but they have been reluctant in enforcing the same. One of the respondents<sup>87</sup>, remarked

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<sup>83</sup> *Idem*

<sup>84</sup> The law of the Child Act of 2009.

<sup>85</sup> *Ibid* section 20.

<sup>86</sup> Legal Officer, Legal and Human Rights Centre (name not disclosed) in an interview conducted in November 2011

<sup>87</sup> *Idem*

as follows: none of the Social Welfare Officer who has discharged their responsibility of protecting and promoting children's rights as of now.<sup>88</sup>

This shows how irresponsible these social welfare officers are and hence poor enforcement of the laws. The hypothesis that the laws in place are not enforced as to allow street children enjoy their right of education is proved to be true. The public's perception on street children is explained on various reasons based on the forces behind their presence in the street. Some of the respondents were totally of the opinion that the existence of many street children is a result of poor family conditions, poverty which is contributed by the government's failure to make implementable strategies which corresponds to the changing circumstances of the society. It was also suggested that the government's responsibility of making sure that social services such as education, health and others are accorded to every member of the public in order to make sure that every person gets what he is entitled to.

The public is of the opinion that the prevailing social difficulty which forces children to go to the street and abandon their homes is the results of poor government involvement in solving society's problems. The Law of the Child provides penalty and other punishments for those who contravene the provisions of part I which part relates to the parental duty, and the public at large in making sure that child's rights are protected and promoted.<sup>89</sup>

The Act provides that any person, who contravenes any provision of Part I, commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding six months or to both<sup>90</sup>. A child living in the street around Iringa bus terminal when asked on the fate of living in the street and the way people perceive him had these to say: "almost the whole of the public is against us, and when we ask for their

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<sup>88</sup> *Idem*

<sup>89</sup> *Idem*

<sup>90</sup> Section 14 of the Law of the Child Act, 2009.

help they assault us. The police from whom we expect security and protect us against violation of our various rights treats us as thieves, but we are not: we argue the government to make sure that our rights are protected. On education, he had these to say: I am ready to go to school: am not here because I don't like to learn; I am here because my relatives have failed to send me to school, however if get a chance of going to school I can go. Police officers have therefore been reported to be the most violators of children's rights especially street children. This is because they view street child as notorious child in behaviors which are not good in the society.<sup>91</sup>

The Law of the Child Act is even clearer on this aspect. Penalties are imposed by the law and those responsible for enforcement have been named. However, to the detriment of street children and children generally there is a serious pitfall in terms of enforcement. Those entrusted to enforce the laws does not discharge their duties as required by the law, hence the hypothesis is proved to be true. <sup>92</sup>

### **3.4 The Government Policies and Strategies to Control the Problem of Street Children**

“Fundamental rights and freedoms are the bright right of all human beings; their protection and promotion is the first responsibility of governments”<sup>93</sup> . It is therefore the responsibility of the government of the United Republic to protect and promote human rights with specific regards to the right of education. Article 13 (6)(b) of the Constitution of the United Republic of Tanzania, street children which forms the basis of this study. This responsibility can inter alia be implemented through the enactment of the laws which can adequately deal with the problem.

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<sup>91</sup> *Idem*

<sup>92</sup> *Idem*

<sup>93</sup> Vienna Declaration of the world Conference on Human Rights, 1993.

To the contrary, the government has enacted the law which relieves it from this very responsibility.<sup>94</sup>

The policies provide in very clear terms that children shall be entitled to free and compulsory education and that their best interests shall be the primary responsibility of the government. However the policies suffer from time framework within which they are going to be implemented and hence the same have remained a mere sham. It is in this aspect that the researcher and the respondents are of the view that the government has been always and still is preaching wine while drinking water. Under the Law of the Child Act, the government has recognized street children as a group requiring special attention and care.<sup>95</sup>

By so doing therefore, the section 16 of the Law of the Child Act, government is enjoined to make sure that the category it has categorized gets various social care required of them. The Law of the Child Act provides for mechanisms intended to make sure that children are put under care and supervision of foster care, adoption and maintenance where their parents or relatives are nowhere to be found<sup>96</sup>.

