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THE RIGHTS OF CHILDREN AFFECTED BY AIDS: A POLICY PAPER FOCUSING ON THE RIGHT TO EDUCATION

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THE RIGHTS OF CHILDREN AFFECTED BY AIDS:
A POLICY PAPER FOCUSING ON THE RIGHT TO EDUCATION

A Dissertation
Presented to
the Graduate School of
Clemson University

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Philosophy
International Family and Community Studies

by
Gita Jaffe
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Accepted by:
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Abstract

HIV and AIDS have the potential to surpass every catastrophe in Africa's history, because they encompass all of the past vulnerabilities. Thirty years after the identification of HIV, a transition from medical disease to social epidemic has occurred. The impact on family and community is threatening current economic, medical and social systems. In sub-Saharan Africa (SSA), the region most adversely affected, 14 million children have already been orphaned (UNAIDS, 2008). And at the core of the burgeoning orphan crisis, children affected by AIDS (CABA) are unable to exercise their rights, based on their position in society. This paper will concentrate on the right to education. The existing failures that are challenging CABA fall under five themes: (1) international co-operation; (2) state responsibility; (3) the inherent conflicts in the law; (4) the inability of the education system to adapt to the situation; and (5) inadequate monitoring and evaluation systems to assist in the evolution of policy and practice. However, international and national law led by the Convention on the Rights of the Child (1989) provide four guiding principles (participation; life, survival and development; non-discrimination; and best interests of the child) that set the standard for a model of action. A principle-based framework, replicable in any community, has been developed that integrates policy and practice at the international, national and community level. Action points for operationalization at each level are integrated into the model and explained in this paper.

Acknowledgments

Inspired by CABA, this generation's everyday heroes; in honour of my late grandfather, George E. Brickwood a lifetime advocate for education; dedicated to my biggest enthusiast, my mother, Chapelle Jaffe; and with tremendous gratitude to those who believed in my efforts when I could no longer.

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Section One

Introduction

The magnitude of the HIV and AIDS epidemic has the potential to eclipse every catastrophe in Africa's history. The crisis is reversing key development indicators, threatening the economy and transforming cultural traditions through demographic shifts. In sub-Saharan Africa (SSA), HIV and AIDS have become a part of everyday life. The regional impact is not just a local problem but a global challenge.

In only thirty years after the identification of HIV, the understanding of the epidemic and the response to it has changed significantly. Initially framed as a medical disease, the epidemic has transitioned into a social one. Similarly, although it was first recognized by its impact on the individual, it is now widely acknowledged as a familial and even community disease. The epidemic has destabilized family and community which have further resulted in the marginalization of children, many of whom face new responsibilities. The epidemic and its impact have been diverse. Similarly, the programmatic, policy and treatment approaches to the epidemic have been varied. With more than 14 million children under the age of 18 who already have been identified as orphans in sub-Saharan Africa¹ (UNAIDS, 2008), the region is faced with a new set of issues including challenges to the educational system and the lack of a framework to respond appropriately.

¹ There has been significant variance in the statistical data of CABA over the years. Smart (2003) discussed issues of variance including the age of orphans included, type or category of orphans and method of orphan counting as issues which are at fault. Estimates of number of orphans in SSA have been over projected as with many HIV or AIDS-related statistics in the past, due to statistical estimation models and programmes (Bennel, 2005). Therefore current statistics are believed to be more accurate.

The situation has diminished the ability of children affected by AIDS (CABA) to exercise their right to education. CABA are not able to attain their human rights based on their position in society. The resulting discrimination could be catastrophic for them since education is indispensable for the exercise of other human rights (General Comment 13, p.3).

This paper will examine the problems arising for CABA in exercising their right to education, the reasons why this is happening, the impact, and what can be done about it. Tanzania will be used throughout this paper to illustrate the impact of the epidemic on CABA because it is representative of SSA. It also has a similar social, economic, and political environment to other countries in the region. The significance of the AIDS epidemic to Tanzanian society has been extensive, resulting in it being declared as a national disaster, and named a top-priority government development issue (Nyangara, Mariko, Kalungwa, 2009, p. 7). Finally, I have focused on Tanzania because it is home to *Africa's Children-Africa's Future* (AC-AF) a rights-based non-governmental organization (NGO) that works with community and government. As the director of AC-AF, I have integrated observations from this experience into the findings.

Definition of Terms

A **child** is, “a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger and therefore recognize an earlier age of majority” (UNICEF, 1989) as defined in the Convention on the Rights of the Child (CRC). Despite limitations, this definition is the most widely adopted globally, and it will remain the standard for which discussion is based on the topic throughout this work.

Children affected by AIDS (CABA) are children who have been affected by the AIDS epidemic but who are not necessarily children living with HIV. The population has gone through a number of name changes. CABA is the term of preference, as it is currently the term used with the highest regard of agency and respect for the dignity of the person. A CABA was traditionally a child who was orphaned due to the AIDS epidemic. However, orphans and vulnerable children (OVC) and most vulnerable children (MVC) are also terms that are used in the literature and they will be used interchangeably with CABA throughout this paper. This is because these terms are more commonly used in existing Tanzanian policy, and represent the same population. Previous terms, such as ‘AIDS orphans’ has been controversial due to its stigmatizing and discriminatory nature. This term assumed that children were infected. The terms single-orphan and double-orphan and/or maternal orphan and paternal orphan, have also been used. These terms denote who the child’s living parental relations are. Notwithstanding these distinctions, as the population affected increases it is more difficult not to view the entire population as ‘affected’ based on social, political, economic and cultural factors.

Child-headed households (CHH) fall within the most vulnerable category. These families of CABA are generally comprised of siblings or family members, all of whom are under the age of 18. There is no single definition of the relationships of the people within a CHH. Examples of CHH include families comprised of; siblings, children with an incapacitated adult, extended family, or an arbitrary grouping of vulnerable people. For the purpose of this paper, a CHH refers to a group of children and youth (related, and living together) where someone under the age of 18 is the primary caregiver.

A ‘**child-carer**’ is a person under the age of 18 (child) who has a dual-role within their family. First, they are affected usually through the loss of parents. Second, they are the caregiver or carer. However, a child-carer can also be the head of a household with a sick or ailing parent or guardian, during the end stage of the parent’s life. The order of words is deliberate as the individuals in this demographic category are children first, through biological maturity and placement in society, and defined through their vulnerability as CABA and carers, second.

The **right to education**² was enshrined in the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and reiterated in the Convention on the Rights of the Child (1989). The meaning of the right was further elaborated in General Comment 13 (ED-2003/WS/73) which also established the obligations of governments in implementing the right. The most notable feature of primary education is that it should be “free to all” and “compulsory” (General Comment 13, p.4). However, education at all levels (not just at the primary level) should be available, accessible, acceptable and adaptable. These four features offer a framework for evaluating the progress of government in providing the conditions to secure this right.

² Within the field of international development, the NGO network distinguishes ‘formal education’ to mean within the environment of a school with established roles such as teachers and peers. The purpose of this distinction suggests that children who are not in school are still learning and therefore receiving an education of sorts, however, it is not based on a formal curriculum.

Statement of the Problem

How big is the problem?

SSA is home to 10 percent of the world's population (UNAIDS, 2005) but more than 71 percent of all people living with HIV and AIDS in the world (UNAIDS, 2008). Because the majority of deaths have occurred among individuals aged 15-49 (UNAIDS, 2005) the loss of parents has magnified the short- and long-term implications for the next generation. The impact of the loss of parents has influenced the demographics and has resulted in increasingly young populations. More drastically though, half of the 500 million inhabitants of SSA are under the age of 15 years old. This, in conjunction with the fact that only five percent of Africa's population is over the age of 60, results in a significant percentage of the region's population being at high risk of impact from the epidemic (Twum-Danso, 2005, p. 1). In the early 1980's barely two percent of African children were orphans. More recent estimates put the proportion of children orphaned by AIDS as high as 15-17 percent in some countries (Deininger, Garcia and Subbarao, 2003). Without comprehensive sustainable interventions, it is likely that unsupported households will disintegrate quickly and siblings will be further separated (Germann, 2006).

In Tanzania, a country of 38 million people, an estimated 1.5 million people are living with HIV and AIDS (PLWHA). Approximately 10 percent of these are children. It is estimated that 140,000 Tanzanians die each year from AIDS-related illnesses. This has disrupted family structures and led to an increase in the estimated 1.1 million OVC (PEPFAR, 2008 in TACAIDS). According to the Tanzanian Commission for HIV and AIDS (TACAIDS) eight percent of Tanzanian children under 18 have lost their biological

fathers, four percent have lost their mothers and one percent have lost both parents, primarily due to the AIDS epidemic (TACAIDS, 2005). By 2008, the Ministry of Health and Social Welfare determined that approximately 11 percent of children in Tanzania under the age of 18 were vulnerable, and five percent were classified as the most vulnerable children, of these 12 percent were children living in CHH, however only one percent were receiving any support from relatives (TACAIDS, 2008, p. 27).³

Lack of attention to CABA

Despite the increased attention to CABA, the international community, funders and implementers have focused almost exclusively on children orphaned by AIDS and programming has been designed to provide services and support directly to orphans (Richter et.al, 2009). Similarly, although there has been increased attention to studying CABA, available data are insufficient. Research has tended to concentrate on the magnitude of the crisis rather than on the specific challenges faced by CABA (Germann, 2006). Moreover, the more intransigent issues pertaining to CABA have been ignored on the public stage. The World AIDS conferences are a case in point. Following the 2004 World AIDS Conference, Sherr (2006) reported that in more than 550 seminars⁴, only 12 mentioned the word children. Rather, the repetitive and often controversial images of “wide-eyed pathetic children” (Richter, in Sherr 2006, p. 1) diminished the likelihood of policy change since weaknesses in existing policies were not identified and discussed.

³ Data on population-based surveys is not available for 2006 and 2007, with the only available data based on the Tanzania HIV and AIDS Indicator Survey of 2003 and 2004, and the Tanzania Demographic and Health Survey 2004 and 2005 (TACAIDS, 2008).

⁴ The conference itself had over 490 oral abstracts and over 5000 poster abstracts, it was found that only 19 or 3.9 percent of the former and 116 or 2.3 percent of the latter were related to children in some capacity. (Sherr, 2006)

Similar analysis following the 2006 and 2008 World AIDS conferences showed parallel results.

Although largely ignored, CABA are challenging conventional ideas about childhood. For this population, the level of responsibility expected, has changed from past generations. As the number of orphans increases, the need for alternative ‘family models’ and more extensive fostering arrangements will increase.

They are also one of the most vulnerable groups in society, mostly due to the likelihood of facing increased poverty. Recognizing that approximately a quarter of the world’s children are born into and live in poverty, a child’s opportunities are influenced by their environment. In 2005, it was projected that in the worst affected countries, between 30-40 percent of the child population would be orphaned and would require a government ‘safety net’ for financial support (Bennel, 2005, p. 485). Beyond the number of young children orphaned, the 18-25 years old⁵ orphaned population of youth who have ‘aged-out’ as children, but remain highly vulnerable, are a concern.

Finally, CABA are changing traditional notions of childhood. The definition of childhood historically has been associated with the number of years attained. However, this definition does not consider influential factors on status such as environment, culture and family responsibilities especially for children taking on caregiving roles. If social indicators were considered in defining “child”, it would not be possible to have a universal and singular definition of childhood. For one thing, life expectancy of a child in sub-Saharan Africa is vastly different than that of a child in Canada or the United States. A 16-

⁵ This age group is also highly in need of additional research as the generational impact at this age level is unstudied and potentially will have a large impact on society.

year old in Africa, based solely on age and roles and responsibilities is closer in remaining lifespan and level of responsibility to a middle-aged person in North America. The AIDS epidemic has significantly reduced life expectancy in SSA (UNAIDS, 2008). The assumption of responsibility by CABA was not envisioned when the CRC and subsequent laws were drafted. As a result, CABA are in need of extra protection. The changing nature of childhood, in conjunction with the adherence children's rights reflect in the nature of the society that children live in, suggest the type of childhood they will experience (Fortin, 2003).

