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A CASE STUDY IN TANZANIA: POLICE ROUND-UPS AND DETENTION OF STREET CHILDREN AS A SUBSTITUTE FOR CARE AND PROTECTION

*Sheryl L. Buske**

“I wish that our community and government would love
us and guide us and not be ashamed of us.”¹

INTRODUCTION

The number of street children has increased exponentially over the last decade. In virtually every country, and in every major city, groups of children can be found scratching their survival from the streets. As the number of street children has steadily risen, the question of “what to do about the street children” becomes more urgent. Sadly, more and more often the astonishing answer is to simply remove them from sight, by whatever means is necessary. Street children around the world are consistently viewed, and treated, as something distasteful and unsightly requiring removal. “Removal” of large numbers of street children is routinely accomplished through mass arrests, commonly known as round-ups. Alleged to be in violation of vagrancy laws, children on the street are summarily, and indiscriminately, rounded-up by the police and arrested. Neither age nor gender provides much protection from round-ups; girls and children as young as seven have been arrested during round-ups.² Once arrested, some children are

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¹ MARIE WERNHAM, CONSORTIUM FOR STREET CHILDREN, AN OUTSIDE CHANCE: STREET CHILDREN AND JUVENILE JUSTICE – AN INTERNATIONAL PERSPECTIVE, 19 (2004) available at http://www.juvenilejusticepanel.org/resources/?act=res&cat=&nod=_root_&id=OutsideChanceStreetChildrenJJ&start=1 (quoting Marco Puzon, *Painted Gray Faces: Behind Bars and in the Streets: Street Children and Juvenile Justice System in the Philippines* 142 (2003)).

² MKOMBOZI CENTRE FOR STREET CHILDREN & ARUSHA CAUCUS FOR CHILDREN’S RIGHTS, POLICE ROUND-UPS OF STREET CHILDREN IN ARUSHA ARE UNJUST, UNCONSTITUTIONAL, AND UNDERMINE THE UNITED REPUBLIC OF

driven far distances from towns, dropped off, and left to make their way the best they can. Other children are held in locked facilities, sometimes for months, pursuant to various administrative laws that do not afford the children any due process rights, including judicial review of their arrest and detention.³ Sometimes the children are simply “given” by the police to other adults in exchange for debts owed. Along the way, the children are beaten, abused, and sexually violated by both the police and the adult offenders with whom they are detained. Adding insult to injury, the round-ups and detentions are often justified as “preventive measures” necessary for the child’s protection.⁴

In Northern Tanzania, the police routinely round-up street children and hold them in custody for days and weeks, only to be abused, neglected, and forced into physical labor.⁵ The round-ups are justified as a proper exercise of a colonial-era vagrancy ordinance and the penal code.⁶ Recently, the frequency of the round-ups combined with the number of children who were being arrested and the abuse they suffered while in custody prompted a local non-governmental organization (NGO) to challenge the constitutionality of the round-ups.⁷

This article presents the situation and legal challenge in Tanzania as a case study. As background to the events in Tanzania, Part II of this article describes the global phenomenon of street children. Part III addresses the contentious and abusive relationship that exists between the police and street children around the world. Part IV describes the unacceptable, but all too common, round-ups and arrests of street children, leading to confinement, as so-called care and protection of street children. As a case study, Part V details the round-ups and arrests of Tanzanian street children, and the subsequent legal challenge

TANZANIA CONSTITUTION AND THE RULE OF LAW, 2, 28 (2005), *available at* http://mkombozi.org/publications/research_report/2005_10_research_report_arusha_roundups_legal_analysis.pdf [hereinafter POLICE ROUND-UPS].

³ See 18 HUMAN RIGHTS WATCH, CHILDREN OF THE DUST: ABUSE OF HANOI STREET CHILDREN IN DETENTION 2 (Nov. 2008), *available at* <http://www.hrw.org/en/reports/2006/11/12/children-dust> [hereinafter CHILDREN OF THE DUST].

⁴ See JOE L. P. LUGALLA & COLLETA G. KIBASSA, URBAN LIFE AND STREET CHILDREN’S HEALTH: CHILDREN’S ACCOUNTS OF URBAN HARDSHIPS AND VIOLENCE IN TANZANIA 3 (2003).

⁵ See *Caucus for Children’s Rights Holds Workshop*, ARUSHA TIMES, Dec. 10-16, 2005, http://www.arushatimes.co.tz/2005/48/local_news_6.htm.

⁶ *Id.*

⁷ *Id.*

that followed. Finally, this article concludes by arguing that round-ups and detention deprive street children of their human rights and cannot be used as a substitute for care and protection.

I. STREET KIDS: A GLOBAL PHENOMENON

The term “street child” seems to have first appeared in 1851 when journalist Henry Mayhew used it to describe London’s working poor during the 1840s.⁸ Although his observations and accounts of street children a century ago are surprisingly still accurate, street children did not really register on the international radar until 1979, during the International Year of the Child.⁹ Since then, the number of street children has increased worldwide and they have garnered considerably more attention.

A. HOW BIG IS THE STREET CHILD “PROBLEM”?

Just how many street children are there in the world? It is nearly impossible to say with any degree of accuracy. The estimate of 100 million street children worldwide is the figure quoted most often,¹⁰ but no one knows for sure.¹¹ Accurate statistics are “practically impossible” for several reasons.¹² First, this population is very fluid; the children sometimes leave the street for periods of weeks or months only to return at a later time, sometimes great distances from where

⁸ HENRY MAYHEW, *Of the Children Street-Sellers of London*, in LONDON LABOUR AND THE LONDON POOR: A CYCLOPAEDIA OF THE CONDITION AND EARNINGS OF THOSE THAT WILL WORK, THOSE THAT CANNOT WORK AND THOSE WHO WILL NOT WORK 468, 468 (1861-1862).

⁹ Laura P. Wexler, *Street Children and U.S. Immigration Law: What Should Be Done?*, 41 Cornell Int’l L.J. 545, 547 (2008).

¹⁰ See LUGALLA, *supra* note 4, at 15.

¹¹ Alex Dressler, *Foreword* to SARAH THOMAS DE BENITEZ, STATE OF THE WORLD’S STREET CHILDREN: VIOLENCE, at vi (2007).

¹² INSTITUT INT’L DES DROITS DE L’ENFANT, CHILDREN IN STREET SITUATIONS 6 (2008), available at http://www.childsrighs.org/html/documents/themes/Topic_ESR_en.pdf; see also Uché U. Ewelukwa, *Litigating the Rights of Street Children in Regional or International Fora: Trends, Options, Barriers and Breakthroughs*, 9 YALE HUM. RTS. & DEV. L.J. 85, 92 (2006) (noting there are “few accurate statistics” on street children).

they started.¹³ Second, there is a lack of comprehensive research with this population.¹⁴ Third, statistical reports are susceptible to the interests of the stakeholders, i.e. over or under reporting depending on the interests at stake.¹⁵ Finally, there is a lack of consensus as to “who” is a street child and who should, therefore, be “counted.”¹⁶

Other commonly used definitions, which categorize street children include whether they are “of” or “on” the street.¹⁷ Children “of” the street are understood to be those who have no contact with their families and are without homes. Conversely, children “on” the street are understood to be those who spend their days working on the streets but return to their families at night.¹⁸

Some have argued, rightly, that while these terms may be useful for researchers, they fail to account for the children as individual human beings and can further stigmatize them.¹⁹ Like the difference between the language of “child prostitute” and “child who is prostituted,” there is a difference between “street child” and “child who is homeless”: one labels the child and one explains a situation beyond the child’s making.²⁰ As one child explained, “[p]eople say that there are ‘street children,’ that children are coming ‘from the streets.’ I tell you there is no such thing as a child who belongs to the street, only children who belong to the community.”²¹

¹³ See INSTITUT INT’L DES DROITS DE L’ENFANT, *supra* note 12 (characterizing this as a mobility issue and noting that it is common for street children to move from one neighborhood, or city, to another); see also Donald M. Taylor ET AL., “Street Kids”: *Towards and Understanding of Their Motivational Context*, 36 CAN. J. BEHAV. SCI. 1 (2004) (noting that street children tend to be “highly mobile both within and between urban centers.”).

¹⁴ See LUGALLA, *supra* note 4, at 15.

¹⁵ See INSTITUT INT’L DES DROITS DE L’ENFANT, *supra* note 12.

¹⁶ See LUGALLA, *supra* note 4, at 15; see also GLYNIS CLACHERY ET AL., INCLUDING STREET CHILDREN: A SITUATIONAL ANALYSIS OF STREET CHILDREN IN DURBAN, SOUTH AFRICA 16 (Feb. 2011), available at [http://www.crin.org/docs/Street_Action_Report_FINAL-1\[1\].pdf](http://www.crin.org/docs/Street_Action_Report_FINAL-1[1].pdf) (noting that the definition of street children has been contested for decades).

¹⁷ See LUGALLA, *supra* note 4, at 15.

¹⁸ *Id.*

¹⁹ MKOMBOZI, THINK PIECE: MKOMBOZI’S RATIONALE FOR CHALLENGING STEREOTYPES ABOUT STREET CHILDREN (2008), available at http://www.mkombozi.org/publications/think_piece/2008_07_17_news_think_piece_stereotypes.pdf [hereinafter THINK PIECE].

²⁰ *Id.*

²¹ *Id.* (alteration to the original).

The language we choose to use to refer to the group of children who have a variety of relationships with the streets is telling.²² If “[t]he social construction of street children is itself a form of social action,”²³ it matters then, very much, what language and labels we use with regard to street children. Language is powerful; it has the power to stigmatize children or “provide them with an identity and sense of belonging.”²⁴

While recognizing the inherent limitations of generalizing about the uniqueness of individual children and youth and their experiences, as others have done elsewhere,²⁵ the terms “street child,” “street children,” and “street youth” are used in this article for purposes of brevity. Additionally, throughout this article, the terms “migrate,” and occasionally “run,” are used to describe the process by which children leave, or are pushed from, their homes for the street. The author agrees with the position taken by some NGOs that the term “migrate” better reflects what is often a rational and intentional decision by street children to relocate their lives to the street.²⁶ Like other groups of people who leave their homes to make homes in new places, street

²² See WERNHAM, *supra* note 1, at 13.

²³ KATE MCALPINE, MKOMBOZI, CENSUS 2006: THE RHETORIC AND REALITY OF TANZANIA’S STREET CHILDREN 18 (2007), available at http://www.mkombozi.org/publications/research_report/2007_05_research_report_census_2006.pdf (quoting S.L. de Moura, *The Social Construction of Street Children: Configuration and Implications*, 32 BRIT J. OF SOC. WORK 353 (2002)).