The government therefore recognizes the existence of street children and other disadvantaged groups in the society which need special care and attention. The government has however not taken initiatives to make sure that its intention becomes a reality; in short what the government preaches is a theory which has never been practiced since the enactment of the Law of the Child Act. It has been noted however with approval that various centers dealing with orphanages and street children are run and controlled by NGO's and private persons<sup>97</sup>.

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<sup>94</sup> *Idem*

<sup>95</sup> *Idem*

<sup>96</sup> These are provided for under Part VI of the Law of Child Act, 2009.

<sup>97</sup> *Idem*

The government has not taken initiatives to deal with the problem in a practical sense. It has not established centers for orphanages and street children and provides social assistances including education which is determined to liberate street children from their social setting. The government was enjoined to take active role in establishing centers for educating street children and other disadvantaged groups in the society.<sup>98</sup>

The Education Act provides that subject to national policy on education and to other national plans and priorities appropriately specified from time to time, every citizen of the United Republic shall be entitled to receive such category, nature and level of education as his ability may permit him<sup>99</sup>. Policies adopted by the government do not support the intention of the government. Further, it has been noted with approval that the government has not taken serious initiatives to educate its citizens or even at least prepare good learning environments due to the fact that an individual has to educate him or herself. One can therefore conclude that measures taken by the government are not aimed at fostering education strictly speaking.<sup>100</sup>

Measures which have been undertaken by the government have been always a reaction on the impacts of the problem. There have been no serious measures and strategies which have been initiated by the government to make sure that the root cause of the problem are curbed. The laws in place are just a mere mask by the government to hide the eyes of equity, the equity that requires that children and especially street children should be provided with the right to education compulsorily and free and that the government must make sure that the ambit become a reality. The policies in place however have tried to fulfill this ambit though the same also lacks

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<sup>98</sup> *Idem*

<sup>99</sup> Section 56(1) of Cap 353

<sup>100</sup> *Idem*

time framework and hence incline one to think that there is no committed intention on the part of the government to make this goal a reality. The hypothesis has also been proved to be true.<sup>101</sup>

### 3.5 The Constitution and the Right to Education

There is no doubt that for a right to be respected and been accorded the importance it deserves, there should be a settled legal frame work which will make it enforceable in case of its breach. Further, rights enshrined under the Bills of Rights for a long time been accorded a response which makes them respectable. To the contrary, the Constitution of the United Republic of Tanzania being the law of the land however, has not enshrined the right to education in its enforceable part. That being the case its violation has increased due to its less enforcement mechanisms. One of the respondent had these to say: to approach the court one need to have settled provisions from the law to back up his cause of action, and normally due to its sui generis, the provision of the constitution is said to have more legal force compared to other laws because all other laws are a result of the Constitution.<sup>102</sup>

The respondent was of the view that unenforceability of the provision of the Constitution dealing with the right of education has, and still is a bar to approach the court in case of the breach of the said right. It is therefore recommended that if the right is to effectively be enforced, then it should be enshrined in an enforceable part of the Constitution in order to allow those who want to petition the court in case of its violation to do so. The enshrinement of the right of education in an enforceable part of the Constitution has been viewed as a loophole by the

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<sup>101</sup> *Idem.*

<sup>102</sup> *Idem*

government towards declining to honor the ambit of international legal instruments.<sup>103</sup> Further, Article 30(2) of the Constitution provides for derogation clause which allows the law to be made or another law in place to be enforced for the public interests.<sup>104</sup>

It has been the culture of the government to use the term public interests to justify the blunders it does to its citizens. The general public has expressed their views to the effect that, the right of education for street children will go on been violated because they have nowhere to go and seek redress. One of the respondent and others however dissented by saying that it is not necessary that for a right to be respected it must be adumbrated in an enforceable part of the Constitution. He was of the view that if the government had the intention of protecting children's right of education it would have done so even in other pieces of legislations and make sure that the same is enforced strictly.<sup>105</sup>