In SSA, the government's approach to HIV and AIDS has been to manage it, rather than to find solutions to the key challenges. This suggests that social and political systems have absorbed the affects of HIV and AIDS as much as possible (De Waal, 2006, p. 66). However, underlying social challenges within the continent exacerbate Africa's AIDS crisis (Poku and Whiteside, 2004). Poverty and its perpetuating factors are responsible for shaping the epidemic. They have resulted in even greater levels of poverty, decreased productivity and societal restructuring that has progressively shaped the state of affairs of highly affected countries, in addition to individuals and their own livelihoods. Poverty is holistically considered (by the United Nations Development Programme) as the inability to meet basic nutritional, health, educational, shelter, social and recreational needs (Mulinge, 2002, p.1122).

With such a large surge in orphaned children, the responsibility for their livelihoods has exhausted the extended family and potential guardians while governments (and the international community) have not been able to actively protect these children. The magnitude of the orphan crisis has been paralleled by the stigmatizing reactions toward the

most vulnerable people. The challenge for CABA is that they are unable to access their rights, based on their position in society that encompasses being: (a) under persistent poverty; (b) child-carer's, which is a position in society that is not recognized; (c) without a parent (or guardian) of legal age to ensure their rights are upheld and (d) failed by states to absorb the responsibility of orphans, as mandated by law.

How does the AIDS epidemic affect the development of children?

In light of the fact that the family has traditionally shaped the child's future by providing the requisites of basic development, the wellbeing of children is ultimately challenged, by the orphan crisis (Mulinge, 2002, p. 1127). It is therefore understood that the AIDS epidemic has a substantial affect on the development of the child. The marginalization of children, the additional caregiving responsibilities, psychosocial issues including trauma, and economic challenges have been identified as major areas of concern with respect to child development.

Historically, international policies about HIV and AIDS have been influenced by the medical construct, which conflicts with African's perception of the crisis (Iliffe, 2006). From the African perspective, AIDS shifted from being an independent or individual illness to a "household" illness. It was (and remains) impossible to separate an ailing person (or multiple sick people) from the family dynamic and social structure of a community (Iliffe, 2006). This in turn, changed the natural progression of household and community interactions and responsibilities. Research has proven that once an AIDS epidemic becomes generalized⁶ within a country, direct negative economic impact and damage to the

⁶ An epidemic is generalized when more than one percent of the population consists of people living with HIV and AIDS.

governments' economic health occurs (Knight, 2006, p. 41). All of these factors have greater implications on the wellbeing of children.

An interesting interpretation of orphanhood looks at the concept as a form of detention, in that children are treated exclusively as objects of concern and items in socioeconomic accounting rather than as subjects of human rights. Ennew (2005) suggested that, despite kindness, a concern regarding orphans, whether in substitute families or institutions, is that no one wants to pay for the cost of their upbringing (p. 133). Desmond (2009, p. 98) argued that strong and supported families with good access to quality services can deflect the impact of the AIDS epidemic, but it is the result of the interaction in the context of poverty that results in a weakened family structure. However, the magnitude of and the overextension of the orphan crisis in already poverty-stricken areas makes it more likely that economic barriers will inhibit child development.

In ten countries where five percent or more of adults were living with HIV and where recent household surveys had been conducted, a population-adjusted average of 15 percent of orphans lived in households receiving some form of assistance, such as medical care, school assistance, financial support or psychosocial services (UNAIDS, 2008, p. 20). This is still a small portion of the population in need of assistance. Traumatic stress, often called psychosocial stress in relation to the issue of the orphan crisis, is a key determinant in wellbeing and child development (Bauman and Germann, 2005). This incorporates the concepts of grief and loss with the psychological and emotional effects of losing the 'normal' generational transfer of knowledge from parent-to-child. Drawing research from more well documented forms of parent-child separation, there is significant evidence that the initial experience of losing a parent is traumatic. Frequently, children are reported to

experience crying, sadness and/or repeatedly calling for and looking for their mothers [or other guardian] (Poehlmann, 2005; Kimbrough-Melton, 2010). However, the importance of cultural norms is important in analyzing data collected in the U.S. versus the sub-Saharan Africa context. For example, in many traditional African settings, children are not permitted to attend a funeral or go to a grave site after a death of someone they know, especially their parents. As a result, the child or family may not comprehend that the parent(s) have passed away, which is important to bringing emotional closure to the life of their loved one. Beyond crying and sadness, children may also experience confusion, anger, sleep problems, and developmental regressions when they are exposed to a traumatic event (Poehlmann, 2005; Kimbrough-Melton, 2010). A study completed in South Africa on psychological distress amongst children orphaned by AIDS (Cluver, Gardner and Operario, 2007) concluded that orphanhood due to the AIDS epidemic (but not other factors) was shown to be independently associated with depression, post-traumatic stress, peer relationship problems and suicidal ideation (p. 761).

Additionally, research has shown that the emotional turmoil experienced by CABA and recognized by their teachers, can result in behaviour that is, “apathetic, listless, excessively reserved or inappropriately serious in the classroom.....[They] do not play as much as other children” (Kelly, 2003, p. 76). Grief, coping and depression are issues that have significantly affected individuals and communities. These challenges have intensified over the years as the orphan crisis has become more severe. Robson and Sylvester’s (2007) study on staff and student perceptions of the impact of the AIDS epidemic on education of CABA in high-prevalence districts of Zambia illustrated how little discussion

among stakeholders of such issues occurs due to the silence or denial that is typical of the African context.

The impact of grieving on children is apparent in their daily interactions. When children act out, their behaviour is frequently seen as troublesome so it is dismissed and not addressed. In fact, it often is a reflection of the grief that they are experiencing. To illustrate, a family in AC-AFs programme had become quiet and dismissive during one of the regular AC-AF family meetings. The underlying reason for their behaviour was the fact that the child-carer was unable to mediate a small sibling-argument that had occurred weeks previous to this time. When analyzing the issue, it was determined that their late mother, who had died approximately four months prior to this incident, always assumed the role of mediator. Now that she was deceased, the eldest child did not know how to cope. Prior to intervening by AC-AF, these four children, who lived in a 10 by 10 room together, did not speak to each other. The solution to this problem was two-fold. Firstly, the children needed to learn critical skills and coping mechanisms among each other. Second, their grief had to be addressed. In situations similar to this community members do not have training in addressing such issues.

The challenges brought by ailing and dying parents have necessitated adaptations by children and their communities to the circumstances presented by child-carers. Children, especially those in caregiving roles, have had to adapt rapidly to assume new responsibilities within the family. In so doing, they also have broader influence in the community.

A child's psychosocial capacity can also be affected by the entrance and exit of distant and extended family members. Often, the most vulnerable children have been

moved from location to location and neglected in some capacity prior to living in a CHH. Issues of inheritance and access to material possessions also can increase the miscommunication among family members. To illustrate this point an example using a family from the AC-AF programme will be used. The children in this particular family were step-siblings. The eldest of the children was often moved to neighbouring communities where extended family members lived when they were in need of a servant (culturally known as a 'house girl'). This situation was possible because the child's various extended family members claimed that she was their responsibility based on inheritance following the death of her father. Not only did the situation put the child at greater risk of abuse and neglect, it also compromised the safety and security of her younger siblings. Finally, it also affected the child-carer in issues related to attachment and love with and by other people. At 16 years old, she felt that she was loved if someone had need for her to be a servant.

In quality of life assessments, over 69 percent of CHHs reported a 'medium' to 'satisfactory' quality of life and demonstrate high levels of resilience despite significant adversities (Germann, 2006, p.149). This study prompted some support agencies to provide emotionally driven services such as orphanages or band-aid responses. The example suggested that the initial responses acted as if it was better for a child to be in an orphanage than to live in a CHH, despite evidence that said otherwise. However, Germann's study (2006) also suggested that resilience was a key component of quality of life and wellbeing, and that many CABA were able to achieve this. This leads to the concept that supporting a programme that keeps families together is important in individual resiliency and effectively quality of life.

In contrast to the work of Foster et al. (2005), Richter (2008) and Guest (2003), De Waal (2006) suggested that the quality of life of orphans is not much different than non orphans based on their status in society. Clearly, there are some vulnerable children who do not live below the quality of life of other children who have not been orphaned, however the probability of vulnerability and their lack of access to opportunities is much greater.

AC-AF's experience confirms the vulnerability of children. Data collected from the Ubungo-area at the onset of programming in this community showed that discrimination against CABA was vast⁷. The adult population (approximately 200 respondents) believed overwhelmingly (71 percent) that most OVC will grow up to be thieves or to be troublesome. In contrast, a majority (61 percent) of children (approximately 400 respondents) who were surveyed indicated that orphans are more likely to have to work harder to grow up the same as other children (AC-AF, 2011, p. 49). This striking difference in the perceptions of orphans and vulnerable children by adults and children, as well as the impact that this population has on society (throughout the survey), validates the need for significant policy change at the national level, that will be encouraged and enforced. Concern associated with the widespread stigma related to being a CABA has a tremendous affect on the development of a child. The overwhelming stigma experienced by CABA limits their opportunities for success. For example, an AC-AF child living with HIV and AIDS experienced bullying, not only from her peers but from school administrators as well. Because she is quite ill, her enrolment in secondary school (a relative rarity, and measure of success in Tanzania) was critical to her overall wellbeing.

⁷ Data was collected in 2009.

However, as she began showing increased symptoms, the bullying (both perceived and real) which occurred resulted in her skipping school and losing confidence in herself. She expressed concern that her peers no longer wanted to speak with her. Her teacher made an embarrassing comment that her hair looked ‘gross’ and she should cover her head in front of the class. This lack of understanding of her condition contributed to her being stigmatized and effectively discriminated against.

Opportunities for participation and decision making are tremendously important to a child’s development. Ansell (2005) suggested the idea that children rarely are given an opportunity to have a public voice, and therefore should be ‘seen not heard,’ exemplifies how adult society disregards children’s opinions as active agents in societal outcomes. This is further exacerbated with the stigma associated with orphanhood. Despite this, children have great capacity to act with agency within their environments. Formal education becomes increasingly important however to ensure that children have opportunities to meaningfully participate especially when they have suffered discrimination based on their age even though many have tremendous responsibilities caring for others. The example of a participant in AC-AF programming receiving a high performance standard on their exams illustrates this point.

In Tanzania, the teacher to student ratio is quite high. It is not uncommon for one teacher to have approximately 100 students. However, a common concern is the frequency with which teachers are absent from the classroom so that students must learn by themselves. Despite the fact that Tanzanian students, pay added costs to get a primary education, AC-AF children routinely report that their teachers are not conducting classes during the school day. The teacher will offer a tutorial to explain the content of the

standardized examinations so that students can graduate to the next level of study. However, children have to pay extra for the tutorial. Based on their position in society as young people, the children are not able to formally complain about this deficiency. For CABA, an issue like this takes on an added dimension of discrimination since they often are unable to pay additional fees. The challenges for CABA presented by the orphan crisis are rooted in stigma associated with their position in society. As a result, the 'standard norms' of society, which are based on principles of human rights, have not been applied to CABA. The failure to apply these principles causes CABA, and especially child-carers, to suffer discrimination. The United Nations has recognized HIV and AIDS as inhibitors to overall development. In part, this was recognized during the Declaration of Commitment at the 2001 Special Session of the UN General Assembly on HIV and AIDS (commonly referred to as UNGASS). Subsequently, the impact of the epidemic on development indicators was recognized by Goal Six of the Millennium Development Goals (MDG), which stipulates the need to combat HIV and AIDS. Although progress has been made toward universal access for antiretroviral treatment, the fact that fewer deaths occur annually also means that more people are living with the disease. However, despite improvements, the epidemic is outpacing the rate at which drugs are delivered, which results in an increase in the severity of the orphan crisis, with little to no reprieve expected in the near future (UNAIDS, 2008).