²⁴ WERNHAM, *supra* note 1, at 13.; see Taylor, *supra* note 13 (noting that some street children proudly label themselves as “street kids”); see also INSTITUT INT’L DES DROITS DE L’ENFANT, *supra* note 12, at 4 (arguing that definitions such as “street children” are stigmatizing and do not take into account the child’s subjective perception); See also 7 PAULO SERGIO PINHEIRO, WORLD REPORT ON VIOLENCE AGAINST CHILDREN 295 (2006), available at <http://www.unicef.org/violencestudy/> (noting that while the term “street child” can be used pejoratively, it is also sometimes used with “considerable pride”).

²⁵ WERNHAM, *supra* note 1, at 13.

²⁶ CLACHERTY ET AL., *supra* note 16, at 19 (using the term “migration” to describe the process of children moving around to various places after they leave home); see also HANNAH JOHNSON ET AL., MKOMBOZI CENTRE FOR STREET CHILDREN RESPONSES TO CHILD VULNERABILITY: WHY DO CHILDREN MIGRATE TO THE STREETS IN TANZANIA? 4 (Sept. 2005), available at http://www.mkombozi.org/publications/research_report/2005_09_research_report_child_vulnerability.pdf.

children's relocation to the street can be understood as a form of migration.

In the absence of reliable global statistics, NGOs and governments rely on estimates at more local levels such as provinces, municipalities, states, and cities to get a sense of how many street children there are worldwide.²⁷ Even when viewed with some degree of skepticism, the following sampling of NGO and government estimates reveal huge numbers of children living and working on the streets worldwide:

- Albania:²⁸ In 2003, approximately 800 street children were estimated to roam the streets of Tirana, the capital city, as beggars, street sellers, and shoe-shine boys. Street children were said to be the most vulnerable to maltreatment, insecurity, illiteracy, and malnutrition.
- Vietnam:²⁹ In 2006, the Ministry of Labor, Invalids, and Social Affairs (MOLISA) of Vietnam estimated that there are 23,000 street children in Vietnam and as many as 1,500 in Hanoi alone. While there is some perception that the numbers of street children are decreasing in Vietnam, child advocates believe the children are only "more scattered and less visible" since the country has instituted round-up campaigns.
- Democratic Republic of Congo (DRC):³⁰ As recently as 2006, human rights advocates estimated that tens of thousands of children lived on the streets of Kinshasa and other cities in the DRC. These numbers are fairly striking given that "prior to the 1970s there were few, if any," street children in the DRC.
- Bulgaria:³¹ More than fifteen years ago, in 1996, it was estimated that between 12,000 and 14,000 street children lived on the streets throughout Bulgaria. The majority of the street children were Roma, a marginalized ethnic group. Most of the

²⁷ INSTITUT INT'L DES DROITS DE L'ENFANT, *supra* note 12, at 5.

²⁸ *Id.* at 8.

²⁹ CHILDREN OF THE DUST, *supra* note 3, at 10.

³⁰ HUMAN RIGHTS WATCH, WHAT FUTURE? STREET CHILDREN IN THE DEMOCRATIC REPUBLIC OF CONGO 1, 12 (2006), *available at* <http://www.hrw.org/en/node/11435/section/1> [hereinafter WHAT FUTURE?].

³¹ HUMAN RIGHTS WATCH, CHILDREN OF BULGARIA: POLICE VIOLENCE AND ARBITRARY CONFINEMENT 9, 11 (1996.), *available at* <http://www.hrw.org/en/reports/1996/09/01/children-bulgaria> [hereinafter CHILDREN OF BULGARIA].

street children begged, worked odd jobs, gathered recyclable materials, and engaged in prostitution.

- Papua New Guinea:³² In early 2004, the media reported that the number of street children living in Port Moresby was increasing by 15% every year. Further, it estimated that there were as many as 5,000 street children in Papua New Guinea, ranging in age between seven and eighteen.
- Latin America:³³ It is estimated that there are 40 million street children in Latin America, and the numbers are expected to increase as poverty becomes more widespread in urban areas.
- Brazil:³⁴ The 2003 State Report to the Committee on the Rights of the Child reported that the “problem” of street children in Brazil has been apparent since the late 1970s. In Sao Paulo, the largest city in South America, for example, there were believed to be approximately 3,500 children on the street.
- Bangladesh:³⁵ NGOs working with street children in Dhaka City, Bangladesh report that as many as 400,000 street children live on the streets across Bangladesh. The children “survive as they can” by rag picking, begging, stealing, and engaging in prostitution.
- Egypt:³⁶ NGOs report that roughly one million children are thought to be on Egyptian streets, primarily in Cairo and Alexandria.
- Rwanda:³⁷ In 2001 the government estimated that approximately seven thousand children were living on the streets in urban areas.

³² Maureen Gerawa, *Street Kids Numbers on the Increase*, PNG POST-COURIER, Jan. 7, 2004.

³³ Charmaine J. Comprosky, *The Plight of the Street Children in Latin America Who Are Addicted to Sniffing Glue, and the Role and Responsibilities of Transnational Corporations*, 8 ILSA J. INT’L COMP. LAW 599, 599 (2002) (quoting Marc D. Seitles, *Effect on the Convention on the Rights of the Child Upon Street Children in Latin America, A Study of Brazil, Colombia, and Guatemala*, 16 INT’L PUB. INT. 159-60 (1998)).

³⁴ INSTITUT INT’L DES DROITS DE L’ENFANT, *supra* note 12, at 8.

³⁵ Thomas de Benitez, *supra* note 12, at 9.

³⁶ *Id.* at 38.

Despite the challenges in crafting a definition that “capture[s] the totality of the experiences of street children worldwide”³⁸ and ascertaining a reliable headcount of the global street child population, there are some broad truths that can be stated with certainty. First, the street child phenomenon is neither new nor restricted to developing countries.³⁹ Rather, street children are common in industrialized countries and former socialist/communist countries as well.⁴⁰ Indeed, there are as many as 1.6 million street children in the United States.⁴¹ Second, the number of street children worldwide is increasing.⁴² Third, there are more street boys than girls worldwide.⁴³ Fourth, the majority of street children around the world are between ten and fourteen years old;⁴⁴ however, there is some indication that street children are getting younger and younger.⁴⁵ Fifth, the majority of street children around the world engage in some sort of “work” to earn enough money to

³⁷ HUMAN RIGHTS WATCH, *SWEPT AWAY – STREET CHILDREN ILLEGALLY DETAINED IN KIGALI, RWANDA* 3 (2006), available at <http://www.hrw.org/en/reports/2006/05/14/swept-away> [hereinafter *SWEPT AWAY*].

³⁸ Ewelukwa, *supra* note 12, at 91.

³⁹ LUGALLA, *supra* note 4, at 14; *see also* Ewelukwa, *supra* note 12, at 92; *see also* Wexler, *supra* note 9, at 548.

⁴⁰ LUGALLA, *supra* note 4, at 14; *see* Ewelukwa, *supra* note 12, at 90 (noting that in former socialist countries, including Poland and Hungary, for example, the number of street children living in empty buildings, cellars and railway stations is increasing).

⁴¹ NATIONAL CENTER FOR FAMILY HOMELESSNESS, *AMERICA’S YOUNGEST OUTCASTS* 2 (2009), available at http://www.homelesschildrenamerica.org/pdf/rc_full_report.pdf.

⁴² WALTER DE OLIVEIRA, *WORKING WITH CHILDREN ON THE STREETS OF BRAZIL: POLITICS AND PRACTICE* 5 (2000); *see also* Gerawa, *supra* note 32; JOHNSON ET AL., *supra* note 26.

⁴³ Kevin J. Lalor, *Street Children: A Comparative Perspective*, 23 *CHILD ABUSE & NEGLECT* 759, 761 (1999); *see also* WERNHAM, *supra* note 1, at 15 (citing girls account for between 3% and 30% of the street child population depending on the location and that the fewer numbers of girls might be explained by social and cultural factors); *see also* CHILDREN OF THE DUST, *supra* note 3 at 11 (noting that 75% of the street children in Hanoi, Vietnam are boys); *see also* PINHEIRO, *supra* note 24, at 296.

⁴⁴ Lalor, *supra* note 43.

⁴⁵ *See* Wexler, *supra* note 9, at 549.

survive.⁴⁶ Finally, the majority of street children are found in urban areas.⁴⁷

B. PUSH AND PULL FACTORS: VULNERABILITY + EMERGENCY = RUN

Cities around the world have undergone rapid changes since the early 1990s and the poor are particularly affected.⁴⁸ Many of the changes can be attributed to widespread unemployment, rising rates of crime and violence, and the “tremendous increase” in the number of street children in urban areas.⁴⁹ Whether because they chose to leave or because they were pushed out of their homes, children are thought to “flock” to urban areas.⁵⁰

A variety of complex, inter-related, and often overlapping push and pull factors that result in children migrating to the streets have been identified.⁵¹ For children who are already vulnerable and at risk, an emergency or other event can be the tipping point that finally pushes them to the streets.⁵²

Almost all children who end up on the streets share some common vulnerabilities. Vulnerability in this context refers to a

⁴⁶ Considering that street children spend a considerable amount of time “working,” it is interesting that few conceptualizations of them are as members of the working poor. See PHILLIP KILBRIDE ET AL., STREET CHILDREN IN KENYA: VOICES OF CHILDREN IN SEARCH OF A CHILDHOOD 6 (2000).

⁴⁷ Cf. Peter Anthony Kopoka, International Conference on Street Children and Street Children’s Health in East Africa, The Problem of Street Children in Africa: An Ignored Tragedy 7 (Apr. 19-21, 2000), available at <http://www.fiuc.org/iaup/ssi/PDF-doc/IDS-doc/Streetchildren.pdf> (noting, however that even though most of the street children are in urban areas, many of the children have rural origins).

⁴⁸ LUGALLA, *supra* note 4, at 3.

⁴⁹ *Id.*; see also ARVIND GANESAN, HUMAN RIGHTS WATCH, POLICE ABUSE AND KILLINGS OF STREET CHILDREN IN INDIA 13 (Patricia Gossman et al. eds., Nov. 1996) (quoting HAZEL D’LIMA & ROSA GOSALIA, NAT’L LABOR INST., STREET CHILDREN OF BOMBAY: A SITUATIONAL ANALYSIS 2 (1992)), available at <http://www.hrw.org/legacy/reports/1996/India4.htm> (reporting that in India, which has the highest street child population in the world, the increase in numbers of street children is “closely associated with the process of fast urbanization” in the major cities).

⁵⁰ LUGALLA, *supra* note 4, at 3.

⁵¹ See generally JOHNSON ET AL., *supra* note 26.

⁵² See *id.* at 7.

“multiplicity”⁵³ of conditions that place children at greater risk of separating, or being separated, from their families and running to the streets. At one level, circumstances in the home environment contribute to a child’s vulnerability, including when:

- a child’s family lives in poverty;⁵⁴
- a child is maltreated in the home;⁵⁵
- there is domestic violence in the home;⁵⁶
- a child does not have the opportunity or ability to go to school;⁵⁷
- family breakdown—the absence or loss of family members;⁵⁸

⁵³ CLACHERTY ET AL, *supra* note 16, at 19 (“Very few children mentioned one factor as the cause of their coming to the streets and most talked about a multiplicity of reasons....”).