**Public opinion on reasons which force the street children not to enjoy their right to education:**

Respondents	Place	Reasons
20	Miyomboni area	Government
40	Kihesa	Government, parents, children
15	Mwanyingo	Government, parents
20	Semtema	Children, poverty
15	Tumaini	Poverty, Government

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<sup>103</sup> *Idem*

<sup>104</sup> *Idem*

<sup>105</sup> *Idem*

15	Mkwawa	Globalization, Government
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The figure above explain on different opinion that were given by some of the respondents by a total of 125 on the reason which force the street children not to enjoy their right to education, on some of the places as shown from the figure are Miyomboni Area, Kihesa, Mwanyingo, Semtema, Tumaini and Mkwawa. Where majority of the respondents spoke on the government failure to take measure to overcome the problem of street children as the result for the increase of the number of the street children as the result they are not attending to school and hence do not enjoy the right to education as well as there is no specific laws which protect them and their right to education, again for them it is difficult to afford the school needs because they are segregated from both their guardian or parents and some of them they are orphans so there is no one to take responsibility to ensure them are in class.

Due to this reasons above were the majority point out the government as the reason for the increase of the street children by failure to overcome the problem, they suggest the solution that the Government has to ensure the laws protects the right to education to the street children however some recommended that the government has to overcome the problem by creating the camps that foster the street children.

#### **Views from Street children on not enjoying their right to education:**

Respondents	Place	Reason
20	Town areas	Orphans, no place to live, poverty

15	Kihesa garage	Poverty
15	Makorongoni	Parents inhumanity
20	Flerimo	Poverty, no place to live
10	Mwembetogwa	Inhuman, poverty

The figure above explain the opinion of the Street children who are not in school by total of 80 children, they give the opinion which force them to not be in school as mentioned above and some of them recommended that they are ready to go to school if their problem will be solved, as seen from the figure poverty is the leading reason for the street children not to enjoy their education right, since some of them due to poverty they are forced themselves to street to find their basic needs such as food, shelter and money for their daily accommodations.

**All respondents by sex:**

Respondents	Male	Female
205	100	105

This figure shows the total number of all the respondents and also their division by sex. It is noted that there are many rights in Tanzania which have been placed in an enforceable part of the Constitution but still they are not protected and their enforcement is still a problem.

Due to the above views it appears that the fact that the right of education being enshrined in an enforceable part of the Constitution has made it to receive less response and hence taken for granted. Also the fact that the said right cannot be enforced as a basic right in Tanzania has resulted into enactment of other laws which have followed the same path. “Charity begins at home”, being the mother law the Constitution should enshrine the right to education in an

enforceable part so that the same can be taken seriously. This will led to consideration of different groups in enjoyment of the right to education including the street Children<sup>106</sup>.

### 3.6 Parental Responsibilities and Children's Right to Education

The Law of Marriage Act makes it clear that parents have primary responsibility of taking care of their children. This responsibility includes supplying food, shelter, education, paying for health services<sup>107</sup> and other. Further, the Law of the Child Act provides that parents or guardians or any other person having the custody of the child have the duty of making sure that he or she maintains the child and particularly making sure that the children get the right to education and guidance. The law provides further that the child shall have inter alia the right to education from his parents<sup>108</sup> Views of the respondents on this aspect are on one hand of exaggeration response while on the other hand receiving a governmental oriented responsibility. Some See the gist of the Law of Child Act and compare its content with that of the Constitution of the United Republic of Tanzania.<sup>109</sup>

Some of the questionnaires supplied on the response of the respondents on this question were to the effect that streets don't have ability to give birth and therefore it has nothing to do with the group known as street children. This response means therefore that all children have their parents and if the said parents are not alive then there must be some other persons and

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<sup>106</sup> See the gist of the Law of Child Act and compare its content with that of the Constitution

<sup>107</sup> Section 129 (sic) of the Law of Marriage Act

<sup>108</sup> *Idem.*

<sup>109</sup> *Idem*

perhaps the relatives of the child who are entrusted with the responsibility of making sure that those children get education, maintenance, health care and other social amenities.