In contrast to the common perception of the crisis, an estimated 90 percent of CABA are in the care and support of extended family members (Skovdal and Campbell, 2010, p. 19). Nonetheless, the growing crisis has made it difficult for extended family to care for children. As the population of CABA grows daily, extended family cannot be

relied upon to satisfy their needs. And, the traditional care–systems have been weakened due to poverty and the cyclical nature of its impact (Kelly, 2003).

Childhood is generally seen as a stage of life that should end at the close of a natural course of development (Guggenheim, 2005). However, in this situation, this idea is not applicable, as there is a resounding loss of childhood for a significant population. CABA no longer have a natural course of development where they move smoothly from childhood to adulthood. Rather, the transition is unnatural and abrupt and unable to effectively follow the suggested position in society.

The changing status of the role of the child is also likely to change the way children learn. Children learn in two key ways: adult to child, and child to child (or peer to peer)⁸ (Guggenheim, 2005). This does not eliminate the importance of learning in a formal setting. Rather, this further confirms that there is one environment that is most conducive to both methods of learning, the formal education system.

How does the AIDS epidemic affect education for children?

The impact of AIDS on education for CABA

The AIDS epidemic affects education for children in two key ways. The first is on the individual level and the second is on the system itself. Both of these result in changing dynamics within the family and the education sector. There have been a number of studies that document this evidence (Ansell, 2006; Bennell, 2005A, Bennell, 2005B, Kelly, 2003).

⁸ These two types of traditional learning will be the focus as more recently introduced methods such as internet, television and books in the home are not common in SSA, particularly for the most vulnerable children (mainly due to cost).

According to Human Rights Watch, CABA are less likely to attend schools and are thus more vulnerable to human rights abuses and the spread of HIV (Ansell, 2006) .

The UNGASS education indicators of 2005 and 2008, compared children who were not orphaned to children who were orphaned, on a variety of educational indicators. Data identified several factors that reduced the likelihood of CABA attending school, including caring for ailing family members, becoming the head of a household and caring for family, being forced to work, and the inability to pay for a formal education. These factors led to increased disparity between children and CABA. Many of these elements underlie poverty. Subsequently, research in Tanzania has shown that orphans had markedly increased internalizing problems, as well as going to bed hungry (Kelly, 2003, p. 124).

The AIDS epidemic has affected the educational opportunities for children in six key ways:

- (a) discrimination against CABA in schools by pupils and teachers;
- (b) the inability of families to pay for school fees and associated costs such as uniforms and books;
- (c) an increased demand for children's labour at home or in the workplace;
- (d) the need for children to care for other sick relatives;
- (e) a lower expected return on investment in the child's schooling; and
- (f) rising mortality among teachers and trainers (Grainger, Webb and Elliott, 2003).

Further to the 'lower expected return on investment' explanation, a more explicit reason why CABA do not always receive an education relates to the negative and discriminatory attitude of elders about the long-term prospects for CABA to live. They believe that the children will 'die young' so they will not benefit from education in the

long-term (Kelly, p. 74). However, this argument, which relates most heavily to a cost-benefit analysis, fails to identify the attributes education has on assisting a child to develop within their community as an active and important member.

Other factors also contribute to the inability of children to get a formal education. Opportunities for future employment are important considerations for parents, guardians and the state. If the quality of education is poor, parents or caregivers may be wary of enrolling their child thereby reducing their likelihood of getting future employment (Boyden and Gibbs, 1997, p. 212). Some schools teach in a colonial language which makes education inaccessible to children who do not know the language. For many of the world's children, "schooling acts neither as a channel of upward social mobility nor as an instrument of social change and personal development but as yet another medium of social control"(Boyden and Gibbs, year, p. 213).

The impact of CABA on the education system

The situation that CABA find themselves in also affects the educational system. Research has shown that single-orphan children were more likely to have less frequent attendance than double orphans, which was attributed to caring levels and/or the responsibilities of the child (Kelly, 2003). The impact of large numbers of double orphans within a school setting impacts the environment. The developmental behaviour changes, as noted earlier, influence a classroom setting, and therefore the magnitude of the orphan crisis can impact the educational surroundings for all children. However, it is suggested that the greater number of double orphans may be due to the educational assistance that targets the most vulnerable children on a small-scale but that overlooks a larger

percentage of the population's children (who are single orphans) on a national or more broad-based scale excluding most vulnerable children in such studies (p. 74). However, in more comprehensive studies conducted by the World Bank (Ainsworth and Filmer, 2002) the school enrolment comparison of orphans to non-orphans in 28 other countries (globally) found considerable variation. Orphans were enrolled at lower rates in 22 of the countries.

There are other factors that also affect a child's attendance at school. Increased adult mortality rates, for example, may negatively impact the perception of the future benefit of investing in child schooling. This, in turn, may affect a child's long-term productivity, earning capacity, health and wellbeing (Ainsworth, Beegle and Koda, 2005). This means that the impact of CABA on the nation's systems will move beyond the education system. This is due to the wide-spread societal impact, which will result in future systems that are impacted by the success of an education system within a country, such as the economic and political systems also facing increased challenges. In addition, it should be noted that adult mortality rates include all adults within the community so the loss of teachers and administrative staff can destabilize a school. Data from research in three SSA countries (Botswana, Malawi and Uganda) detailed a lack of support by the government and educational system for CABA and other orphans (Bennell, 2005A and B). The reasons cited for the lack of support included:

- (a) the failure of Ministries of Education to develop comprehensive and coherent policy frameworks;
- (b) the negative attitudes of school managers and teachers concerning what schools should do to support orphans and other disadvantaged children;
- (c) chronic and pervasive resource constraints;

- (d) the generally unsupportive school environment with only a minority of schools being child-friendly; and
- (e) the absence of serious overt discrimination against children directly affected by the epidemic (p. 484).

These data are similar to the experience of children in Tanzania. The evidence reveals that at a community and national level the effect is far greater than the programming and policies in place. For example, in each of the nine schools in the Dar es Salaam area where AC-AF has ongoing commitments, approximately half of each school's student population is orphaned.

The loss of parental figures affects more than just the orphaned generation. Subbarao and Coury (2004) described three dimensions of orphanhood: the individual, households and community. With respect to education, the immediate impact of orphanhood identified is based on the status of the individual and dropping out of school. However, the impact of the increasing requirement for public expenditures on welfare, health and education, in conjunction with the changing dynamic of the working day, demonstrate the broader implications on the household and community (Subbarao and Coury, 2004).

HIV and AIDS have also changed the definition of a child as it relates to the age at which compulsory education ends (Smart, 2003). Although this is not based in law, the finding has been formulated through practice. Observations through AC-AF have solidified this idea. For example, some children had taken off a year of school (primary level) while they were caring for their ailing parent prior to their death. The standard is for all children

in Tanzania to begin primary school at the age of seven. However it is not uncommon to have an age range of five years within any given class (grade).

International organizations (i.e., Save the Children and ActionAid) have identified a range of vulnerability with respect to the educational needs of OVC (Boler and Carroll, 2003). Poverty, stigma, trauma, HIV status, gender (particularly for girls), bereavement, lack of family support, working children, street children, chronic illness, adult roles, and conflict were identified as having negative consequences on the attainment of education. A study completed by Edusector (AIDS Response Trust) in combination with Tamasha (2009), a Tanzanian-based organization found that there was denial at the school level in regard to the issues pertaining to support OVC (and specifically children who are living with HIV) and that the existing response fails to achieve the needs of both the students and the teachers (p. 4). Both the individual and systems have been affected by the situation of CABA. The Tanzanian example will further highlight a specific state example that is representative of the region.

How has the Tanzanian educational system affected CABA?

In response to the substantial impact of the AIDS epidemic on its people, Tanzania's government made a national commitment that has been visible through campaigns and support for AIDS-related programming. The country-wide voluntary HIV testing campaign is an example of such action. However, little has been done to improve policy.

The HIV and AIDS epidemic aside, Tanzania historically has had relatively low enrolment of children in formal education (Ainsworth et al, 2005, p. 414). The net

secondary education enrolment ratio was five percent, which ranked among the lowest in the world at the turn of the century (p. 420).

The Tanzanian education system has been challenged most recently by the magnitude of the AIDS epidemic. In the annual report of the Kinondoni municipality⁹ (in Dar es Salaam), it was suggested that the measures expected to improve the situation of primary school education were based on “conducting a survey that would then ensure that there were enough desks for all pupils (one desk for three students) and enhancing teacher’s performance and effectiveness through regular seminars, workshops and refresher courses” (Kinondoni Municipality, 200, p.16). This short-sighted measurement failed to recognize the challenges faced by students in moving toward future success. For example, the report did not discuss several important concepts that are necessary for the safety and security of all children, including increasing accessibility, monitoring of teachers to ensure that they have fulfilled their requirements, and decreasing discrimination for all vulnerable children. The Municipal’s statistical summaries of students enrolled in primary school (Standard One through Seven) suggested that a high percentages of students were registered (over 99 percent approximately) in 2007. Yet only 46 percent passed in the same year (p.19). No discussion or explanation was given. AC-AF’s experience working with CABA found that many children register on the first day of school but do not complete the school year. It is thought that this is primarily because funding is based on the number of students enrolled per year, (and that figure is taken on the first day of school), and schools have no incentive to try to keep children in school. On the first day of school, the administration also records

⁹ The programme discussed (AC-AF) is based in the Kinondoni region.

the orphan status of each child. In the past, schools with more orphans would be given greater funding. As a result, children were encouraged to enrol in school whether or not they planned to stay in school. However, with the introduction of a new municipal protocol¹⁰ on education funding allocation, which permits support of a predetermined number of orphans, AC-AF observed that most wards (geographic areas within the municipal) simply answered that they had the annual preselected number of orphans in their school. Based on AC-AF's work in providing programming and outreach to the population, these numbers have been significantly lower than the actual projections of orphans per school in recent years. It has been suggested that this decrease in financial assistance is due to availability of resources. With the inability to access additional fees, school administrations changed their protocol as well. The result has been that children themselves did not receive the benefits.

The Right to Education

Why is education important to CABA?

Access to a formal education has a pivotal role in child development and childhood. Boyden and Gibbs (1997) stated that in the modern nation, a 'normal' childhood requires schooling. Access to a formal education is considered a component of wellbeing and necessary to exercising the full range of rights. It also is an important indicator of child growth. Children need consistency in their lives, especially in the face of adversity from increased responsibilities. School, as a setting, allows children to establish routine,

¹⁰ There is no explicit document that has explained this process. However, years of observation and data collection have supported this finding.

consistent relationships and to interact daily with other people. It combines formalized learning (academic) with social learning through experiential interactions among peers and also with regular adult-child relationships.

Primary school and primary education are perceived to provide the widest social benefit at the lowest costs to societies (Ansell, 2005). When children exercise their right to education, the broader community also benefits. Through education, children can learn invaluable skills and develop cognitively. Their economic prospects increase. Their health improves and they have greater control of their lives (Ansell, p. 134). Because of this, the World Bank uses a theory, inspired by Human Capital Theory, which views education as an investment good when education expenditures are compared against other forms of state investment (Ansell, p. 134).