⁵⁴ JOHNSON ET AL, *supra* note 26, at 6; *see also* UNICEF, CHILDREN WORKING ON THE STREETS OF ETHIOPIA 8 (Latanya Mapp ed., 2000), *available at* http://www.unicef.org/french/evaldatabase/files/ETH_2000_800.pdf (identifying poverty as one of the factors that pushes children to work) [hereinafter CHILDREN WORKING ON THE STREETS OF ETHIOPIA]; *see also* CHILDREN OF THE DUST, *supra* note 3, at 9 (identifying poverty as a significant factor pushing children to the street).

⁵⁵ JOHNSON ET AL, *supra* note 26, at 6; *see also* PINHEIRO, *supra* note 24, at 193 (noting research conducted in Peru identified family violence and child maltreatment as the precipitating factor which caused children to run to the streets); *see also* CLACHERTY ET AL, *supra* note 16, at 16 (noting that abuse of the children is a “major reason” children move to the streets); *See id.* at 20 (noting abuse by step-parents as one factor that causes children to migrate to the streets).

⁵⁶ JOHNSON ET AL., *supra* note 26, at 6; *see also* CHILDREN OF THE DUST, *supra* note 3, at 10 (identifying domestic violence as one of the reasons children leave home); *see also* CLACHERTY ET AL, *supra* note 16, at 16 (“Studies on street children in Bangladesh, Russia and South Africa ... have all found that violence in the home and community were major ‘push’ factors.”).

⁵⁷ JOHNSON ET AL., *supra* note 26, at 6; *see also* CLACHERTY ET AL, *supra* note 16, at 16 (noting parents’ inability to pay school fees “plays a role” in children moving to the streets).

⁵⁸ KILBRIDE ET AL., *supra* note 46, at 5 (“[F]amily breakdown as the immediate precipitating push factor that prompts a child to leave home ... for the streets....”); *see also* CLACHERTY ET AL, *supra* note 16, at 16 (“The death or loss of a primary care giver is also a commonly reported ‘push’ factor, with HIV/AIDS being a major cause of parental death.”); *See id.* at 16 (citing example of one workshop with street children where 17 of the 30 children had experienced the death of at least one parent).

- when life at home is worse than life on the streets.⁵⁹

On another level, structural conditions at the community and national level are also thought to contribute to a child's vulnerability because of the direct effect on the child, even when the conditions or circumstances initially seem too far removed from the child's day-to-day life, including:

- rapid increases in the population;⁶⁰
- rapid urbanization⁶¹
- widespread unemployment;⁶²
- civil war and famine;⁶³
- "an under-resourced educational system",⁶⁴
- falling through the gaps of government assistance,⁶⁵

⁵⁹ JOHNSON ET AL., *supra* note 26, at 6; *see also* MCALPINE, *supra* note 23, at 19 ("[W]e used to live with our parents, until my moved away in 2001 because my father used to go drinking all day and would fight my mom. He would stay out all night and drink alcohol, then return at night and beat my mom because the food was not good, he said. I always felt bad seeing this happen. One night my dad beat her in the dark so we couldn't see, and that morning my mom told us children she couldn't take it anymore. She left us all and makes me really sad. Ever since our lives have been so much more difficult. Now our father would beat us instead of my mom....By 2004, most of my brothers had run away from home because my dad was really mean and angry and drunk. Only my younger brother and I stayed with my dad....Then one day we failed to take proper care of the cows and they ended up entering someone's field. That night my dad beat us so bad. Even the neighbors would beat us because they thought we were stealing their food, since we were given no food. One day, after we were beaten, we decided to run away and never come back.").

⁶⁰ JOHNSON ET AL., *supra* note 26, at 7; *see also* Kopoka, *supra* note 47 (noting the natural increase in population in rural areas have contributed to urban areas).

⁶¹ Kopoka, *supra* note 47 (citing the rapid urbanization, population growth and increasing disparities in wealth, particularly in Africa).

⁶² JOHNSON ET AL., *supra* note 26, at 6.

⁶³ KILBRIDE ET AL., *supra* note 46, at 4 (noting Mozambique and Sudan as examples where civil war and famine have contributed to the number of street children); *see also* Kopoka, *supra* note 47, at 5 (citing the armed conflict in Sierra Leone and Liberia).

⁶⁴ JOHNSON ET AL., *supra* note 26, at 7.

- limited employment options for the unskilled or uneducated;⁶⁶ and
- child soldiers.⁶⁷

Vulnerability, without more, however, does not fully explain why some children run to the street, but others do not. There are, after all, millions of children worldwide who are vulnerable by this standard but do not end up living on the street. What, then, accounts for the difference?

Mkombozi, the leading children's rights NGO in Tanzania,⁶⁸ argues that it is vulnerability *plus* an emergency or precipitating event that results in children migrating to the streets.⁶⁹ For vulnerable children who live without safety nets, they have no other choice but to "run" to the streets when faced with an emergency or other precipitating event that makes the streets the better, or only, option.⁷⁰

In the majority of cases, the immediate emergency or precipitating factor that pushes children to the streets is conflict in the home, even though it is seldom a single or sudden event.⁷¹ Conflict in the home is further complicated by conflict in the greater community, which has increased as countries have seen a rise in individual interests over the traditional focus on community needs.⁷² Conflict in the greater community can contribute to a child's vulnerability in a variety of ways, including the following:

⁶⁵ Kopoka, *supra* note 47, at 12 ("The Ministry of housing, for example, has nothing to offer street children....From the standpoint of Ministries of Education, street children are dropouts lacking familial background necessary for them to benefit from education....Labour ministries consider them untrainable because they lack of [e]ducation and are therefore unemployable....Youth and sport ministries see them as unruly spirits likely to damage precious equipment....Health agencies are more useful because street children will not refuse first aid....").

⁶⁶ JOHNSON ET AL., *supra* note 26, at 7.

⁶⁷ KILBRIDE ET AL., *supra* note 46, at 4 (noting Uganda as an example where child soldiers and AIDS have contributed to the number of street children).

⁶⁸ Mkombozi (meaning "liberator" or "emancipator" in Swahili) "supports Tanzania's children and youth, including those at risk of vulnerability, through housing, education, research, advocacy, and outreach." More information can be found at <http://mkombozi.org/about/index.html>.

⁶⁹ JOHNSON ET AL., *supra* note 26, at 6.

⁷⁰ *Id.*

⁷¹ *Id.* at 7.

⁷² *Id.*

- more and more fathers leave families to look for work;
- the numbers of single parent households increase due to breakdowns in relationships, a parent's death, and the birth of non-marital children;
- failure or inability of extended families to care for children;
- risky behaviors (alcoholism, prostitution) by parents; and
- children left unsupervised for extended periods while single parents are working.⁷³

To a lesser degree, there are some indicators that the streets operate as “pull” factors as well, including the following:

- a part-time association with the street to join friends or family members⁷⁴ that eventually merges into a full-time association;⁷⁵
- the excitement of living in a big city.⁷⁶

Given this background, is it any wonder that some children and youth, when faced with the proverbial straw that breaks the camel's back, run to the streets because they believe their lives will be better there?

II. STREET CHILDREN'S RELATIONSHIP WITH THE POLICE

Street children “are more likely than other children to come into” contact with the police.⁷⁷ The majority of street children who do come into contact with police are said to be “in conflict with the law” because

⁷³ *Id.* at 7.

⁷⁴ CLACHERTY ET AL, *supra* note 16, at 20 (noting that a common theme in the reasons children migrate to the street is that some children move to the streets on weekends to beg, often with relatives, but then end up staying there).

⁷⁵ CLACHERTY ET AL, *supra* note 16, at 18–20; *See* Lalor, *supra* note 43, at 762.

⁷⁶ Kopoka, *supra* note 47, at 7 (noting that the “excitement and glamour” of living in large cities is one of the “pull” factors causing children to migrate to the streets).

⁷⁷ HELEN MOESTUE, UNICEF, LOST IN THE JUSTICE SYSTEM: CHILDREN IN CONFLICT WITH THE LAW IN EASTERN EUROPE AND CENTRAL ASIA 28 (rev. ed. May 2008) available at http://www.unicef.org/ceecis/Lost_in_the_Justice.pdf.

they have committed, or have been accused of committing, a crime.⁷⁸ The overwhelming majority of these children, however, are only accused of, or even guilty of, petty, non-violent crimes or “status offences” such as truancy, which are criminalized only because of the person’s juvenile status.⁷⁹ Additionally, in communities where vagrancy is criminalized, street children are often the primary target.⁸⁰ Moreover, because they are poor and marginalized, they are particularly vulnerable to police contact.⁸¹ They are “easy targets” in that they are usually “small, poor, ignorant of their rights and often have no family members who will come to their defense.”⁸² In some countries, the police are “the number one problem” street children face,⁸³ more so than violence on the street from other actors, poor health and lack of medical care, lack of education, and having enough to eat. Indeed, there are multiple reports around the world in which street children are believed to have been assassinated by the police.⁸⁴

The overwhelming majority of interactions between street children and the police are negative, characterized by “psychological, physical and sexual violence, and arbitrary abuse of power.”⁸⁵ A variety of factors are thought to contribute to police abusive treatment of street children, including:

- a lack of education or training;⁸⁶

⁷⁸ *Id.* at 16.

⁷⁹ *Id.*

⁸⁰ *Id.* at 28.

⁸¹ *Id.*

⁸² GANESAN, *supra* note 49, at 4.

⁸³ *Id.* at 20 (citing Human Rights Watch Interview, Madras, February 2, 1995); *see also* PINHEIRO, *supra* note 24, at 297 (noting that police violence against street children is a “common theme”).

⁸⁴ PINHEIRO, *supra* note 24, at 296 (referring to examples including reports that the national police in Colombia were responsible for the assassination of 850 children between 2000-2004 and abductions of 620 between 2003-2004); *see also* WERNHAM, *supra* note 1, at 75 (referring to the “death squad killing of street children” by police in Brazil in 1993).

⁸⁵ WERNHAM, *supra* note 1, at 74; *see also* CLACHERTY ET AL., *supra* note 16, at 24 (noting that for street children in Durban, South Africa, for example, harassment from the police was the “main problem” for them, so much so that abuse by the police was so dominant in their lives that they described it as “an integral part” of their lives).