The above response places the primary responsibilities to the parents towards their children, and thus according the respondents who put forward this proposition there is no way a parent can seek help from someone else on their own children. The government here therefore plays a secondary responsibility of providing various social facilities which parents are to make sure that their children enjoy. The Law of the Child Act provides that Subject to the provisions of the Law of Marriage Act, where parents of a child are separated or divorced, a child shall have a right to maintenance and education of the quality he enjoyed immediately before his parents separated or divorced.<sup>110</sup>

The law ends there without showing who is enjoined to make sure that the children whose parents have separated get education and maintenance. Other respondents have even dared to say that parents whose children are on the street and therefore who cannot access their right to education did not adequately prepared themselves to start responsibilities of parents. This conception has been also been expressed from dependence point of view, and therefore leading to the question which goes: how can a person be able to bear parental responsibilities while he or she is begging for contributions to conduct marriage ceremony?<sup>111</sup>

Those who are in favors this view asserts that, many parents are not prepared to bare children and that is why they subsequently fail to take their responsibilities as parents. On the other hand many other respondents have favored the contention that the government has a primary responsibility of making sure that parents are actively taking part in maintaining their children, care, educating them and other parental social responsibilities. These respondents are of

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<sup>110</sup>Section 26(1) of the Law of Child Act, 2009

<sup>111</sup> *Idem*

the view that the government has a direct bearing preparing environments that can help its citizens to adequately earn living wage that can help them and their children.<sup>112</sup>

In connection with that, the government bears directly the responsibility of providing compulsory education to children (street children) free and for all. They were also of the view that the primary responsibility of protecting and promoting human rights rests on the government and as such the same has to make sure that the right to education is protected and promoted. To the contrary however, the government has tended to place all the responsibilities to the parents contrary to the well established international legal regimes.<sup>113</sup>

It can therefore be concluded from the above two conceptions of the respondents that, the second formulation is more convincing than the first one though it also plays a significance role towards making sure that street children's right to education is protected and eventually promoted.<sup>114</sup> Be it as it may, the government bears the primary responsibility of making sure that children's right to education is protected and promoted. It should therefore strive to maintain this ambit a reality and hence honor the obligations created under various international legal instruments.

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<sup>112</sup> L.P. Shahidi, The Right of the Street Children and Bandoned Children, UDSM Law Journal, 1991, 32, v. 8.

<sup>113</sup> *Ibid*, 33

<sup>114</sup> *Idem*.

## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATION

#### 4.1 Conclusion

The problem of street children is still a big issue in Sub Saharan countries, most of the states in East Africa are faced with the same problem and its impact are in great level than what could be assumed. Street children caused by different factors such as poverty, lack of parental care, and most be lost of parents due to some different factors, sometimes it may happen that children loose life direction due to separation or divorce of his or her parents. From there now it's were these children may be turn to be street children for the aim of finding something for their survival and other needs.<sup>115</sup>

Street children faced with a lot of problems such as lack of education as we can see there is no law which explain to whom is responsible to ensure this children access to their right to education, and what follows there is some enters in sexual activities for the aim of getting money for the needs, and this is current problem where by a lot of children from different countries who has no homes they are taken to participate in sexual movies such as pornographies and other.<sup>116</sup> The other group of children may be taken in drug dealing where their body can be used as the way to transfer drugs from one place to another of which through it most of them died other lost their good health and other problem.<sup>117</sup>

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<sup>115</sup> B. Doherty, *Street Child*, Harpercollins Publishers Limited, 2009, 103.