School, in conjunction with the family, are the two most significant factors in the socialization of individuals. Education provides opportunities both in the present for children and in the future in regard to employment and access to choices. The normalcy it provides also helps to ensure that children are able to participate in society. Thus, it is considered to be an enabler, not only for the individual but also for society.

Despite its importance in the lives of children, the status of CABA in society, and especially child-carers, leads to broad-based discrimination, (as previously discussed) which prevents vulnerable children from exercising their full range of rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized people can lift themselves out of poverty and obtain the means to participate fully in their communities (General Comment 13, p. 7). For this reason, the education system is often cited as a key indicator for measuring the impact of the orphan crisis.

AC-AF's study

In a preliminary baseline study conducted by AC-AF in 2009¹¹, more than 53 percent of children and 51 percent of adults said that an education¹² was the greatest need of OVC (AC-AF, 2011, p. 48 and 56). The overarching principle of education, as established by relevant international and national law, is that education is to provide for and aid in the developmental needs of children. This includes the social and the scholastic knowledge that are required to provide future opportunities. The role of education ensures children develop their voice in order to be heard. Therefore the right to education is not only important for CABA, but for the entire child population, including CABA. The reality is that programming cannot control or effectively respond to the magnitude of the AIDS epidemic and its impact on the education of CABA. In other words, programmes could not ensure that all CABA receive an education. And, responses should not have a negative impact on other children in the community who may live in abject poverty but are not 'child-carer's' or residing in the most vulnerable families. Still, the reality is that CABA have previously experienced additional stigma, discrimination, and social ostracism, often heightened by the uninformed school authorities who place unnecessary restraints on vulnerable children's participation in school activities (Kelly, 2003). In short, children need broader experiences and the size of the problem is too big to meet all of the needs of

¹¹ The study was conducted by AC-AF in Ubungo, Dar es Salaam, Tanzania. This study was a community needs identification baseline survey for the greater community to respond to. The intention of the survey, is that following approximately five years of programming a similar study will be conducted to examine the impact of AC-AFs programmes on the greater community (AC-AF, 2011). Further, these surveys were undertaken to determine the community's attitude to critical issues pertaining to the orphan crisis. The adult survey was completed with 205 respondents and the children's survey was completed by 459 respondents.

¹² Other options on this question included variations of all of these categories; financial assistance, food assistance, emotional assistance, and a guardian/role model, depending on the age of the respondent.

CABA. Therefore education, a gateway to additional opportunities becomes increasingly important for the individual, family and community.

How have the national community and international community responded?

A right implies a relationship between two entities, one asserting a claim and the other recognizing or guaranteeing it (Boyden and Hudson, 1985). The panoply of children's rights are defined in a variety of policies at the international, national and local levels. At the international level, the CRC is the leading policy in setting forth children's rights. The CRC is groundbreaking in establishing children as people and as active members of society, rather than framing the responsibilities to children as "needs" (David, 2002, p. 259).

During the thirty-second session of the Committee on the Rights of the Child, it was recommended that a number of actions be taken, including facilitating the engagement of state parties on HIV and AIDS issues in relation to the rights of the child (CRC/GC/2003/3). The comments represented a significant shift in understanding on the part of the international community. No longer did they see children as only marginally affected by the epidemic. Rather the comments acknowledged the reality that "unfortunately, children are at the heart of the problem" (CRC/GC/2003/3). Following the meeting, a set of objectives were articulated, as follows:

- (a) to identify further and strengthen understanding of all the human rights of children in the context of HIV and AIDS;
- (b) to promote the realization of the human rights of children in the context of HIV and AIDS, as guaranteed under the CRC;

(c) to identify measures and good practices to increase the level of implementation by states of the rights related to the prevention of HIV and AIDS and the support, care and protection of children infected with or affected by the pandemic; and

(d) to contribute to the formulation and promotion of child-oriented plans of action, strategies, laws, policies and programmes to combat the spread and mitigate the impact of HIV and AIDS at the national and international levels.

These objectives, although delayed in general, addressed many of the issues facing CABA. The Committee on the Rights of the Child discussed the perceived concept of HIV and AIDS as primarily a medical or health problem and integrated the platform for a holistic child-rights-based approach. It was suggested at the Committee on Economic, Social and Cultural Rights (1999) that the existing inadequacies in care and support were mainly due to cultural, structural and financial hindrances (CRC/GC/2003/3). The recommendations, which were reaffirmed at a general discussion (CRC/C/80) on children living in a world with HIV and AIDS, called upon states parties to:

(a) adopt and implement national and local HIV- and AIDS-related policies that are child-centred and rights-based;

(b) allocate resources within the context of international co-operation through the support of national and community-based action;

(c) review existing laws or enact new legislation on the basis of ensuring non-discrimination;

(d) include HIV and AIDS plans within the work of national mechanisms responsible for monitoring and coordinating children's rights;

- (e) reassess existing HIV-related data collection and evaluation processes;
- (f) develop national HIV and AIDS reporting processes;
- (g) encourage international organizations to contribute systematically at the national level; and
- (h) include NGOs, faith based organizations (FBOs) and civil society in the response.

These recommendations are critical to the formation of policy options and recommendations. They provide a foundation for improving the process and concentrating a response for this generation of children.

Following this meeting, it also was recommended that the UN Commission on Human Rights consider establishing at its 61st session (2005) a working group to prepare a draft of UN Guidelines for the protection and alternative care of children without parental care. This recommendation was supported by UNICEF, WHO, and other interested intergovernmental bodies and international NGOs.¹³ Currently, *The Better Care Network*¹⁴, remains a key focal point, as it is recognized as an interagency network. However, to date there has not been a strong enough system in place to make these action points come to fruition.

This day of general discussion on children without parental care resulted in the Committee on the Rights of the Child calling for all states parties and other stakeholders to

¹³ This report (E/2005/23, E/CN.4/2005/135) was reviewed, and there was one discussion point (page 207) which suggested that, “States should take necessary measures to address the problem of children growing up without parents...and recognizes the need for guidelines for the protection and alternative care of children without parental care”. No discussion on enforcing this action point has been identified.

¹⁴ The Better Care Network started in 2003 by the joint efforts of Displaced Children and Orphans Fund (DCOF), the Africa Bureau for Sustainable Development of the United States Agency for International Development (USAID), United Nations Children's Fund (UNICEF), and Save the Children UK.

seek individual solutions when considering and implementing alternative care measures for children and their families in need of special support (CRC/C/153). This recommendation is a distant strategy of the initially articulated outcome for international co-operation. However, the statement that welcomes the construction of principles and standards of care for children without parental care existed. The obligations of parents or caregivers and family are set forth in Article 5 of the CRC. Article 5 recognizes parents and guardians as the most important source for upholding children's rights, followed by the state. Many children in caregiving roles are not acknowledged in the CRC even though they do not have legal adults to care for them. As a result, child-carers are likely to suffer discrimination simply because they have no legal standing in their caregiving role. It is acknowledged that the situation of CABA and child-carers was not perceived when the CRC was drafted, but there remain aspects of the treatment of CABA that are discriminatory, primarily based on the age of the carer. There are different capacities perceived to be associated with childhood in different societies. The global standards often contain contradictory ideas about child responsibilities.

At the regional level, the African Charter on the Rights and Welfare of the Child (African Charter) (1990) is modeled after the CRC. Enacted in 1990, the Charter was designed to recognize the need for special safeguards for children. It acknowledged the unique position of children in African societies and the importance of a child's physical and mental development (Tamburini, 2002, p. 53). It was seen as a radical departure from African cultural traditionalism to a "significant shift in African political thinking on the controversial subject of the relevance of the human rights ideal to Africa" (Thompson,

1992, p. 433). The intention was that with this treaty, the potential to reach communities on a practical level would be greater due to the cultural appropriateness.

Article 11 of the African Charter, stipulates the educational requirements for children and the responsibilities associated with it. Significantly, however, the provision does not state that formal education must be conducted in a school. Rather, it suggests that education is conducted in society and the African environment. Although there is a clear description, the emphasis of education is weakened by the use of terms such as ‘encouraging’ any form of schooling including primary school and the development of secondary education. Further, the section does not provide for a free basic education. As a result, the protection of CABA’s educational rights is weakened because they are frequently unable to pay for the school-related costs (such as uniforms, exam fees, book and desk fees) of a formal education.

Another deficiency in the CRC’s protections of the right to education is that secondary school appears to be a privilege rather than a right. Although there is an assumption that equal opportunity for those who reach higher education should exist, the reality is that CABA are unable to access the foundational requirements (prerequisite schooling) to achieve such a standard. Therefore, they have never received an equal opportunity to attain higher levels of education.

Glimmers of hope

Despite these problems, there are some glimmers of hope. A system of universal education should increase opportunities, and destigmatize the situation for CABA, resulting in reduced barriers for accessing education. By building an inclusive policy on

education, the status of children will shift closer toward equality to access and opportunity. Moreover, other recommended policies, specifically in regard to the recognition of child-carers, will empower children to exercise their rights. Under such a system the schools will have the ability to provide the core components of social welfare and strengthen other such groups in the community to support initiatives.

In Uganda, the Universal Primary Education policy of 1997 was intended to eliminate the cost of primary schooling for up to four children per household. Two of the four children had to be girls. Under the policy, all fee-based requirements, such as uniforms, became free to the individual and/or family. To ensure this restructuring of public-spending occurred, the policy was conducted in conjunction with regular dissemination of information and decentralization of the system. Research has suggested that this policy initially shifted the financial burden of education from households to the public sector (Deininger, 2003). However, it is not clear that the impact was directly associated with the policy. Nonetheless, available data suggest a decrease in cost-related dropout rates (Deininger, p. 294). The major deficiency in this policy is that it limited free education to four children in each family. In Uganda, the average family size typically exceeds four children, so the policy does not ensure that every child in a family will be served.

AC-AF is another glimmer of hope. It integrates a holistic, rights-based approach to the orphan crisis. AC-AF was specifically developed to respond to the orphan crisis over the long-term as a sustainable way of facilitating successful outcomes in communities that are heavily burdened by the AIDS epidemic and orphanhood. AC-AF is a comprehensive model that can be replicated elsewhere. It combines formal education with an array of

other programming including: gender equality, professional development training, psychosocial support, and microcredit loans to the most vulnerable families of children. It is community-driven, working in partnership with community leaders, schools, businesses, government and existing organizations (including faith-based). Community members work with AC-AF to develop responses to new challenges and to adapt existing policies. The initiative combines a focus on completing formal education with practical professional development through internships and apprenticeships with local businesses, and the acquisition of life skills including financial responsibility. The goal is to break the cycle of poverty and to encourage participants to become healthy, motivated and confident individuals with a strong sense of family and community. This programme is based upon the agency of CABA and the investment in the development of coping strategies. It further facilitates and strengthens community networks. The integrated monitoring and evaluation structure encourages community participation in the programme which results in adaptability based on the community where it is working and their identified needs. This promotes ownership of programming. It is this ownership that provides the basis for a sustainable programme¹⁵, through the promotion of greater capacity, empowerment and facilitation.

Programmes should aim to have an impact on the root cause of the problem or challenge. In AC-AF's experience, education was determined by the community to be a key component of support needed for CABA (AC-AF, 2011). The concept of agency (amongst the child recipients as well as all other members of community) is paramount to

¹⁵ The OVCSP (Orphan and Vulnerable Children Support Programme) described above was selected and presented as a programme showing preliminary success toward a sustainable solution the orphan crisis, at the World AIDS Conference, 2010.

the functioning of this programme. This is supported by Boyden and Levinson who state that, “only children can provide real insight into their feelings and experiences” (Boyden and Levinson, 2000, p. 43).