⁸⁶ WERNHAM, *supra* note 1, at 74; *see also* GANESAN, *supra* note 49, at 18-19 (noting the perception of street children as criminals by the police as a contributing factor to the abusive treatment by police of street children; police officers described the street children as “anti-social elements” and perceived

- the ever-growing numbers of street children;⁸⁷
- having experienced violence and abuse as a child;⁸⁸
- a lack of knowledge regarding human rights, particularly children's human rights;⁸⁹
- a lack of resources;⁹⁰
- frustration with legal systems that do not resolve the street child "problem";⁹¹
- impunity due to poor oversight and supervision;⁹²
- links to the military;⁹³ and
- fears about personal safety.⁹⁴

The police, like many others, often have difficulty understanding or accepting that what appears to be poor decision-making by street children is often, in reality, very purposeful decision-making after they have considered their realistic options.⁹⁵ The classic example is self-medication through substance abuse.⁹⁶ Street children sometimes must choose between food and drugs (such as glue); they often choose drugs because they are cheaper, take away hunger pains, and numb them to the unforgiving environment around them, whether it be intense heat or cold, pouring rain, or violence from other people.⁹⁷ From their

them as "thieves, rogues, and drug addicts" who must be remanded to institutions and disciplined).

⁸⁷ GANESAN, *supra* note 49.

⁸⁸ WERNHAM, *supra* note 1, at 74; *see also* PINHEIRO, *supra* note 24 at 296 (arguing that the level of impunity the police wield is important because it means children have no one to report abuses to except the authorities who committed the abuses in the first place).

⁸⁹ WERNHAM, *supra* note 1, at 74.

⁹⁰ *Id.* at 74.

⁹¹ *Id.*

⁹² *Id.* *See also* GANESAN, *supra* note 49, at 74 (noting the "lawlessness" of the police as a factor contributing to police abuse of street children).

⁹³ *Id.*

⁹⁴ *See id.*

⁹⁵ LUGALLA, *supra* note 4, at 18.

⁹⁶ *Id.*

⁹⁷ *Id.*; *see also* Peter Mwangi, *What Pushes Children Into Urban Streets*, WORLD STREET CHILDREN NEWS (July 29 2007), <https://streetkidnews.blogspot.com/category/1/tanzania-street-kid-news/> (in which a former street

perspective, drugs are the better choice because drugs can sometimes meet their needs better, and for a longer period of time, than food.

As for running to the street, in the context of rapid urbanization, unemployment, and poverty, the decision of children to run to and use the streets as a way to improve their condition, and as a way of getting away from abuse, seems both pragmatic and sensible.⁹⁸ With little to no education or marketable skill, the street is often the only viable source of income. And, even though some children do use their earnings to achieve short-term comfort, several studies have documented that high percentages of street children use their earnings to pay for their own needs, including school fees, or support their families.⁹⁹

Government officials and the police generally view street children negatively, believing them to be nothing more than “hooligans, vagabonds, and criminals.”¹⁰⁰ Even the language used to refer to children on the street reflects fear and contempt, including, for example: *saligomans* (used in Rwanda to refer to “nasty kids”),¹⁰¹ *pajaros fruteros* (used in Peru to refer to street children as fruit birds because they steal fruit from the markets);¹⁰² *watoto wa mitaani* (used in Tanzania to identify them as “children of the streets”);¹⁰³ and *moineaux* (a pejorative term used in the DRC analogizing them to sparrows because they eat food on the street).¹⁰⁴ As one street child

child explains that “smoking marijuana is part and parcel of a street life and the street children believe that through the habit they are able to beat stress.”; DE OLIVEIRA, *supra* note 49, at 18-19 (explaining the hallucinogenic effect of glue makes it possible for street kids to forget about their fears, hunger, and lack of opportunities).

⁹⁸ See generally MCALPINE, *supra* note 23, at 18.

⁹⁹ See CHILDREN WORKING ON THE STREETS OF ETHIOPIA, *supra* note 54, at 20.

¹⁰⁰ LUGALLA, *supra* note 4, at 3.; see also KOPOKA, *supra* note 47 (noting that society tends to view them as “trouble-makers, a nuisance or menace” that must be removed from the street).

¹⁰¹ Gary Barkner & Marilyn Rocky, *Fact Sheets on Street Children*, CHILDHOPE USA (Nov. 19, 2011), <http://www.greenstone.org/greenstone3/nzdl;jsessionid=67E074912052E4DCB1A92FC2155F44DE?a=d&d=HASHba17d9ea218cec41108e9.9&c=cdl&sib=1&dt=&ec=&et=&p.a=b&p.s=ClassifierBrowse&p.sa=>.

¹⁰² *Id.*

¹⁰³ KOPOKA, *supra* note 47, at 6.

¹⁰⁴ *Id.*

explained, “[t]hey call us *tokais* (scavengers) or beggars. Hardly anyone calls us by our own names.”¹⁰⁵

The police and government officials are by no means the only people hostile to street children. As people who live on the edges of other people’s lives, street children are constantly assessed and evaluated by the people they live and work amongst. Consequently, because they are often viewed as “the problem,” it is useful to understand their hostility in the broader context of their attitude towards poverty in general.¹⁰⁶ The circumstances and prospects for large numbers of the general population are, in many ways, similar to the lives of street children except they live their lives out of the public eye. The street children’s “crime,” then, according to some, is not that they are poor and homeless; it is that they “insist” on flaunting their situation, exploiting it for sympathy and money, and “refusing to take responsibility for their situation,” instead doing “drugs and mak[ing] a nuisance of themselves.”¹⁰⁷ As one observer noted, children who have returned to urban areas after being repatriated to their villages go back to “begging as usual with glee and relish.”¹⁰⁸ To some, street children who do not appear to be actively working towards improving their situation are not entitled to empathy or support when the situation is dire for others who are not creating problems in public areas. For those of this opinion, street children are a menace and should be removed because the cities and public would be better off without them.¹⁰⁹

¹⁰⁵ WERNHAM, *supra* note 1, at 13.

¹⁰⁶ LUGALLA, *supra* note 4, at 109; *See also* Kate McAlpine, *Position Paper: The State of Child Protection in Tanzania* 9 (2008), available at http://www.tenmet.org/public_html/TENMET_PositionPaperChildProtection.pdf (noting that Tanzanian police often consider street children to be criminals, in part because they do not understand what causes children to end up on the streets.)

¹⁰⁷ Need information on personal interview listed here; *See also* MKOMBOZI, “PERCEPTION” SURVEY: SURVEY OF COMMUNITY MEMBERS’ PERCEPTIONS OF CHILDREN WHO ARE LIVING/WORKING IN THE STREETS (2010), available at http://www.mkombozi.org/publications/research_report/2010_05_18_research_report_perception_survey_ENG.pdf (noting public observations that some children “live in the streets because they lack values”) [hereinafter “PERCEPTION” SURVEY].

¹⁰⁸ Innocent Kissanga, *Council Embarks on Exercise to Round Up Beggars and Street Kids*, ARUSHA TIMES, April 14, 2007, <http://streetkidnews.blogspot.com/category/1/africa/tanzania-streetkid-news/>.

¹⁰⁹ LUGALLA, *supra* note 4, at 109.

There is, of course, a more sympathetic view of street children.¹¹⁰ Many view street children as victims who have been abandoned by their families, or who abandoned their families because home was worse than the streets, and are left to survive as best as they can on their own.¹¹¹ When viewed as victims who are making rational decisions based on their limited circumstances, they are deserving of encouragement, assistance, and support.¹¹² Unfortunately, this view of street children is very much the minority point of view. Instead, that police view street children as a “menace” to be eradicated seems beyond dispute.¹¹³ Instead of policies that focus on protection and empowerment, negative and hostile attitudes about and toward street children have resulted in policies that focus on the symptoms of street children, i.e., their visible presence, but do little to address the reasons children end up on the streets in the first place.¹¹⁴

III. POLICE ROUND-UPS OF STREET CHILDREN: ARREST AND DETENTION AS A SUBSTITUTE FOR PROTECTION AND CARE

In addition to the “regular” arrests of street children for specific crimes, authorities often arrest larger numbers of street children in systematic “round-ups” during which large numbers of children are swept up in mass arrests.¹¹⁵ Some of the most common reasons given for the police round-ups include: alleged violations of vagrancy statutes,¹¹⁶ “cleaning” the street prior to the arrival of important visitors or to coincide with the tourist season,¹¹⁷ or as a result of “new” initiatives by new regimes intent on showing they are “doing something” about “the street child problem.”¹¹⁸ More disturbing,

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 19.

¹¹⁴ LUGALLA, *supra* note 4, at 20.

¹¹⁵ See UNICEF, CHARGED WITH BEING CHILDREN: EGYPTIAN POLICE ABUSE OF CHILDREN IN NEED OF PROTECTION, 41 (2003), available at <http://www.hrw.org/en/reports/2003/02/18/charged-being-children-0>. (round-ups are also sometimes referred to as “arrest campaigns.”)[hereinafter CHARGED WITH BEING CHILDREN].

¹¹⁶ WERNHAM, *supra* note 1, at 52 (noting in Bombay, for example, one study determined that as many as 75% of children in detention facilities were there on charges, or mere suspicion, of vagrancy).

¹¹⁷ *Id.* at 82 (stating that street children in Kenya are often arrested to “promote tourism, ‘since street children are seen as a nuisance to visitors’”).

¹¹⁸ WERNHAM *supra* note 1, at 83.

however, is that the police and other officials maintain that the round-ups are used as a means to protect and provide care for street children.¹¹⁹ Despite such claims that the round-ups are done in the “children’s best interest,” that the children are held in jails with adult offenders strongly suggests the round-ups are waged in the context of the criminal justice system instead of the child protection system.¹²⁰

In some countries, round-ups are the most common complaint by street children.¹²¹ Consider the following examples:

DEMOCRATIC REPUBLIC OF CONGO (DRC)

As in other sub-Saharan African countries, street children in the DRC are a “relatively new phenomenon.”¹²² There were few, if any, street children in the DRC prior to the 1970s.¹²³ When a child was discovered on the street, he was immediately taken before a court and either reunited with his family or placed in an institutional setting.¹²⁴ The state response to such children had changed dramatically by the 1980s, however, due to significant shifts in the Congolese economy.¹²⁵ On the one hand, the government infrastructure necessary to respond to street children, i.e. police, courts and institutions, struggled with diminishing resources.¹²⁶ At the same time, a declining economy and unemployment pushed children out of homes and schools and into the streets to work odd jobs or beg as a way to contribute to family finances.¹²⁷ Even more recently, “interrelated and complex socio-economic factors”¹²⁸ such as civil war, growing numbers of AIDS orphans, the inability of extended families and communities to care for

¹¹⁹ See, CHILDREN OF BULGARIA, *supra* note 31, at 41 (claiming round-ups are intended to “find out who the kids are” and notify their parents).

¹²⁰ WERNHAM *supra* note 1, at 84.

¹²¹ GANESAN *supra* note 49, at 21 (reporting they are they are rounded-up and held in lock-up for several days on “mere” suspicion of having committed a crime).

¹²² WHAT FUTURE?, *supra* note 30 at 12.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 12.