<sup>116</sup> *Ibid* 104.

<sup>117</sup> *Idem*.

However some of this street children may be taken to be trained as soldiers in different groups which is not proper for their age to be trained as such, what they tries to do is to kill their minds of filling as normal people and impact inhumanity inside them of which they are trained to commits big crimes such as terrorism and other activities, this children trained to use army and to kill at the younger age, others can be tortured very harsh in order to be as they wishes for their uses in different criminal actions.<sup>118</sup>

Therefore no one knows and take precaution to know where they are since some of them has no parents or guardian to take care of them what the difficulties this children are faced there is very hard to explain, finally other dies, other killed by their masters when tries to escape and even others can be died for the hunger and lack of health treatment after being used in a certain activities.<sup>119</sup>

Seriously the state is in need to do something for the care of the street children, the state has to ensure where does this children suppose to be under care and how they are going to enjoy their rights, this children needs to be educated as any other children, they are suppose to be ware for their rights as any other human as the constitution of the country needs, also they are supposed to be under special care in respect of their health.<sup>120</sup>

Lack of care to the street children and lack to education may result to lost of the future generation which will help the nation to grow and develop. The state will lose power from the young generation which is the most dependant power of the nation because it's where the future generation can be created from. To educate the young generation is like to educate the state, because when this children will be educated that means the nation will be at the position of having labor force to produce within the nation in different field, also it help the nation to grow

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<sup>118</sup> *Idem*

<sup>119</sup> K. Gibson, *Street Kids*, University Press, New York, 2011, 340..

<sup>120</sup> *Idem*

faster economically as the result of skilled man and lost the idea of the depending from outsiders.<sup>121</sup>

The street children needs much support from the state to ensure their protection and access to their rights because they are the ones who after been destructed their behaviours they make as a lesson to the other children of which both of them are from the same nation and from there what follows is creation of poor generation which lack proper behaviors.<sup>122</sup>

## 4.2 Recommendation

The following are the solution to what should be done in order to solve the problem of street children and ensures they are enjoys their rights.

This children who live on the street should be placed in foster care until they can be either adopted or solved their problem since some of them run their homes for hunger or may be lack of parental care so incase this be the problem the government has to create good way of finding the solution to their problem and insist them to live in their house life except for those who losts parents or guardian may remain there for the government care. And if they will live under this special care it will be easy to control them and ensure that they get their basic needs including the enjoyment of their rights.<sup>123</sup>

Also a child welfare system should be set up if it doesn't exist and improved if it does in order to better protect children, and also the teachers has to be trained to recognize and report signs of abuse and neglect, this will help in the protection and care of this children because there others who runs from their home only for the inhuman treatment which they are faces from their

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<sup>121</sup> L. Aptekar, *Street Children And Homeless Youth*, New York Press, 2013, 76.

<sup>122</sup> *Idem*

<sup>123</sup> *Idem*

parents or guardian so if there will be good child welfare association will help to the report of their inhumanity faced and will make them feel safe.<sup>124</sup>

However financial support should be given to struggling families so that they can afford to care for their children, poverty in some families is the source to street children and make them fail to attend in school due to lack of money to pay for the fees and even for the needs, since this poverty be the national problem then the state has to take it serious and assist some families which are relay fails even to meet their daily needs, because poverty can led to increase of this street children who will run from their homes to the street to fight for the food and shelters and from there they can be faced with this disaster of street children then lack their rights and fail to attend to school.<sup>125</sup>

Again public campaign should be conducted to encourage parents to not throw their children out of the home for culture reason, this is happening especially in some rural areas where some of the children are pushed out of the house by their parents only because they denied a certain culture example women circumcision like female genital mutilation and other issues, therefore some of them are chased away while some of them runs for their best since they are against this traditional. So the better solution to this is that the government should campaign for the prohibition of this traditional and educate the children for their rights.<sup>126</sup>

This children are supposed to be open up a school which will help them to read and understand their rights also the school which will prepare them for the future life and train into different profession, education as the key to life will help them to develop their knowledge and makes them feel they are special in this country as they are suppose to read for the future national

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<sup>124</sup> *Idem.*

<sup>125</sup> *Idem.*

<sup>126</sup> N. Ansel, *Children Lives In An Era of Children Rights*, Routledge Press, 2014, 105.

building, this also will help in increase of educated members in the nation and forced labor who are well trained in different field.<sup>127</sup>

How to help street children.