Subsequently, the increased awareness of existing policy can also benefit the greater community. For example, in Tanzania, double orphans do not have to pay for their exam fees if they are registered with the government (municipal). However, advocacy is usually necessary to enforce this provision. The provision is not widely known and, if it is known, the registration process is long and tedious. The children in AC-AFs programme were not initially on this list so they were routinely asked for additional fees. However, since they have advocates, the children in AC-AF have become registered. Moreover, they are no longer asked for fees for exams or other related fees (AC-AF, 2010).

Why can't CABA exercise their right to education?

The reasons for the failure of CABA to exercise their right to education are categorized into five themes. They are: the failure of international co-operation; state failure; the inherent conflicts in the law; the education system's inability to respond to the orphan crisis both on an individual level and on a system-level; and monitoring and evaluation.

The international community has failed CABA

In Article 45, the CRC encourages international co-operation for the effective implementation of the Convention. This does not have a significant bearing on international responsibility toward other States parties. Although Article 17 of the CRC

addresses the issue of access to resources, the provision does not require governments to provide resources for States with less means. On the other hand, Article 28(3) of the CRC explicitly requires the international community to cooperate in matters relating to education. It states that, “States Parties shall promote and encourage international cooperation in matters relating to education... [And] particular account shall be taken of the needs of developing countries”. This does not solely mean through financial resources, but through generalized support, and guidance in conjunction with financial assistance. However, to assess whether cooperation has occurred in the area of funding, it is important to look at the role of international aid. The G20, regional organizations, NGOs and international foundations (such as the Bill and Melinda Gates Foundation) suggest that international responsibility has been demonstrated, though not at a level substantial enough absorb the challenges presented by the orphan crisis. This is despite the fact that the second Millennium Development Goal, is to achieve ‘universal primary education’. But, if examining international cooperation, as a customary practice, the guidance and examples suggest that increased efforts of the international community should contribute toward the achievement of CABA accessing their rights. *The Joint Learning Initiative on Children and AIDS* (JLICA) has begun to raise awareness about specific issues, by calling for family-centred responses to CABA that are integrative. They based this on three principle reasons: (1) in generalized epidemics AIDS is a family disease; (2) families carry the heaviest burden in coping with each other; and (3) well functioning families play a fundamental role in the prevention of transmission of HIV (Richter et al., 2009).

The nation state has failed CABA

An examination of the deficiency of law in changing the climate for CABA necessarily focuses on strategies for assisting countries in Africa protecting its children. Although legally the state is the key stakeholder in ensuring the rights of children, the state's inability to enforce the provisions of human rights law weakens the protections for CABA. The state's role in exercising the rights of children is clearly defined within the CRC as a guiding treaty.

Several provisions of the CRC govern the state's responsibilities to children. Article 3 stipulates that the 'best interest of the child' is the standard for assessing the consistency of actions with the CRC. In conjunction with Article 4, as discussed earlier, the state is obligated to provide adequate care particularly when parents or other responsible parties fail to do so (for any reason). However, the magnitude of the epidemic challenges the system at a greater level based on the infrastructure and limited budgets of many of the worst-affected countries of the AIDS epidemic. Yet, Article Four declares that "with regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation". This infers that if a parent or legal guardian fails to be capable of caring for a family, then the state shall be responsible for the children's rights. Despite the abovementioned articles suggesting that orphans are the responsibility of the government, the clause that they are 'to the extent of their available resources' is a potential reason for inadequate responses to the situation thus far. The African Charter assumes the family is a 'natural unit and basis of society'. The obligations

of states parties in Article 20 to assist parents would appear to benefit CABA. However, the demand on the legal and social welfare systems far exceeds the capacity of current governments.

There are inherent conflicts in the law

Tanzania has multiple policies that relate to the wellbeing of CABA with regard to their access to formal education. The following Tanzanian policies will be considered:

- (a) the National Youth Development Policy
- (b) the National Higher Education Policy
- (c) National Policy on HIV and AIDS
- (d) Law of the Child

Despite this framework, one of the challenges is the inherent conflicts based on the fact that children are in dual roles as children and carers. The *National Youth Development Policy* (1996) (NYDP) was enacted through the Ministry of Labour and Youth Development. Although this policy is significantly outdated, it is important as it focuses on the disparity of access to education among girls and boys, particularly in secondary school education¹⁶. It has also included the importance of formal education and its ability to assist in skill development and employability (p. 6). Perhaps more importantly, NYDP's mandate includes strengthening universal primary education and expanding to the secondary school level (p.19). This confirms that there has been attention by Tanzanian policymakers over time to the need to equalize accessibility to the formal education system. Yet, neither the NYDP or the more recently enacted *National Higher Education Policy* and its companion

¹⁶ Smart (2003, p. 3) identified that the gap between girls and boys and access to secondary school for the case of CABA is exacerbated due to the traditional role of females (and girl children) being the lead carers in family, particularly when someone is ill.

paper the *Education and Training Policy* (1999) (NHEP and ETP) have any specific reference to orphans, vulnerable children, or HIV and AIDS. The latter is also dated, however the failure to identify any issues pertaining to vulnerable children, such as high poverty levels, is a significant gap in addressing barriers within society. Further it is inconsistent and arguably contradictory to international law including the CRC and the African Charter which preceded NHEP. Neither NYDP nor NHEP assist CABA in accessing their formal education opportunities even though there was sufficient knowledge of the magnitude of the AIDS epidemic when these policies were enacted.

The enactment of the *National Policy on HIV and AIDS* in Tanzania (2001) (NPHA) also neglected to provide specific protections for people including children and youth affected by HIV and AIDS.¹⁷ However, in the *National Assembly Situation Analysis and Strategy Document*¹⁸ a new goal was added to, ‘reduce the adverse effects of HIV and AIDS on orphans’ (2005, p. 22). Nonetheless, the action points related to orphans and other vulnerable children were still limited to two situations:

- (1) Members of Parliament (MP) must not stigmatize children by referring to them as AIDS-orphans. All orphans and vulnerable children need support; and

¹⁷ In 2003, the seventeenth special session was held by the Committee on the Rights of the Child. It was recommended that a number of actions be taken, including facilitating the engagement of States parties on HIV and AIDS issues in relation to the rights of the child (CRC/GC/2003/3). In this meeting it was discussed that initially children were considered to be only marginally affected by the epidemic, but had stated that the international community, “has discovered that, unfortunately, children are at the heart of the problem” (CRC/GC/2003/3). The eight recommendations, were reaffirmed at a general discussion (CRC/C/80) on children living in a world with HIV and AIDS, calling upon States parties to, ‘adopt and implement national and local HIV and AIDS-related policies, including effective lens of action, strategies and programmes that are child-centred, rights-based and incorporate the rights of the child under the Convention’.

¹⁸ The objective of this assessment was to develop a strategy for mainstreaming HIV and AIDS into the business of the Parliamentary system and its governance institutions, following the recognition that HIV and AIDS is impeding the progress of Tanzania and its parliamentary capacity (UNDP, 2005, p. 3).

(2) MPs must enact legislation that protects the rights of children who are living with HIV and AIDS or are orphaned and monitor its implementation (p. 72).

Despite having no measurable objectives included, when considered in conjunction with other child-centric policies, the NPHA can provide a strong foundation for the protection and accessibility of rights for children affected by AIDS. In practice, however, this has not been the case. Several studies as discussed earlier confirmed the increased likelihood that CABA are out of school.

A key Tanzanian policy that specifically relates to CABA accessing their rights is the *Law of the Child Act* (2009) (LCA), which was heavily influenced by the African Charter. It does not have a specific provision within the policy that addresses access to formal education. However, the policy does provide guidance about the structure of educational institutions including policies on discipline and expulsion. Therefore, there is an assumption that children are attending school. The ‘construction of the child’ as discussed in the policy (Part II Article 4 (2)) stated that, “the best interest of a child shall be the primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions courts or administrative bodies”. Rwezaura (1994) argued that the concept of ‘best interests of the child’ should be interpreted and applied largely based on the social, political and economic conditions of the given state. In Africa, Rwezaura argued the concept should be narrowed to mean ‘the satisfaction of the child’s material needs’ (p. 82). Arguably under the LOC, education, as it currently exists, would be considered a material need. Although education is not, in and of itself a material good, the cost of school such as uniform fees, desk fees, and exam fees are not covered under the current international policies for free primary education (which covers the tuition only).

This means that the barrier of cost is extensive in limiting the potential for CABA to attain a formal education, and the policy does not address this challenge that has existed for decades.

The conflict of access to education is further distinguished within the internal conflict between Article 9(1) which states that ‘a child shall have the right to life, dignity, respect, leisure, liberty, health, education and shelter from his parents’ and the ‘responsibility of the child’ as articulated in Article 15. The latter does not include formal education as a component of child responsibility. Rather, it concentrates on the role of work in contributing to family cohesion, the respect of elders and leaders within the community, service to the community, and the preservation and strengthening of social and national cohesion and cultural values. Notwithstanding this, the law specifically limits the employment of a child (Article 77(1)(3)(1)). It states that work, “should not prevent or affect the child’s attendance at school...or the capacity of the child to benefit from school work”. This suggests that children should be in school prior to working. However, the fact that education is not consistently mandated throughout the LCA significantly weakens a system for universal education within Tanzania and its child population.

The education system has failed CABA

The framework of the education system itself exacerbates barriers for CABA. Similar to the ability of the epidemic to thrive in conditions of poverty and system weakness, the education system, which is already underachieving in SSA, has had significant shortcomings. The current access and entitlement for the right to education for CABA is fundamentally failing based on analysis from the application of the ‘4 A’s’

(availability, accessibility, acceptability and adaptability) (Right to Education Project, 2011). Education is neither free (particularly secondary school) nor does the system provide an adequate infrastructure and teachers. Moreover, such issues as poor commitment from teachers contribute to absenteeism and other failing indicators within the educational system (Bennel, 2005, p. 481). Because the AIDS epidemic has adversely affected teachers and administrative staff, there is an insufficient ratio of student-teacher and supplies-students, which affects the quality of education. The second A, accessibility is challenged by economic considerations (costs of additional aspects of an education such as exam fees, uniforms and desk costs). The presence of persistent poverty inhibits the system from relieving the barriers. As a result, the system, as currently operating, is not accessible to most vulnerable groups. In Tanzania, the third element, acceptability, has been more quickly integrated than the prior two elements, availability and accessibility. Tanzania has had some nationally administered education campaigns, such as on topics of voluntary counselling and testing. However, specific HIV and AIDS education has not been as effective as necessary, in reducing the prevalence, stigma and discrimination that still exists within communities. The final element, adaptability, incorporates the generalized failures of the education system to integrate the needs of CABA within the system, as discussed throughout the paper.

The monitoring and evaluation system has failed CABA

Monitoring and supervision are hampered by a lack of indicators to assess progress (David, 2002). The development of a comprehensive set of indicators is necessary so that responsive policies and programmes can be designed and implemented. There is a need to

identify inconsistencies in existing indicators and to begin to address a more welfare-oriented approach to education.