¹²⁸ *Id.* at 13.

orphans, and deterioration of government services has led to an “explosion” in the numbers of street children in the DRC.¹²⁹

Like other countries, the DRC relies on colonial-era laws that criminalize vagrancy and begging as a pretext for rounding-up and arresting children.¹³⁰ Ministry of the Interior officials, and others, have ordered general round-ups of street children in an effort to “clear” the streets.¹³¹ Additionally, it appears that some round-ups and arrests are ordered for the “express purpose” of acquiring children who can be made to do menial labor such as digging latrines and cleaning police stations.¹³²

Street children who are victims of round-ups are rarely charged with a crime or told why they are being held in custody, even though the antiquated vagrancy law requires that the state ensure the children appear before the court within forty-eight hours of their arrest and that efforts are made to reunify the children with their families.¹³³ Nonetheless, most street children are held for a couple of days and then released back to the street if family members do not appear to retrieve the child or placement in an institution is not available.¹³⁴ The president of the Tribunal of Peace defended the practice because, according to him, “there is nowhere else for [the child] to go.”¹³⁵

In November 2005, the Kinshasa police rounded-up and arrested over 180 street children, some as young as nine-years old, who had been congregating around the city’s main market.¹³⁶ The children were held in police custody, with adults, for six days.¹³⁷ During that time,

¹²⁹ *Id.* It is estimated that there are more than 30,000 street children in Kinshasa and thousands more in other urban areas.).

¹³⁰ *Id.* at 24.

¹³¹ *Id.*

¹³² *Id.* at 20. One street boy reported that he was arrested as part of a round-up in August 2005. According to him, eighteen boys, some as young as ten years old, were forced to dig holes for pit latrines. After a full day of forced physical labor, they were “paid” the equivalent of less than fifty cents. Another boy reported that when he was arrested in 2004 as part of a round-up, he was held for two days during which he was forced to clean prison latrines and do yard work around municipal buildings.

¹³³ *Id.* at 24.

¹³⁴ *Id.* at 25.

¹³⁵ *Id.* (chronicling the testimonial of John, a street boy who was arrested with a group of other boys, held in custody with adults in deplorable conditions, then summarily released back to the street after three days).

¹³⁶ *Id.* at 24.

¹³⁷ *Id.*

they were never charged with a specific crime, nor did they appear before a court.¹³⁸ After six days in custody and protests by children's advocacy organizations, the children were released to their families or to private organizations for street children.¹³⁹

Earlier that year, in two separate incidents in Goma, eighty-five adults and children were arrested when the provincial security council ordered the round-ups after receiving reports of violence by street persons.¹⁴⁰ Police officers later defended the round-ups as necessary to avoid a problem with street children.¹⁴¹ Indeed, the assistant mayor claimed that the round-ups were necessary to "sen[d] an important message . . . to parents to take better care of their children" and to NGOs to "do their work correctly."¹⁴²

The round-ups continue to occur all over the DRC, despite some limited success by advocates for street children who have worked to shift the government focus from arrest and detention to reintegration and rehabilitation.¹⁴³

VIETNAM

The official policy in Vietnam is that street children who are arrested are to be taken to drop-in centers, run by the Committee for Population, Family and Children (CPFC), where attempts to locate their parents are to be made.¹⁴⁴ In reality, most of the street children are taken directly to Social Protection Centers (SPC).¹⁴⁵ Social Protection Centers are locked facilities that fall under the purview of the Vietnamese administration and administrative law—instead of the criminal justice system and penal law—meaning that no court order is required for detention, there is no judicial oversight, and the

¹³⁸ *Id.*

¹³⁹ *Id.* at 24.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 25.

¹⁴² *Id.*

¹⁴³ *Id.* at 27.

¹⁴⁴ CHILDREN OF THE DUST, *supra* note 3, at 28-29.

¹⁴⁵ *Id.* at 29; *see also* HUMAN RIGHTS WATCH, VIETNAM: STREET CHILDREN AT RISK BEFORE APEC SUMMIT (2006), *available at* <http://www.hrw.org/en/news/2006/11/12/vietnam-street-children-risk-apec-summit> (noting that staff at Dong Dau, one of the Social Protection Centers, rarely make any effort to locate the children's families)[hereinafter VIETNAM: STREET CHILDREN AT RISK].

“detainees” are without the due process rights normally accorded criminal defendants.¹⁴⁶ One of the more notorious facilities, Dong Dau, where conditions are especially harsh for children, has been characterized as a “de facto jail.”¹⁴⁷

The conditions at other SPCs are equally harsh: children remain in locked, overcrowded, filthy cells with buckets for toilets for all but one hour per day, occasionally with adults.¹⁴⁸ In some facilities there are “no rehabilitation or educational, and recreational activities, and no medical or psychological treatment.”¹⁴⁹

In addition to random, isolated arrests, the Vietnamese government routinely orders “street cleaning campaigns” (round-ups) of street children.¹⁵⁰ When arrested, the children are rarely told why they have been arrested or what they are being charged with, rarely provided with legal counsel or other representation, and rarely given the opportunity to challenge their arrest.¹⁵¹ The majority of the children are not even arrested for specific crimes.¹⁵² One study concluded that only 7% of street children arrested in Hanoi were charged with specific crimes.¹⁵³ The campaigns are frequent and have lasted for months at a time and often coincide with visits by dignitaries or national events.¹⁵⁴ For example, in anticipation of the 2003 International South East Asian Games, the director of the Hanoi Children and Family Committee ordered round-ups of street children and stated, “For those that still have parents but prefer freedom on the street, we will give them some lessons in life Hanoi needs a major beauty treatment, especially before the games in December.”¹⁵⁵ To ensure the success of the campaign, residents were encouraged to report street children and other homeless individuals, and financial incentives were paid to police officers for each person arrested during the round-ups.¹⁵⁶

¹⁴⁶ CHILDREN OF THE DUST, *supra* note 3, at 2.

¹⁴⁷ VIETNAM: STREET CHILDREN AT RISK, *supra* note 144.

¹⁴⁸ CHILDREN OF THE DUST, *supra* note 3, at 28-29.

¹⁴⁹ *Id.* at 2.

¹⁵⁰ *Id.* at 35.

¹⁵¹ *Id.* at 37; *see also* VIETNAM: STREET CHILDREN AT RISK, *supra* note

144.

¹⁵² CHILDREN OF THE DUST, *supra* note 3, at 35.

¹⁵³ TIM BOND, YOUTH RESEARCH INSTITUTE, A STUDY ON STREET CHILDREN IN HANOI 45-46 (2003).

¹⁵⁴ CHILDREN OF THE DUST, *supra* note 3, at 29.

¹⁵⁵ *Id.* at 30.

¹⁵⁶ *Id.* at 31.

The Vietnamese government claims the round-ups have been successful in addressing the needs of street children, while reducing their numbers.¹⁵⁷ Children's rights advocates disagree and argue that the children have only gone underground or moved away from heavily patrolled areas to avoid arrest.¹⁵⁸

BULGARIA

Bulgarian street children are often arrested during "street sweeps" when they are rounded-up for identification checks.¹⁵⁹ Officials claim the sweeps are meant to be a "preventive" measure, used to determine "who these kids are" and to notify their parents.¹⁶⁰ According to children's advocates, however, parents are rarely informed that their children have been arrested, despite the fact that the children are often held for several nights.¹⁶¹ While in custody, the children are "frequently" beaten by the police,¹⁶² not given bedding, food, or allowed to use the toilet.¹⁶³

RWANDA

Authorities in Kigali began officially authorizing regular round-ups of street children in an effort to clear public areas of "undesirable persons" at least as early as 1997.¹⁶⁴ By 2003, Rwandan officials announced that they would work towards increasing the numbers of street children placed with foster families while simultaneously reducing the number of centers and organizations that provide services to Rwandan street children.¹⁶⁵ This shift in policy seemed to signal that as alternative and more productive responses to the reality of growing numbers of street children were identified, police hostility towards the children and round-ups would end.¹⁶⁶ Nonetheless, the police round-ups continue.¹⁶⁷ Adults and children alike are routinely rounded-up and

¹⁵⁷ *Id.* at 32.

¹⁵⁸ *Id.* at 32-33.

¹⁵⁹ CHILDREN OF BULGARIA, *supra* note 31, at 41.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 36.

¹⁶² *Id.* (reporting being beaten with electric shock batons, chains, rubber hoses, and boxing gloves).

¹⁶³ *Id.* at 41.

¹⁶⁴ SWEPT AWAY, *supra* note 37, at 2.

¹⁶⁵ *Id.* at 3.

¹⁶⁶ *See id.* at 2-3.

¹⁶⁷ *See id.* at 6.

arrested for violating colonial-era vagrancy laws when they are unable to produce documentation verifying their residence.¹⁶⁸ Rwandan penal law defines “vagrants” as “persons with no fixed domicile nor means of subsistence and who do not ordinarily engage in any trade or profession.”¹⁶⁹ Street children, who live on the streets and are generally without formal employment, are particularly vulnerable to arrest for vagrancy. Perhaps even more troubling is that the “vagrancy violation” is often no more than pretext for rounding up street children and temporarily removing them from the streets.¹⁷⁰ That few, if any, are ever formally charged with the offence¹⁷¹ or provided any sort of services, strongly suggests that the primary purpose of the round-ups is simply to remove street children from public view.¹⁷² And, it seems beyond coincidence that the round-ups often coincide with the arrival of visiting dignitaries.¹⁷³ Indeed, in May 2006, when a delegation of the African Peer Review Mechanism was visiting Kigali, the number of detainees increased “enormously.”¹⁷⁴

In Kigali, children caught in the round-ups are held with adults in the Gikondo Center, a detention center that exists even though the Kigali city council has no authority to establish or operate it.¹⁷⁵ Accordingly, due to the lack of official status, funding is erratic, causing irregularities in food and services for the detainees.¹⁷⁶ The conditions are particularly harsh for children. Moreover, the child detainees are vulnerable to the whims of adult detainees, “counselors,” who are authorized to “maintain order” in the center.¹⁷⁷ Counselors have been reported to beat the children and extort or steal their money and belongings.¹⁷⁸

NEPAL

In June 1997, police arrested twenty street children, ranging in age between ten and fifteen, at the Kathmandu airport where they were

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* (translating CODE PENAL DU RWANDA, art. 284).

¹⁷⁰ SWEPT AWAY, *supra* note 37, at 6.

¹⁷¹ *Id.*

¹⁷² *See id.* at 8-9.

¹⁷³ *See id.* at 7.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 4.

¹⁷⁶ SWEPT AWAY, *supra* note 37, at 4

¹⁷⁷ *Id.* at 4-5.