First the society needs to understand that street children are just children but traumatized, chronically neglected physically and mentally abused and exploited children, they can be helped and given a future away from the street. They are not naughty children criminals nor dangerous individuals, many street children do exhibit behaviors problems, aggression and substance abuse issues but there are coping mechanism of children who are in a great deal of physiological pain because street children are traumatized children, abandoned, orphaned, chronically neglected, physically, sexually and mentally abused children, children who are exploited by other to beg for commercial exploitation and other thing.<sup>128</sup>

It is a wish of every street child to be back to his or her family, it's just that they can't because of the family situation or because being vulnerable they are being exploited and used by others. Therefore legally they are in need and care.<sup>129</sup>

Therefore the following ways is on how to help the street children.

To build a positive relationship on the street with children, they need our care concern and protection, this can help them to tell their stories on how they started to be on the street of which by this way a person can understand better the situation of this children and knows where and how he or she can help that child, example to take them in different organizations which deals with children because it can be found that the other children is in street because his or her

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<sup>127</sup> *Idem*

<sup>128</sup> *Idem*

<sup>129</sup> J. Lugalla, *Urban Life And Street Children Health*, Lit, 2003.

parents harass him and the child doesn't know where he can report, so by positive relation we can help them in one way or the other.<sup>130</sup>

Gently to encourage such children to return to their home or to go to the homestead intake shelter, this way also can help especially for those children who runs their home due to bad relationship of his or her parents, or other runs poverty and there are few of them who does not fill to live in such families instead they are ready to live in the street, so this will be the best way of advising them and protect them from being exploited by the people in the world.<sup>131</sup>

Also the society has to ensure that this street children are not ignored because this can create bad altitudes in their mind, instead for help is better to report them into the nearest police station or to the local department of social development office and the responsible office may respond to such children since they are suppose to take responsibility to any children living working or begging on the street.<sup>132</sup>

However the society has to understand that, they are not supposed to take such children to their homes or homestead, only designated social workers and the police may remove a child without parental consent, the homestead can only accept a child if they self refer or from a police officer or a designated social workers with the correct paperwork. This child needs from the society education and the development which they deserve.<sup>133</sup>

Therefore the society is in need to help the government to identify children who living working and begging on the street, this helps the government on understanding where the services is needed for the best of this children, they are suppose to enjoy their right and care as any other

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<sup>130</sup> *Idem*

<sup>131</sup> J.P. Wright, Family Social Capital and Delinquent Involvement Journal of Criminal Justice, 2001, 29, vol 29.

<sup>132</sup> *Idem*

<sup>133</sup> *Idem.*

children and so the society has to remove this notion of segregating them and ignoring them because they need help from their society in order to change their life.

Generally there is a need of the volunteers to help this children is not the issue of state itself but both the state and its government together with its people. There are no government organization which can manage to assist this children from one way to another, and can do something to help them, the government also can do that can be the volunteer also the charitable organizations can also be the volunteers to help this children from stopping to be beggars in the street, in one way or the other this problem can come to an end after understanding its importance.<sup>134</sup>

The problem can't be finished if there will be no volunteers, or if the government will not awaken and sees it as the problem, the future nation will continue to be lost and what will create will be the status of the nation as poverty and begging to other nation, there will be creation of the generation which does not know how to stand on itself and be called a nation until the hand of the outsiders.

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<sup>134</sup> P. Heinonen , Youth Gang And Street Children, Berghan Books, 2011.

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