Each year the core indicators for reporting to UNGASS have been consolidated and refined in collaboration with global partners and the UNAIDS Monitoring and Evaluation Reference Group (MERG). The 2005 Guidelines on the construction of the core indicators explain that their purpose is to integrate them into a country's ongoing monitoring and evaluation since they are designed to help countries assess the current state of their national response while contributing to a better understanding of the global response to the epidemic (UNAIDS, July 2005). Five core indicators were added specifically for generalized epidemics, of which one was to target the percentage of orphans and vulnerable children whose households received free basic external support in care for the child (UNAIDS, 2005). The indicator predominantly focusing on the support for children affected by HIV and AIDS is described in the guidelines' purpose: to assess progress in providing support to households that are caring for orphaned and vulnerable children (UNAIDS, 2005). Although this is important, it does not specifically address children themselves. Rather it focuses on the household where the children are living, which is similar to what JLICA suggests should be addressed. However, the indicator does not measure the needs of the household or the orphans and vulnerable children. The guidelines recommend in small print that additional questions should be added to measure expressed need of families caring for orphans, however it continues to describe that the indicator implicitly suggests that all households with orphans and vulnerable children need external support, though some more than others (UNAIDS, 2005, p. 38). This indicator results in limited

information which inhibits the ability to inform relevant knowledge on the matter including response requirements.

The UNGASS compares the current school attendance of orphans to that of non-orphans between the ages of 10-14 years (UNAIDS, 2005, p. 47). This measurement, however is limiting in two key ways. This indicator is limiting is because the age range of the indicator is too narrow. There is evidence that children tend to (a) be orphaned later in their childhood and/or (b) that those who are younger than this age group have only recently become orphaned and therefore the effect is not detrimental to their education immediately (UNAIDS, 2005, p.7). In order to collect sufficient data to inform relevant policy more comprehensive questions must be asked.

Additionally, the indicator lacks the framework to collect critical data, as it does not adequately represent the effect of orphanhood on education. The draft Tanzanian report to UNGASS for 2002 wrote about orphans and other vulnerable children once. To the question, “does your country have a policy or strategy to address the additional need of orphans and other vulnerable children?” they responded ‘no’ with the following comments (TACAIDS, January-December 2002, p. 20):

- (a) this is one of the core indicators under NMSF (National Multisectoral Strategic Framework);
- (b) national framework for care of the orphans is being developed under the Ministry of Labour and Youth development; and
- (c) a budget to take care of orphanages has been in preparation.

This report solidified how little information was collected about CABA. And further, that in the case of Tanzania, the data were insignificant to help support future decision making.

Finally, the intention to compare the experience of orphans versus non-orphans, is important to ensure that unintended outcomes do not make other children more vulnerable in society based on their orphan status, but rather policy and practice ensure accessibility of opportunities to all children.

The UNGASS 2008 report was the first time that all countries reporting were asked to report for all indicators (24) regardless of the economy and epidemiological status of their country (UNAIDS, 2008). Two indicators related specifically to orphans and vulnerable children: (a) indicator 10, to support for children affected by HIV and AIDS; and (b) indicator 12 questioning orphans and their school attendance. Although some countries did have answers to all of these questions, a number of countries did not fully complete their surveys, and left out critical information such as the indicators pertaining to children. The two indicators that refer to orphans are only requested every four to five years, through the measurement tool of a population-based survey. The wording of these indicators was unchanged from the earlier (2005) version, though an extra definition of external support was described. It was defined as, “free help coming from a source other than friends, family or neighbours unless they are working for a community-based group or organization” (UNAIDS, 2008, p. 44). It further defined the methods of measurement by the following questions (p.44):

- (a) Has this household received medical support, including medical care and/or medical care supplies within the last 12 months?;
- (b) Has this household received school-related assistance, including school fees, within the last 12 months? (This question is to be asked only of children aged 5-17);

(c) Has this household received emotional/psychological support, including counselling from a trained counsellor and/or emotional/spiritual support or companionship within the last three months?; and

(d) Has this household received other social support, including socioeconomic support (e.g. clothing, extra food, financial support, shelter) and/or instrumental support (e.g. help with household work, training for caregivers, and childcare, legal services) within the last three months?

The measurement method fails to ask questions which fully aid the knowledge required to inform decision making. Firstly, there was no scale indicating the amount of support received, by solely requesting a yes or no to any of the services (numerator) over the total number of orphans (denominator). This suggests that based on single sector responses, the indicators are likely to have responses that are exaggerated in regard to services received, based on one-time support systems. Therefore this does not give sufficient evidence about the specific context of individual children (and child-carers) in comparison to a household. Further, the questions, which often relate to the carer, do not prioritize the needs of the orphans and vulnerable children. This, in particular, may occur in households where multiple children live with extended family and support, which is aimed at the most vulnerable children, is given to the other household members. Thus, it does not necessarily account accurately for the care of the vulnerable children.

Indicator 12, which relates to orphans' school attendance, also has critical flaws. Firstly, as described in 2005 indicators, the age bracket discussed or surveyed is only from 10 through 14 years. Secondly, the questions (in addition to the 2005 survey) ask a

household member to answer for every child, ages 10-14 years, living in the household the following:

- (1) Is this child's natural mother still alive? If yes does she live in the household?
- (2) Is this child's natural father still alive? If yes does he live in the household?
- (3) Did this child attend school at any time in the year? (UNAIDS, 2008, p. 50).

The intent of this indicator is to compare school attendance among the typically most vulnerable children (who are double-orphaned) and the least vulnerable children (who have parents still alive). There is no discussion on whether the children remain in school, or for how long they were in school. Further, this survey does not enlist the information of children not living in households, such as on the street, or in institutions, who are also amongst the most vulnerable. Finally, this indicator provides no information on the actual number of orphans, resulting in it being an incomplete indicator for situational understanding of the issues.

Tanzania's report for 2008 (TACAIDS, 2008, p. 9) submitted that for indicator 10, in 2004/2005 1.2 percent of OVC aged 0-17 households received free basic external support in caring for the child. No additional information was given, and further this could not have solely been based on the questions that were listed due to the inconsistent age categories used in the survey. Similarly for indicator 12, it was stated that '73' was the answer provided for current school attendance among orphans and among non-orphans aged 10 to 14. It is noted that although this was not marked as a percentage, it is assumed that this number was to be read as such, but suggests the potential of incomplete reporting, and was not clarified by the publishing agency upon request. The data source was from the MoHSW (Ministry of Health and Social Welfare). With no other additional information

and no description on the data itself, this information is not very influential in understanding the situation within Tanzania or informing policy. In their sole paragraph about orphans and vulnerable children the discussion is based on budgetary concern, whereby they suggest that for the approximately one million orphans an amount of US\$31.5 million or Tanzanian Shillings (TShs) 37.8 billion, of which TShs 30.7 billion is needed for food and TShs 7.1 billion for non-food items should be spent (TACAIDS, 2008, p. 29). This amount suggests that little multisectoral programming is occurring. Multisectoral programming is programming that responds to the holistic nature of an issue, and spans multiple spheres. As this example concentrates on food, and not on the other aspects of CABA needs, it suggests that only a singular sector is concentrated on. Further, the report stated that their data showed that almost 30 percent of surveyed children in the sample districts reported support from programming, (TACAIDS, 2008, p.29) though there was no description of these samples, and these statistics are inconsistent with the other responses. In addition, the organizations completing the questionnaires included a list of twelve organizations, of which some had orphan-based outreach. If though, the data collected was based on their community knowledge it is possible that they were counting the communities in which they were working which therefore raises questions about the data that is available toward the indicators of the UNGASS 2008 report. As an example, if organizations are doing the data collection, are they surveying their participants?

The outreach taken so far in regard to CABA has been insufficient in comparison to the needs of the individual, family and community. Currently, most programmes address one component of the overall challenges OVC face. Therefore substantive gaps in service provision have been identified (O'Grady et al 2008, p. 8). These gaps occur due to limited

resources, skills, inadequate quality assurance, or lack of appropriate regulations and policies.

Todres (2007) stated that for human rights law, there may in fact be a grey area, where the issue of children orphaned by AIDS may require a re-examination of the nature and content of rights in order to better serve children in need (p. 447). The existence of child-carers in society is not new, however, the scale and timeframe is unique in this situation. Unlike other child-carers, such as teenage parents, CABA are born into childhood without being predisposed to the position of being raised by a child-carer.

The large-scale impact of the AIDS epidemic challenges the capacity of a state's government to fulfill the rights of CABA but it does not absolve them or the international and local communities from the responsibility to do so. The reality is that the limited capacity of governments with inadequate resources creates an implied obligation of wealthier states to provide assistance beyond their own borders (Tarantola and Gruskin, 1998). The right to education requires a framework in response to the case of CABA, to ensure that existing barriers and challenges that an entire generation are being subjected to, are overcome.

What are the protections in international and national law?

Despite near-global consensus about the nature of rights for children, the AIDS epidemic has presented an unforeseen predicament, the role of children as carers. At the time of drafting the CRC, this was not envisioned. The CRC's (1989) four guiding principles: non-discrimination; adherence to the best interests of the child; the right to life;

survival and development; and the right to participate, form the foundation for the realization of all rights. All of these principles are connected and do not function in isolation of each other.

The principle of participation

The principle of participation traditionally is interpreted in relation to the opportunities in three environments for children; their family, their schools, and their communities. These are focussed on the agency of the child. Children are active participants in the construction and determination of their own social lives, other people's lives and the societies in which they live (O'Kane, 2003, p. 1). Children are not only shaped by the adults in their life space or 'social ecology'¹⁹ but they also have an influence on adults. Therefore, a child's involvement in and access to attaining an education is also reflected in their participation within family life and the community.

As Melton (1996, p. 1238) concluded, individual rights seriously implies a level of support for family and community life which is largely dependent on the strength of the family environment. The right to a family environment is supported by the international legal framework and respects the child as a pertinent member in family and society. For CABA this framework of inclusion is important to their growth and wellbeing.

¹⁹ The social ecology of the child is a model of child development, which influences a multidimensional approach. This includes: person factors which include the individual biological, temperamental, intellectual and personality characteristics of the child and those close to the individual; the process factors which include the form of interaction that takes place between individuals; the contextual factors which include the families, communities, cultures, ideologies; and time variables which look at the changes over time. (Killian, 2004: 35) This depicts the agency of a child through variable factors and development stages. This construct further integrates the complexity of childhood and the factors which encapsulate the social growth.

Historically, there have been arguments that the recognition of children's rights will undermine those of the traditional family and threaten overall child wellbeing (Melton, 1996). However, as CABA and specifically child-carers have been forced to increase their responsibility, it is evident that non-traditional family structures exist. But, processes for equality in access to and attainment of rights can be applied and ensure adequate participation. This can be accomplished through governments facilitating environments that nurture and support children's relationships on multiple platforms (Kimbrough-Melton, 2010, p. 274). That is to say that all levels of community and diverse stakeholders are integrated into this response.

The principle of non-discrimination

According to the CRC and other national and international policies, all children have the same rights. Even though the right to education for CABA today is inaccessible, the mandate that it should exist is grounded in this principle. However, age discrimination for child-carers and the lack of recognition of their position in society, and inaccessibility based on their status are currently being violated and therefore must be addressed.

The principle of the right to life, survival and development

The right to a decent standard of living (Article 27, CRC) assumes an international standard of living that gives all people, communities and states a goal. Though, given the disparity between the suggested and practical examples of childhood globally, particularly for CABA, it is clear that policies and practices must be set to assist in achieving such a standard within areas where the orphan crisis exists. The standard of living seeks to fulfill a child's physical, mental, spiritual, moral and social development. This then is the premise

for holistic policy and practice that incorporates education as a critical foundational element for the development of social and academic skills that contribute toward all aspects of child wellbeing.