¹⁷⁸ *Id.* at 5 (one detainee reported, “[c]ounselors are thieves who are given power over us because they are physically strong.”)

working as freelance porters.¹⁷⁹ According to the police administration, the children were arrested because they were “public nuisances” in violation of the Public Nuisance Act of 1990.¹⁸⁰ The round-up was authorized as part of the “Clean the Street Operation” which was linked to the “Visit Nepal 1998” tourism initiative.¹⁸¹

The children were held in the jail.¹⁸² They reported that during that time, “they were threatened and tortured,” were denied adequate food, and were forced to sleep on the floor.¹⁸³ The police did not deny additional abuse: the children were forced to clean toilets while they were in custody.¹⁸⁴

After six days, three of the children’s parents were able to pay the fine and obtain their release; the other seventeen children were transferred to the central jail, an adult facility, after they were forced to lie about their age, claiming to be older than they were, so that they could be processed as adults.¹⁸⁵ The minimum bail under the Public Nuisance Act was 4,000 Rupee (then approximately \$70.00).¹⁸⁶ After efforts by children’s rights NGOs, nine children were released after roughly two months in the central jail.¹⁸⁷ The remainder of the children were “not released” because, as “adults,” they were not entitled to be treated as juveniles.¹⁸⁸

EGYPT

Under Egypt’s Child Law of 1996, children who are said to be “vulnerable to delinquency” are arrested.¹⁸⁹ Children are said to be

¹⁷⁹ WERNHAM, *supra* note 1, at 84.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ WERNHAM, *supra* note 1, at 84-85.

¹⁸⁶ *Id.*; The average exchange rate from Nepalese Rupee to U.S. Dollars for June 1997 was .01756 . GOCURRENCY.COM, <http://www.gocurrency.com/v2/historic-exchange-rates.php?ccode2=NPR&ccode=USD&frMonth=5&frDay=5&frYear=1997> (last visited Nov. 6, 2011).

¹⁸⁷ *Id.* at 85.

¹⁸⁸ *Id.*

¹⁸⁹ Additionally, the Prime Ministerial Decree 3452 of 1997 permits the arrest of children said to be “vulnerable to danger” if found in a condition that “threatens the sound rearing he requires” and especially if his security, morals, health or life are in danger; the conditions of his upbringing, within the context

“vulnerable to delinquency” if found in any of the following circumstances:

- begging, including begging by “offering products or services of little value, performing acrobatic shows, or other acts that do not constitute a serious source of income”;
- collecting cigarette butts, leftovers, or other trash;
- engaging in activities connected to “prostitution, debauchery, corruption of morals, gambling, drugs, or other similar conduct or works” for another who engages in such conduct;
- lacks a stable residence, or habitually sleeps on the streets or other unsuitable places;
- associates with people who are vulnerable to delinquency, suspect persons, or people with reputations for behaving badly;
- continually absent from school;
- behaves badly in contravention of parental authority;
- “lacks a legal means of income or a responsible” caretaker.¹⁹⁰

Child advocates argue that the law “invites selective enforcement and stigmatizes children.”¹⁹¹ Egyptian officials defend the law and argue that it is intended to protect children who are exposed to

of his environment, expose him to danger; he is abandoned; his future education is in jeopardy; or he is encouraged to use drugs, alcohol, or violence or commit an immoral act. It is thought that passage of the Prime Ministerial Decree 3452 came about after it was recognized that the Child Law of 1996 failed to address Egypt’s international legal obligations to children in need of protection. Law. No. 12 of 1996 (The Child Law), (Egypt), *translated in* CLARISA BENCOMO, HUMAN RIGHTS WATCH, 15 CHARGED WITH BEING CHILDREN: EGYPTIAN POLICE ABUSE OF CHILDREN IN NEED OF PROTECTION 1, 62-63 (2003), *available at* <http://www.hrw.org/en/reports/2003/02/18/charged-being-children-0>; Prime Ministerial Decree 3452 of 1997, (Egypt), *translated in* CLARISA BENCOMO, HUMAN RIGHTS WATCH, 15 CHARGED WITH BEING CHILDREN: EGYPTIAN POLICE ABUSE OF CHILDREN IN NEED OF PROTECTION 1, 64 (2003), *available at* <http://www.hrw.org/en/reports/2003/02/18/charged-being-children-0>. RR 20.3.2, 20.6, 15.1, 18.2.3

¹⁹⁰ Law No. 12 of 1996, *supra* note 185.

¹⁹¹ CLARISA BENCOMO, HUMAN RIGHTS WATCH, 15 CHARGED WITH BEING CHILDREN: EGYPTIAN POLICE ABUSE OF CHILDREN IN NEED OF PROTECTION 1, 40 (2003), *available at* <http://www.hrw.org/en/reports/2003/02/18/charged-being-children-0>.

delinquency *before* they commit a crime.¹⁹² Rather, the reality for children arrested for being “vulnerable to delinquency” is that instead of being offered support and protection, they are treated as criminal suspects and can be held in custody for up to three years with little or no judicial review.¹⁹³ Indeed, by the Ministry of Interior’s own count, more than twenty-five percent of all the children arrested in Egypt “were arrested on charges of being vulnerable to delinquency.”¹⁹⁴ Over just a one-year period, the number of children arrested pursuant to this law doubled.¹⁹⁵ The Ministry views the increase in the number of children arrested as a progress and credits it to the increased status and resources that are allocated to the General Administration for Juvenile Welfare Organizations.¹⁹⁶

Egyptian police describe their “daily work” as “gather[ing] up children from the streets and arrest[ing] any who are [vulnerable to delinquency.]”¹⁹⁷ These “daily” arrests are generally not systematic and usually only involve small numbers of children.¹⁹⁸ They arrest children in the parks because they “look like they are homeless.”¹⁹⁹ They arrest children selling tissues.²⁰⁰ They arrest children “walking down the street during school hours.”²⁰¹ In contrast, round-ups, which last several days, are much more systematic and strategic and involve greater numbers of children.²⁰² The police claim the round-ups are necessary “to demonstrate the government’s presence. Because if we didn’t have [round-ups] then quickly the streets would fill up with kids selling tissues and wiping cars and begging.”²⁰³ The round-ups have been ordered in particular neighborhoods on the basis of reports that the number of children selling tissues is increasing.²⁰⁴ The police have also

¹⁹² *Id.* at 38.

¹⁹³ *Id.* at 38.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 41.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 41, 43.

²⁰³ *Id.* at 41.

²⁰⁴ *Id.* at 38.

been known to target specific groups of children who, because of their accent or clothing, appear not to be from the local area.²⁰⁵

Child advocates argue the round-ups are broader in scope than the police acknowledge.²⁰⁶ They claim the police send vehicles “to gather children the way they send vehicles to collect dogs”²⁰⁷ and that they “simply grab any child they can find on the street” without distinguishing between children or determining their purpose for being physically on the street.²⁰⁸ Children report being arrested during round-ups after being sent out to get lunch for work colleagues, while on lunch break from a job as a mechanic, or while departing the train station after returning from a trip.²⁰⁹

III. CASE STUDY: TANZANIA

To fully understand the situation of street children in Tanzania, it is helpful to have some familiarity with its social and economic history. Although a full discussion of Tanzania’s history is beyond the scope of this article, even a brief overview of the major historical social policies sheds light as to how an environment conducive to the existence of street children was created.

Following the 1884 Berlin Conference, Tanzania was first ruled for thirty years by the Germans and then by the British for forty-five years.²¹⁰ It was not until 1961 that mainland Tanzania, then known as Tanganyika, achieved independence.²¹¹ Shortly thereafter, Zanzibar overthrew the rule of the Sultanate and joined the mainland to form the United Republic of Tanzania in 1964.²¹² During colonial rule, however, the Germans and later the British, worked aggressively to shift the national agricultural efforts from small self-supporting family farms to cash-crops suitable for foreign trade.²¹³ Indeed, as a colonial governor stated at the time, “[t]he first objective of the government is to induce the native to become a producer directly or indirectly, that is to produce or to assist in producing something more than the crop of local

²⁰⁵ *Id.* at 42.

²⁰⁶ *Id.* at 41.

²⁰⁷ *Id.* at 41-42.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 41.

²¹⁰ LUGALLA, *supra* note 4, at 22-24 (noting German rule existed from 1884 to 1916 and British rule lasted from 1916 to 1961).

²¹¹ *Id.* at 22.

²¹² *Id.*

²¹³ *See generally id.* at 22-34.

foodstuffs that he requires for himself and his family.”²¹⁴ This wholesale shift from farming food crops for consumption to cash-crops for foreign sale occurred at three levels: (1) German (and later British) settler farming; (2) plantation farming by foreign companies; and (3) small-scale cash-crop farming by Tanzanians.²¹⁵ To ensure the plan’s success, parallel strategies were initiated, including: (1) “redirecting” fertile land from local Tanzanians to foreign owned plantations; (2) the introduction of taxes to be paid in money form; (3) designation of geographic areas as “production areas” from which crops would be harvested and “labor areas” from which human labor would be supplied; and (4) migration policies which severely restricted the number of Tanzanians who were permitted to leave the rural areas.²¹⁶ The result of all this was that for many Tanzanians who were displaced from their farms, they had few options other than to migrate to urban areas.²¹⁷

The legacy of the colonial policies was that the “outside-oriented economy” was firmly rooted by the time Tanzania achieved its independence in 1961.²¹⁸ This outward focus led to an undeveloped rural Tanzania and created a socio-economic gap between the rural and urban areas.²¹⁹ It is against this background of rural deprivation that urban migration must be understood.²²⁰ Rapid migration to urban areas followed independence.²²¹ The urban areas, however, did not generate their own surplus of crops and were unable to absorb the onslaught of urban migration, which, in turn, only intensified the problems of poverty and unemployment.²²² In February 1967, then President Nyerere announced the Arusha Declaration, which rejected capitalism as a means of development in Tanzania and all forms of social equality.²²³ Instead, future development was to be based on the

²¹⁴ *Id.* at 25-26 (quoting a 1926 statement by British Governor Sir Donald Cameron).

²¹⁵ *Id.* at 24.

²¹⁶ LUGALLA, *supra* note 4, at 24-26

²¹⁷ Disastrously, for the few Tanzanians who were permitted to do so and sought work in the cities, they were poorly prepared in that most had not had any formal education. *Id.* at 25.

²¹⁸ *Id.* at 26.

²¹⁹ *See id.* at 28.

²²⁰ *Id.* at 27.

²²¹ *See id.* at 28.

²²² *Id.*

²²³ *Id.*

principles of the traditional African family.²²⁴ Known as the *Ujamaa* policy, the new government focused on rural development and self-reliance.²²⁵ It did so by nationalizing education and medical care as well as large industries, the “so-called commanding heights of the economy,” such as land, banks and insurance.²²⁶ Essentially, the government engaged in socialistic reform by shifting the emphasis to public ownership of property and increased the role of the government.²²⁷

The first ten years or so of the *Ujamaa* policy resulted in considerable social progress. Much of that progress, however, was later threatened and undermined during the economic crisis of the late 1970s. A growing “government bureaucracy that was prominently engaged in redistributing services rather than production activities,” combined with external factors such as the oil crisis, the collapse of the East African Community, and the crash of the coffee market, resulted in “severe economic instability” in the late 1970s.²²⁸ The “fundamental problem” at the time was that public administration was expanding while production was declining.²²⁹

The consequences for the average Tanzanian were dire. In an effort to plug the hole in the dam before it completely collapsed, the Tanzanian government signed an agreement with the World Bank that called for “structural adjustment policies” (SAPs).²³⁰ The purpose of the SAPs was to “attain macro-economic balance by bringing national expenditure into line with national income.”²³¹ Although some claim the SAPs have been successful, if they have, it is because they have shifted the national burden to the poor through inflation and rising costs.²³² And, in addition to the social economic crisis, the AIDS epidemic that hit Tanzania in the 1990s exacerbated the already difficult circumstances of the poor.