The principle of the best interests of the child

The ‘best interests of the child’ incorporates the catalogue of rights in the CRC. It is used when mediating amongst multiple principles that might seem in conflict with each other. Therefore the “best interests of the child” principle is a standard against which policies and interventions can be measured. As a constitutional document, the CRC implicitly defines rights in terms of a child’s own understanding and experience (Melton, 2005). As with the right to education, the fulfilment of the best interests of the child should provide access and opportunities in order to ensure present and future development to the child. This principle sets a standard for a framework for CABA to gain their right to education, in a manner that includes the voice of the children and youth themselves. Therefore the implication of this principle in practice is that policies and practices that are identified should incorporate the identified needs and interests as children recognize themselves.

These four guiding principles of national and international law provide a framework of standards. The issue of CABA and their inability to exercise their right to education require a model that remedies the barriers. The next section will explain the recommended principle-based framework with the operational action points that are required for change.

Section Two

Recommendations

Regardless of the economic and social challenges facing African governments that complicate their ability to meet the legal obligations and standards under national and international law, there are steps that can be taken that would help protect CABA and ensure they exercise their right to education. Many of these could be materially inexpensive while being practically impactful. The conceptual understanding of human rights is that they are inherently respectful toward people. Therefore, the question of who is responsible for ensuring that all children, including the most vulnerable, have full access to their rights, is raised.

The recommendations for policy options were constructed based on a principally-driven framework derived from the respect and dignity of the person. This is founded in one's fundamental human rights. The model's intention is to improve existing policies and practices toward the realization for CABA to attain their right to education, which is recognized as a critical component of exercising the catalogue of rights. However, the concept behind these principles is that their ultimate success is dependent on the practical implementation of all of the principles together. This strategy is replicable in any community and state, based on its foundation, and can be appropriately applied within the realm of cultural sensitivity. The principles are directed toward the international community, nation states and local communities. I have developed this framework based on the recognition that policy and practice, independent of each other, have been

insignificant in mitigating the barriers to CABA attaining their education. Therefore this principle-based model should provide the foundational guidance necessary for effective solutions.

Recommended Principles: A Framework to Assist CABA in Exercising their Right to Education

<p>Principle One: CABA should be treated with the same respect and dignity as any other person</p>
<p>Principle Two: CABA should have equal access to education</p>
<p>Principle Three: Responses to CABA should be co-ordinated and integrated at all levels (local to global)</p>
<p>Principle Four: Policy and Programmatic responses to CABA should be holistic and comprehensive</p>
<p>Principle Five: The role of child-carers should be recognized in national and international policy</p>
<p>Principle Six: CABA should have opportunities to be active in community life</p>
<p>Principle Seven: Children including CABA should be mobilized in supporting the right to education</p>
<p>Principle Eight: All stakeholders should be held accountable for the required monitoring and evaluation</p>

Strategies for operationalization

Principle One: CABA should be treated with the same respect and dignity as any other person

This principle focuses on the destigmatization of CABA, by adopting a philosophy that all people, including all children, are affected by the AIDS epidemic. Shifting from the historical viewpoint that HIV and AIDS infects individuals, and broadening the perspective that it is a 'household illness,' this principle seeks to establish a 'level playing field'. If all children were considered to be affected (which they are in generalized epidemics) there should be an end to stigmatizing children that are directly affected (either infected and/or orphaned) by the disease. However, this does not deny that there are varying levels of being affected by the AIDS epidemic. At a global level the outcomes of this principle should promote a safe and secure environment, with decreased stigma and discrimination.

The strategy for operationalization is three-tiered. At the international level the most important aspect is to ensure adequate education and awareness strategies focusing on broad-stroke media campaigns. These should aim to destigmatize HIV and AIDS and particularly to remove blame that is associated with the disease. Furthermore the international level shall support the national and local levels in their efforts toward the satisfaction of this principle. This is not only through financial resources, but also with planning, skills, training and capacity building.

The national level strategy is similarly aimed at integrating education and awareness campaigns that are culturally appropriate. The local level, or community, therefore will ensure that the campaigns are integrated into everyday life in order to effectively share this message. The reduced stigma which results from the social implications of the epidemic

such as orphanhood, will assist in the further integration of CABA to society as ‘children’ instead of ‘orphans’, and resume a state of normalcy assisting in their quest for wellbeing.

Principle Two: CABA should have equal access to education

This principle is founded on the knowledge that education provides the foundation for people and societies to develop. Under international law, primary education should be ‘free and compulsory’ however barriers still exist in regard to access to education due to the costs associated with schooling. At the secondary school level however, there is no existing framework that promotes equal access for all. It is imperative that response from the international, national and local level communities, engage in this principle. Therefore there are a number of actions that will need to be completed. At an international level, policy development and implementation must occur. Whether this is through a general comment and/or an integrated optional protocol, international response at this level is necessary to trickle down into other international and national treaties, as they track the CRC. This will further develop a standard for nation states to strive toward. In support of such change, it is imperative that the international community then invests in the education sector. For such broad and equalizing policies that target all children, greater support than states alone is required.

It is for this reason that the development of an awareness campaign about the issues is necessary. Additional conferences will also be beneficial in ensuring the international community understand the deficiencies in the current system and what they can do in response to them. Finally, it is also essential for the international community to support nation states as they enforce this policy and put it into practice. Furthermore, the nation

states should adopt such policy into their own legal doctrines, to ensure the full support of its contents.

At the national level it is necessary to ratify any policies relating to this principle that are recommended by the international community. In that the local, national and international community must meet to identify the specific details of the amendment to law, there should not be anything within the policy that would not be ratified. The second point is to ensure that the nation state is effectively enforcing the mandate, and ensure that all associated costs with schools are included in the national programme to ensure 'free and compulsory education' for all children in all primary and secondary years/grades.

Particularly for the first phase for this policy it is imperative that the state level develops a plan to support the community in ensuring CABA can exercise their right to education and are actually going to school. The development of appropriate education and awareness campaigns are likely to assist in this action point. Further, the development of national targets that encourage regions to implement equal standard of access to education will help empower the state and its regions to achieve the standards set forth in the policy.

A strategy that has worked at the national level with other issues is that of an ombudsman for children or trained advocate. Such a person can help to identify problems within the system and to bring complaints or work to otherwise resolve problems. In Europe, this type of system is common in ensuring that justice prevails in a given environment. The education system should be based on the concepts of availability, accessibility, acceptability and adaptability. However, for a system of this magnitude additional nation-wide curriculum re-evaluation should occur in order to integrate new elements to support the destigmatization of CABA-related issues. This then includes

comprehensive training for educators and administrators that incorporates capacity building, a focus on how to develop safe and secure environments, psychosocial training including the issues pertaining to grieving and coping mechanisms, and bully prevention which will additionally address issues of stigma and discrimination.

The local level is where the ground work of the national standards must be achieved. This means that appropriate education and awareness programmes must be mandated in addition to the teaching and training about the action points described in the national level. It is recommended that local councils are developed, as they will be able to report any challenges to this principle to the appropriate bodies (such as committees), and seek guidance for responses as needed. Finally, it is imperative that given the current challenges facing the education system, the local community in conjunction with the support of the nation state, develop retention programmes for all children, so that no children drop out or fail due to preventable causes. This will particularly be required at the local level for children who are vulnerable but do not live in traditional environments (such as families) as they may live on the street or in orphanages and require additional co-ordination.

Principle Three: Responses to CABA should be co-ordinated and integrated at all levels (local to global)

This principle recognizes that all levels (the international community, nation states, and local communities) should work together in strategies toward CABA exercising their right to an education. This means that both between all levels and within all levels all stakeholders should share a common vision. This principle is guided by normative change at each level, but particularly at the community level.

Germann (2006, p. 157) stated that comprehensive community approaches to child care combine the African tradition of ‘everyone’s child’ with the modern approach of ‘every child has rights’. The responses must elicit integrated approaches that are fundamentally rights-based. Community cohesion should entail the co-operation of all levels in the circle of care for CABA and ensure that the responsibilities toward CABA are shared among stakeholders and guaranteed. The participation of all levels of government, civil society (inclusive of non-governmental organizations, community-based organizations, and faith-based organizations), businesses, and academic institutions should support the common goals. The potential for large-scale positive impact is drastically improved when concentration is placed on the agency of a community. This strategy must seek to engage and empower the populous to understand their rights, and collectively access them. For instance, through community action, the role of civil society inclusive of NGOs, FBOs and other community-involved groups, the methods behind accessing rights (such as a registration process) can be shared, with lessons learned building the capacity of the entire community.

To ensure that the international community is engaged, an education and awareness campaign that specifically mandates roles and responsibilities within their community is recommended. This campaign should engage global actors including states, multinational corporations, and international organizations to participate. The campaign itself must clearly articulate what actions each stakeholder should do, so that there is a greater understanding of collective action. Secondary to that, the international community shall support the national and community level responses, through the use of the international

resources, and ensure that they additionally share the lessons learned and findings that are developed through the experience of all relevant stakeholders.

At a national level, these education and awareness campaigns will continue, and the reciprocating support of the local community is required to ensure they are able to coordinate and uphold their responsibilities. This should incorporate all national level stakeholders in a comprehensive approach, and therefore seeking the inclusion of academic institutions would be beneficial.

At a local level the most fundamental component, that includes concepts of education and awareness, togetherness and the network of support is found in embracing the spirit of ‘ubuntu’²⁰ as a strategy for bringing community together. The orphan crisis thus far has shown opportunities to strengthen and build ubuntu. Relationships are central to the creation of community and, ultimately, to a child’s participation. There has never been doubt that African society, and African families have thrived despite the development of the AIDS epidemic. However the magnitude has overwhelmed all levels of communities, states and the international community, in regard to the demand that is placed on them. But, the challenges which have persisted have also been a platform for traditional societies to present their strength in togetherness. The concept of ubuntu has been replicated in community-based programming in diverse settings. The essence of *Strong Communities*²¹ adopted an ubuntu-inspired mission ‘people should not have to ask’, which results from a web of support that ensures the philosophy ‘no family is lost’. In the case of

²⁰ Ubuntu is a strong series of relationships that experiences neighbourly living, popularized by Desmond Tutu (Melton, 2010).

²¹ *Strong Communities* is a foundation-funded community-wide, universal initiative for prevention of child abuse and neglect in South Carolina (Melton, 2010, p. 93).

Strong Communities, the concept, to make ‘noticing and caring easy and non-stigmatizing’ was conducted through the infusion of the network of support from community stakeholders (Melton, 2010, p. 92). Such an example should have similar outcomes in communities impacted by the AIDS epidemic. In fact, the overwhelmed and overextended communities have shown a level of the spirit of ubuntu throughout SSA. However, toward this next phase of impact a strengthened system is necessary.

Policies pertaining to community-driven responses must specifically address the promotion of a supportive and enabling environment. In other words, such a policy should be community-led and should include focused strategies to facilitate the rights of individuals. To ensure satisfactory results three deliverable components must be considered: ownership of application; action points that satisfy the community’s self-identified priorities; and collective efficacy. These elements are critical to the ongoing interest of the community. Through community engagement the identification of needs and corresponding responses should result in a sense of possession over actions taken. This in conjunction with collective decision making will create the basis for more sustainable outcomes. A democratic community should incorporate collective caring amongst one another, or sharing collective responsibility, which results in the highest regard for child wellbeing (Melton, 2005A). The inclusion of democracy within the community also facilitates children’s personal development which in turn facilitates societal development (Melton, 2005A). The principle is that the combination of school and a democratic environment ensure that participants are involved with civic engagement and therefore the satisfaction of human rights.