All of this—the underdevelopment in rural areas and socio-economic gaps between the rural and urban areas—has fueled

²²⁴ LUGALLA, *supra* note 4, at 28.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* at 29.

²²⁸ *Id.* at 29-30

²²⁹ *Id.* at 30.

²³⁰ LUGALLA, *supra* note 4, at 30

²³¹ *Id.*

²³² *Id.* at 30-31 (noting that the World Trade Organization, for example, argues that the SAPs are working as can be seen in the decrease in inflation and growth in the GNP).

migration to urban areas by people in search of better opportunities. Those searching for something better include children.

A. *STREET CHILDREN IN TANZANIA*²³³

The most recent geographically focused and comprehensive study of Tanzania's street children was conducted in 2006 in the towns of Arusha and Moshi in Northern Tanzania.²³⁴ Arusha and Moshi are urban centers in an otherwise fairly remote area of the country. At the edge of the Serengeti and at the base of Mt. Kilimanjaro, Moshi is home to the largest regional hospital while Arusha is the site of the International Criminal Tribunal for Rwanda as well as the seat of the East African Law Society.²³⁵ Both are destinations for thousands of visitors each year. Additionally, both are home to large numbers of expatriots from other countries. For both of these reasons, Arusha and Moshi are attractive to street children who depend on begging and odd jobs on the street for their survival.²³⁶

The purpose of the study was to collect census data on the children and youth on the streets in Arusha and Moshi.²³⁷ It was intended to provide "a snapshot of the trends and situation of vulnerable children spending time in the streets in [N]orthern Tanzania."²³⁸ Over the course of twelve-hour periods in each town, former street youth who had been trained as interviewers conducted street interviews with approximately 2,000 children and young people

²³³ Much of the material contained in Part IV of this article comes from various Mkombozi publications. Mkombozi, which means "emancipator" or "liberator" in Kiswahili, is the leading international children's rights NGO in Tanzania. Mkombozi uses "education, research, advocacy, and outreach to help vulnerable children and youth to grow in mind, body and spirit." MKOMBOZI, <http://mkombozi.org>.

²³⁴ This was in follow-up to similar studies conducted in 2003 and 2005. MCALPINE, *supra* note 23.

²³⁵ EAST AFRICA LAW SOCIETY, http://www.ealawsociety.org/Joomla/index.php?option=com_content&task=view&id=29&Itemid=50 (last visited Nov. 6, 2011).

²³⁶ It is also possible that, as Mkombozi and other street child organizations become known around the region, children run to Moshi and Arusha because they have heard there are NGOs that will help them.

²³⁷ MCALPINE, *supra* note 23, at 5.

²³⁸ *Id.*

(CYP).²³⁹ For purposes of this study, the CYP were divided into two groups: part-time CYP (CYP who come to the streets for periods of time and then return to families and homes) and full-time CYP (CYP who spend all their time on the street and who have nowhere to “return” to).

On the basis of this data, several things become clear about the make-up of street children in Northern Tanzania:

Demographics:

- *Part-time CYP continue to outnumber full-time CYP:* In both Arusha and Moshi, roughly 40-45% of the interviewees are on the street part-time as compared to 17% (Arusha) and 5% (Moshi) of full-time CYP.²⁴⁰
- *Boys outnumber girls:* Girls account for roughly 10% of the full-time CYP and 15% of the part-time CYP in both towns.²⁴¹
- *Most CYP are over fifteen years of age:* 96% of the full-time CYP in Arusha and 54% of full-time CYP in Moshi were over fifteen years; 71% of the part-time CYP in Arusha and 84% of the part-time CYP in Moshi are over fifteen years.²⁴²
- *Most CYP have been on the street more than one year:* In Arusha, 24% of full-time and 30% of part-time CYP had been on the streets more than three years; in Moshi, 20% of the full-time CYP had been on the streets for more than a year, 43% for between one and six months, and 4% for less than a month.²⁴³ As a whole, the numbers show that CYP continue

²³⁹ The rationale for using former street youth as interviewers was threefold: first, it was an effort to address the concern that data collection by unfamiliar adults would be more difficult; second, it was an opportunity to expose former street youth to research methodologies and give them the opportunity to contribute to the collective understanding of street youth; and third, it increased the likelihood of access to street children who might otherwise not have participated. *Id.* at 5, 8.

²⁴⁰ These numbers represent some changes from the previous year: an increase in part-time CYP and a decrease in full-time CYP in Moshi and decreases in both groups in Arusha. *Id.* at 8.

²⁴¹ These numbers are consistent with numbers from the previous year with regard to part-time female CYP in both towns, but a slight reduction in full-time female CYP is a shift from the trend of full-time female CYP increases since 2003. *Id.*

²⁴² It is notable, however, that a sizeable group (39%) of the full-time CYP in Moshi is between 10-14 years old. *Id.*

²⁴³ MCALPINE, *supra* note 23, at 9.

to migrate to the streets, and while they have developed and honed some survival skills, they have likely lost out on formal education and opportunities.²⁴⁴

- *Some CYP on the street are attending or have completed primary school:* 13% of the full-time and 17% of the part-time CYP in both towns attend primary school on a daily basis; further, in Moshi, 20% of the full-time and 52% of part-time CYP had completed primary school.²⁴⁵ In Arusha, 15% of full-time and 31% of part-time CYP had completed primary school.²⁴⁶

Characteristics of CYP:

- *The majority of CYP spend their time on the street working, trying to meet their basic needs, or begging:* 36% of the CYP in Arusha and Moshi spend their time working, with 77% working more than twelve hours per day; 26% spend their time trying to meet their basic needs, and 24% spend their time begging, with 75% begging for more than twelve hours per day.²⁴⁷
- *Drug use and prostitution is relatively limited:* In Arusha, 5% of full-time CYP acknowledged using drugs, and only eight CYP admitted to involvement in prostitution; in Moshi, all the interviewed CYP denied using drugs or being involved in prostitution.²⁴⁸
- *“Regular” employment is more common for girls:* Of the female CYP who work, in Arusha and Moshi, they primarily rely on a “regular” job at the same place; male CYP tend to opt for more “opportunistic” work that is neither regular in place or schedule.²⁴⁹
- *Social networks of CYP are limited:* CYP in both towns reported using their money for themselves or their families,

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 14.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 9.

²⁴⁸ *Id.* at 10.

²⁴⁹ *Id.* at 10.

but rarely sharing with friends, indicating CYP primarily rely on themselves.²⁵⁰

The picture of street children in Northern Tanzania that emerges is in some ways consistent with the findings and conclusions of other studies. For example, like other places in the world, the number of street children in Northern Tanzania appears to be growing; boys outnumber girls; there are more children on the street part-time than full-time; and they spend the majority of their time “working,” which is interesting given they are rarely considered part of the “working poor.”²⁵¹ On the other hand, these findings are inconsistent with findings of other studies as well. The CYP in this study reported significantly less drug use and involvement in prostitution than is generally reported.²⁵² It is possible that the fear of acknowledging illegal acts kept some CYP from responding truthfully. Still, the same could be said of responses in other studies which found much higher rates of drug use and involvement in prostitution.

B. POLICE ATTITUDES & ROUND-UPS

The global tendency of the police and government officials to view street children as a “problem” to be aggressively dealt with is true in Tanzania as well. Mkombozi has found that street children are consistently met with “disinterest, negligence and outright violence” by government officials.²⁵³ Reflecting this view, most official policies with regard to street children have been punitive and oppressive, and concerned more with social control than social development.²⁵⁴

Orchestrated efforts by the police to round-up and arrest street children in Tanzania’s Kilimanjaro region is believed to have begun in the fall of 2001.²⁵⁵ In September 2001, then District Commissioner

²⁵⁰ *Id.*; but see CLACHERY ET AL, *supra* note 16, at 21 (reporting results of a study conducted in Durban, South Africa concluding that almost 14% of the street child participants received financial support of friends and that as many as 27% shared their money with friends or siblings).

²⁵¹ Considering that street children spend a considerable amount of time “working,” it is interesting that few conceptualizations of them view them as members of the working poor. See KILBRIDE ET AL, *supra* note 46, at 6.

²⁵² MCALPINE, *supra* note 23, at 10.

²⁵³ MKOMBOZI, ANNUAL REPORT 2007 4 (2007), available at http://www.mkombozi.org/publications/annual_report/2007_annual_report_EN_G.pdf.

²⁵⁴ LUGALLA, *supra* note 4, at 3.

²⁵⁵ POLICE ROUND-UPS, *supra* note 2, at 1.

Mende ordered one of the most aggressive and widely reported round-ups of Arusha's street children.²⁵⁶ As a result, "an undisclosed number of children were [arrested] on charges of *uzururaji* (loitering) . . . [and] held in a remand facility for over a month before being released."²⁵⁷

By early 2004, District Commissioner Saria had replaced Mende and initially appeared willing to work towards solutions other than police round-ups of the city's street child population.²⁵⁸ Nonetheless, in March 2004, approximately eighteen children and three beggars were arrested.²⁵⁹ Interestingly, media reports at the time noted how street children and beggars were viewed as a single entity in that they were both a "safe and clean cities issue."²⁶⁰ The children reported they were told an "important visitor" would be visiting soon which required that they "be 'cleaned' from the streets."²⁶¹ Indeed, the arrests coincided with German President, Dr. Johannes Rau's, visit to Arusha.²⁶²

Following a hearing, the Maromboso Primary Court Magistrate ordered that the children be immediately released.²⁶³ Despite the order, the police nonetheless returned the children to the police station and severely beat them before releasing them.²⁶⁴

The round-ups continued. In May 2005, twenty street children were arrested and seven of those were held in a remand facility pending a hearing.²⁶⁵ After several weeks the children were released to the custody of a non-governmental street child advocacy organization, which in turn released the children back to the streets.²⁶⁶

Just a few months later, in August 2005, another fifteen children were arrested, including one as young as seven years old.²⁶⁷ The children were held overnight in a cell with as many as twenty-five

²⁵⁶ *Id.* at 2.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 2, n.4.