Principle Four: Policy and Programmatic responses to CABA should be holistic and comprehensive

The formulation of HIV and AIDS policy, as Osei-Hwedie and Osei-Hwedie (1999) argued in the early years of the AIDS epidemic, was influenced by misunderstanding, ignorance, fear and emotions, and associated with behaviours of individual choice. The conceptualization that societies must balance economic, social, psychological, legal, political and ethical considerations to create policy today, requires a holistic set of policies that incorporate the rights of those most vulnerable with the entire population.

Education responses and AIDS responses are not within silos but rather within a greater framework of wellbeing (Morfit, 2011). Providing the right to education in isolation of the other basic human rights is insufficient. Therefore responses should be inclusive of medical, social, political and economic spheres in order to ensure comprehensive approaches. The strongest success within education is attained with a holistic approach. Therefore, strategies that incorporate multiple facets should have better outcomes.

The strategy to engage in this principle requires any and all international-based policy or practice to be holistic in its approach. Education and awareness materials developed should be comprehensive and include media campaigns that depict education as a central right within a catalogue of rights. Further it should be depicted as being critical to the ability to shift a population from being marginalized to being less marginalized. In order to ensure that the national and community level follow through with these campaigns, the need for national level support strategies is suggested.

At the national level, there should be a mandate that all responses must be holistic, and comprehensive, so that fast ‘band-aid’ strategies are not implemented any more. This is based on the evidence that shows that such strategies have historically hindered the long-term development practice and efficiency of communities (Moyo, 2009; Easterly, 2006). Therefore, it is necessary for the nation state to support community-based strategies that envelop all of the spheres that are included in the wellbeing of CABA. In referring back to the example of the Ugandan primary education universal education policy, its intention was to expand the outreach of education among its children. However, this campaign did not include all children, and also did not incorporate all of the needs that children in school may have. For instance, integrating guidance and grieving might bolster its impact within an AIDS-affected society.

At a community level holistic and multisectoral strategies such as AC-AF should encompass CABA exercising their right to education as part of a broader framework. The potential for AC-AFs long-term impact is based on the fact that it is an integrative approach and incorporates all of the major components of wellbeing; equality (particularly in regard to gender), education, mental health, physical health, economic and financial stability, skill development, and mutuality within the community.

Principle Five: The role of child-carers should be recognized in national and international policy

Child-carers are currently not recognized under national and international law. As carers under the age of 18 they are unable to exercise their own rights and the rights of their siblings (or those they care for). The acknowledgment of their position in society, and

responsibilities should result in their lives being different as they would be able to exercise their human rights.

The purpose of an optional protocol is to promote the progressive development of international law by enabling those states that are willing to adopt more demanding standards to do so. Therefore the first action point for operationalization of this principle is for the international community to develop an optional protocol with regard to the position of child-carers in society and the ability to exercise their rights. In order to accomplish this significant education and awareness campaigns are required in order to ensure that the international community understands the deficiencies in the existing system and provide a basis of knowledge to encourage the ratification of the optional protocol and/or other legal frameworks.

At the national level, the ratification and integration into the nation states own legal framework would result in the strongest opportunities for child-carers and CABA as a population. Similar to other principles the need to embrace education and awareness programmes is necessary, however the focus of these campaigns would be specific to the importance of human rights.

At the local level these awareness programmes would then be utilized to ensure the respect and dignity of the individual, in addition to recognizing the role of the child-carer. Further the support of child-carers in advocating for their own rights and the rights of those they care for is necessary. A suggestion in how to enact this component is through the development of youth councils and peer-to-peer training. With this model, the development of peer-to-peer training on this topic would ensure that child-carers in the

community are active agents in the teaching and learning process and the position of child-carers should be destigmatized.

Principle Six: CABA should have opportunities to be active in community life

This principle embraces the concepts of mutuality and reciprocity. The purpose of this principle is to ensure that CABA are active participants in their communities, not only as recipients of support but also as contributors. This participation will not only help CABA develop themselves, but also assist the community in being able to recognize the agency of CABA. Furthermore, this reciprocity will build relationships within the community between and among people. This supports the notion that children with more connection and stronger relationships have a better opportunity for success. A further intention of this principle is that this development should help ensure that CABA begin to develop strategies for taking care of themselves.

To implement this principle it is necessary, at the international level, to support national and community level stakeholders to adopt such principles by raising awareness of the concepts. Beyond this, and in conjunction with the councils and youth groups developed in principle five, CABA should be invited to provide guidance to the national and international community on pertinent issues, and become part of the decision making team to develop international strategies. This would be supported by the national level campaigns that both promote community leadership among CABA and assist in the development of the necessary skill set for success in such roles within the broader community. In order to engage stakeholders the national government should highlight through media campaigns positive examples of CABA-driven practices.

At the local level, civil society should encompass elements of reciprocity among recipients of programming within their visions. For example, as a component of the AC-AF programme, annually the programming participants are encouraged and supported in giving back to their community. This has included awareness building, community events and socials and could include physical infrastructure (such as goal posts for the football pitch or a latrine by the community area) in the future. Initially, these are low-cost events, and organized with the support of AC-AF team members. The topics vary, but are based on the interests of the children who are in the programming and what they collectively want to do for their community.

The encouragement and promotion of ongoing participation can be operationalized by having opportunities for such instances. With the establishment of community level councils (and school-run councils) that regularly develop mutual community building and relationships these action points should garner visible benefits to the community's cohesion. This will increase the understanding that children are independent and able to cope effectively despite hardships. The primary advantage of a rights-based perspective is that it avoids categorizing the disadvantaged, which entitles all children equally (Fortin, 2003).

Principle Seven: Children including CABA should be mobilized in supporting the right to education

The inclusion of children as active agents in the promotion of the right to education should support principle six and further build relationships and community cohesion and integration.

To facilitate this principle the international community must support nation states and local communities to promote child-focussed and child-led strategies. This should be paralleled with the promotion of education and awareness on the agency of children, and the importance of child and youth voice. With this strategy the foundation for the development of an international level committee of children (including CABA) to develop strategies that the international community can implement, will be nurtured. The national level strategies must therefore assist the international framework by having similar campaigns increasing awareness about youth voice. Further the development of a national level committee of children (including CABA) that assists in the education and awareness campaigns and informing the international community should be erected. At the local level, the implementation of national strategies will increase awareness of the issues, and build opportunities for youth to join and build youth committees throughout regions that feed into the national level strategy.

The cohesion and expansion of a support network, will help children recognize, among other lessons, that there are other children who face similar challenges. Their relationships among each other should encourage friendships and confidence. This then positively affects the ability to trust, and increases capacity, while encouraging hope and effectively increasing the productivity of the children. The increased stability of children and ability to effectively use coping mechanisms should lead to more productive and happier livelihoods, as well as decreased long-term dependence on external community agents.

Principle Eight: All stakeholders should be held accountable for the required monitoring and evaluation

To satisfy that CABA exercise their right to education, all stakeholders should adhere to the seven abovementioned principles. Each level (international, national and community) should assist each other both within and between systems. Monitoring and evaluation should be standardized, and required for every level in both data collection and dissemination.

Despite the fact that the fulfillment of all rights may not be achievable, steps should be made towards achieving them and adequate monitoring and evaluation must be conducted. Results must be compiled and disseminated to ensure there is sufficient understanding of the current issues and that progress is shared. A movement beyond the general commentary and application of policy amendments that are enforceable with comprehensive programming can ensure CABA may exercise their right to education in order to attain their catalogue of rights. This concept introduces accountability through a support system between the response levels that should generate increased understanding and interest.

The international community must develop a holistic, comprehensive, but realistic standardized monitoring and evaluation plan. This means that all levels of monitoring and evaluation are the same so that there is a consistency within the process that can inform future policy and practice. Therefore appropriate training strategies must be devised (that are constructed with nation states and community involvement). These should be able to be implemented at the international, national and local community level to assist various stakeholders in being able to effectively complete monitoring and evaluation requirements.

The collection of monitoring and evaluation reports in a timely manner shall be enforced through the international community. And a caveat that the data must be collected and findings disseminated in an appropriate and timely method and manner is necessary.

It is the responsibility of the international community to support and conduct national level training programmes that also will include relevant stakeholders such as academic institutions. In referring back to the inadequacy of UNGASS indicators it is important that the opportunity to develop a comprehensive and informative evaluation system is accepted.

At the national level, implementation requires training strategies that are supported by a full time system. The system would have the role of support to all national and local level stakeholders as well as liaison to the international community evaluative bodies. This would also ensure that local level partners in monitoring and evaluation reporting are well trained and supported. Through years of experience working in sub-Saharan Africa, it is apparent that many organizations and civil society members are unable to perform regular monitoring and evaluation, in accordance with the current systems. However, monitoring and evaluation should be an important component to programming, as it helps to inform future decisions. To ensure that a standardized system is feasible, the development of a more relevant methodology is recommended. For example the use of mobile technology and completing reports through multiple choice and short answer questions by civil society, on their mobile phones, would likely garner much more successful results. Studies on adherence to antiretroviral drug therapies have used this type of technology in SSA as it is more appropriate in regard to accessibility and availability for the majority of the population. This system would also support national level stakeholders to disseminate the

data collected in an appropriate and timely method and manner, to ensure that the population are aware of the progress made and challenges still existing.

Finally, at the local level it is imperative to have well trained local members of the community that are able to collect data and report to their national committees in a timely manner. The standardized monitoring and evaluation will also help to ensure that the process is the foundation for improvements within and among communities. This would further be achieved through the appropriate dissemination of the findings.

Conclusion

The AIDS epidemic has unveiled new challenges, one of which is the capacity for families, nation states and the international community to persevere. As a population, CABA do not currently exercise their right to an education. Tanzania is an example of a country that has been faced with this predicament. The situation in Tanzania, however, is comparable to that throughout the region of SSA. The dilemma raises the question of whether action at the onset of the AIDS epidemic, focusing on long-term strategies and child welfare, would have prevented, or at least reduced, the impact of the orphan crisis and the challenges which it has introduced. Although this question is rhetorical, its intent is to illustrate the need for comprehensive action. Based on research, it is clear that the existing combination of policy and practice to date have not protected CABA on a sufficient scale.

An alternative strategy is required. Without such a strategy, the horrible consequences of the epidemic will continue to be harmful to individuals whose rights are not protected as well as to their families, communities and the systems on which they rely. The impact of the AIDS epidemic cannot be reversed. Nonetheless, ignoring the ongoing

issues will result in more substantial challenges, resulting in increasing disparities among people, in the long-term at all levels.

The principle-based model proposed in this paper comes at a time when responses have mandated that CABA need special assistance.²² However, strategies attempted to date have been inefficient and unsuccessful in regard to scale and often purpose. Therefore, the implementation of the recommended strategy in this paper must be inclusive of all eight principles to be effective at the level required. As a model, these policy recommendations adhere to a set of principles that are guided by a rights-based framework, including: respect for the dignity of children; respect for the right to participate; respect for the right to a family environment/community environment; and acknowledging principles for policy and state responsibility. These fundamental components build a framework of standards for policy and practice to adhere to. This does not suggest that families are failing completely. However, based on the magnitude of the crisis, global priorities must shift to support CABA and child-carers in their ability to exercise their own rights.

As a newly identified vulnerable group, CABA are considered children under law, but are also carers in practice. The utilization of the recommended principle-based approach in this paper, nurtures the environment necessary for positive outcomes. Without the implementation of this framework by international, national and local communities alike, however, CABA will inevitably suffer greater hardships, and sub-Saharan Africa will continue to endure increasingly drastic and dire circumstances.

²² The Declaration of Commitment on HIV and AIDS (General Assembly resolution 69/262 of 2 June 2006) was based on a session that was held at the United Nations in June of 2001, in accordance with resolution 55/13 of 3 November 2000.

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