²⁶¹ *Id.* at 2.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 2, 28.

adults,²⁶⁸ in violation of the requirement that children be separated from adults while in custody.²⁶⁹ While in police custody, and before a hearing, the children were “beaten with a caning stick, forced to clean the police station, and forced to carry large stones on their heads as ‘punishment.’”²⁷⁰ The following day, the three youngest children were released, and the four older children were taken to court.²⁷¹ The court ultimately concluded that the children were too young to be charged with a crime and dismissed the charges against them.²⁷² Still, the court ordered the children to clean the court building and grounds before they were released.²⁷³

C. *THE LEGAL CHALLENGE: MKOMBOZI, ET AL. V. ATTORNEY GENERAL*

A child’s best interest is explicitly and implicitly provided for in Tanzania’s legislation.²⁷⁴ Police officers, then, are compelled to act in a child’s best interest anytime a child comes into contact, or conflict, with the law.²⁷⁵ Police “may bring before a juvenile court any child or young person found on the street . . . destitute.”²⁷⁶

In reality, however, the guiding principle of a child’s best interest is routinely ignored. Instead, the puzzle pieces of Tanzania’s fragmented domestic legislation actively work against street children’s best interest.

The Petition: Mkombozi et al v. Attorney General

The practice of police round-ups of street children in Northern Tanzania “catalyzed the formation” of the Caucus for Children’s Rights (CCR), an advocacy organization, as a vehicle for advocating for

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 2.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ POLICE ROUND-UPS, *supra* note 2, at 2; Interestingly, one of the children who was required to clean the building and grounds before being released noted that “[t]he judge was good to us, he said: ‘I can’t take them to court, they are too young.’” *Id.* at 28.

²⁷⁴ *Id.* at 3.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

changes in the juvenile justice system in Tanzania.²⁷⁷ On November 7, 2007, the CCR filed a petition in the High Court of Tanzania (Arusha) challenging the legality of the round-ups.²⁷⁸ The CCR sought a landmark declaratory judgment that the Townships (Removal of Undesirable Persons) Ordinance, the Destitute Persons Act, and specific sections of the Criminal Procedure Act and the Penal Code violated the Constitution of the United Republic of Tanzania (URTC).²⁷⁹

The CCR argued that round-ups of street children are illegal because (1) they are predicated on existing colonial-era legislation, which violates the spirit and the letter of the United Republic of Tanzania's Constitution, (2) the prohibited conduct is unconstitutionally vague, and (3) the arrests of street children are unconstitutionally discriminatory.²⁸⁰

1. PREDICATED ON COLONIAL-ERA LEGISLATION

During colonial British rule, legislation was passed that was intended to provide district authorities with the means to protect and promote the colonial system.²⁸¹ Much of the legislation from that era, which obviously predates Tanzania's independence, continues to survive despite being in direct conflict with newer constitutional principles.²⁸² The Townships (Removal of Undesirable Persons) Ordinance of 1944, and as amended in 1958 (TRUPO), one example of colonial-era legislation, was originally intended as means by which district authorities could protect and promote the colonial system by

²⁷⁷ *Caucus for Children's Rights Holds Workshop*, *supra* note 5. The Caucus is "a consortium of civil society organizations that is undertaking an advocacy campaign that lobbies local Government to develop responses to the underlying causes of children coming to the streets and to allocate funds to social service provision for marginalized children and youth."

²⁷⁸ Petition, Mkombozi Centre for Street Children et al. v. The Hon. Attorney General, [2007] (High Court of Tanz. at Arusha) (unpublished petition) (on file with author).

²⁷⁹ *Id.* at 4.

²⁸⁰ POLICE ROUND-UPS, *supra* note 2, at 5-6; *see also* Petition, Mkombozi Centre for Street Children et al. v. The Hon. Attorney General, 3-4 [2007] (High Court of Tanz. at Arusha) (unpublished petition) (on file with author).

²⁸¹ POLICE ROUND-UPS, *supra* note 2, at 5.

²⁸² *Id.*

barring “undesirable persons” from their districts.²⁸³ Pursuant to the TRUPO, “undesirable persons” are those who loiter, those who are “rogues or vagabonds,” and, in particular, those who “according to law or custom should be rendered to control . . . [or those who have] no settled home . . . [or those who have] no employment or reputable means of livelihood.”²⁸⁴

The TRUPO, and other colonial-era legislation, has been determined to be “repressive” in that it “constrains and denies the rights and freedoms of children.”²⁸⁵ Such constraints violate both the spirit and the letter of the Constitution of the United Republic of Tanzania. First, the foundation on which the Constitution is based is the intention to “build in our country a society founded on the principles of freedom, justice, fraternity, and concord.”²⁸⁶ More specifically, Article 9 speaks to the pursuit of *ujamaa* (family ties and relationships)²⁸⁷ and provides that state authorities and their agencies are required to direct their policies and programs towards ensuring:

- “that human dignity and other human rights are respected and cherished”;
- “that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights”;
- “that all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism are eradicated.”²⁸⁸

Articles 12 and 13 address the equality of human beings before the law. Specifically, Article 12 provides that “[e]very person is entitled to recognition and respect for his dignity.”²⁸⁹ Article 13 provides that:

- “[a]ll persons are equal before the law and are entitled, without discrimination, to protection and equality before the law”;
- “[n]o law . . . shall make any provision that is discriminatory either of itself or in its effect”;

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ POLICE ROUND-UPS, *supra* note 2, at 3.

²⁸⁶ CONST. OF THE UNITED REPUBLIC OF TANZANIA pmbl. (1977).

²⁸⁷ See LUGALLA, *supra* note 4 at 28 (referring to this as the Ujamaa policy).

²⁸⁸ CONST. OF THE UNITED REPUBLIC OF TANZANIA (Art. 9 of 1977).

²⁸⁹ *Id.* at art. 12.

- “[t]he civic rights, duties, and interests of every person . . . shall be protected”;
- “[n]o person shall be discriminated against by . . . any authority acting under any law or in the discharge of the functions . . . of any state office;
- ‘discriminate’ means to satisfy the needs, rights or other requirements of different persons on the basis of . . . station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently.”²⁹⁰

Articles 15, 16, and 17 speak to individual freedoms. Article 15 provides that “[e]very person has a right to live as a free person” and that “no [one] shall be arrested, imprisoned, confined, detained, deported or otherwise deprived of his freedom” except under circumstances prescribed by law or following a conviction for a criminal offense.²⁹¹ Article 16 provides that “[e]very person is entitled to . . . privacy of his own person” and that the state is required to establish “legal procedures regarding the circumstances . . . and extent to which the right to privacy . . . may be encroached upon.”²⁹² Finally, Article 17 provides that “every citizen . . . has the right of freedom of movement in the United Republic [of Tanzania].”²⁹³

On the whole, it is clear that in 1977, a newly independent Tanzania recognized and enshrined basic human rights principles into the new constitution. Those principles, including the recognition and respect for human dignity and equality, the right of freedom and privacy, and the prohibition on discrimination, are the standard by which all laws and policies must be evaluated. Round-ups of street children, predicated on the TRUPO and the Destitute Persons Act, are inconsistent with the overriding constitutional principles. Plainly, much of the colonial-era legislation, including the TRUPO and the Destitute Persons Act, was intended “to benefit colonial interests”²⁹⁴ without regard to individual human rights.

²⁹⁰ *Id.* at art. 13.

²⁹¹ *Id.* at art. 15.

²⁹² *Id.* at art. 16.

²⁹³ *Id.* at art. 17.

²⁹⁴ POLICE ROUND-UPS, *supra* note 2, at 3.

2. UNCONSTITUTIONALLY VAGUE

Round-ups of street children, pursuant to the TRUPO and the Penal Code, are also illegal because they are predicated on a criminal act, which is impermissibly vague.²⁹⁵ The TRUPO declares “undesirable persons” to be those who “loiter” or who are “rogues or vagabonds,” those who should be “rendered to control,” or have no settled home or are without employment or “reputable means of livelihood.”²⁹⁶ In addition, the Penal Code declares “every person wandering or placing himself in any, public place to beg” to be an idle and disorderly person.²⁹⁷ The Penal Code further defines the prohibited conduct, which constitutes a misdemeanor, to be that which “causes any common injury or danger or annoyance, or *obstructs or causes inconvenience to the public in the exercise of common rights.*”²⁹⁸ Thus, the definition of loitering contained in the Penal Code “is based on the danger loitering poses to [the] community safety.”²⁹⁹ Indeed, the loitering provision is contained in Chapter XVII: Nuisances and Offences Against Health and Conveniences of the Penal Code.³⁰⁰ The first problem, as argued by the CCR, is that loitering, without more, does not “impede the exercise of common rights,” but only creates the danger of such an impediment.³⁰¹ Accordingly, the prohibition against loitering is based on the risk of the act, not the actual act, of impeding the exercise of common rights.³⁰² The second problem, as argued by the CCR, is that in the context of street children who have migrated to the streets as a “result of social breakdown, marginalisation and poverty,” it is not at all clear that they act with the necessary mens rea, the requisite intent, to commit a criminal act.³⁰³

Another aspect of the vagueness doctrine is the risk of arbitrary arrest. The risk of arbitrary arrest is exacerbated by the TRUPO and the Penal Code which permit warrantless arrests.³⁰⁴ Moreover, warrantless arrests are inherently arbitrary because they make no

²⁹⁵ CONST. OF THE UNITED REPUBLIC OF TANZANIA (Art. 9 of 1977); *see also* POLICE ROUND-UPS, *supra* note 2, at 5-7.

²⁹⁶ POLICE ROUND-UPS, *supra* note 2, at 5.

²⁹⁷ Penal Code of 1981, Cap. 16, LAWS OF TANZANIA § 176.

²⁹⁸ *Id.* § 170 (emphasis added).

²⁹⁹ POLICE ROUND-UPS, *supra* note 2, at 6.

³⁰⁰ Penal Code of 1981, Cap. 16, LAWS OF TANZANIA § 170.

³⁰¹ POLICE ROUND-UPS, *supra* note 2, at 6.

³⁰² *Id.*

³⁰³ *Id.* at 7.

³⁰⁴ *Id.*

distinction between street children who are in need of care and protection and those who are in contact or conflict with the law.³⁰⁵

3. UNCONSTITUTIONALLY DISCRIMINATORY

The CCR also argued that police round-ups of street children are also illegal because they are carried out in a discriminatory manner, which is constitutionally prohibited.³⁰⁶ Specifically, street children, who have “no means, let alone reputable means, of livelihood” are discriminated against because they are not treated differently from adults.³⁰⁷ Moreover, street children are further discriminated against because the prohibition on “loitering” only applies to street children and not children who have a different station in life.³⁰⁸

The High Court Decision

On May 14, 2008, the Petition was heard by the High Court of Tanzania (Arusha).³⁰⁹ Despite the passage of the new comprehensive 2009 Law of the Child which was passed while this petition was pending, the High Court rejected arguments that the round-ups of street children are illegal because they are predicated on statutes that are unconstitutional.³¹⁰ Putting “public interest” over the rights of children, the Court declared that “it was in the public interest to protect cities and municipalities from undesirable, destitute, and idle persons.”³¹¹ Moreover, the Court concluded that it was “not in the public interest for children to be treated differently from adults.”³¹²

³⁰⁵ *Id.* at 7-8.

³⁰⁶ Petition, Mkombozi Centre for Street Children et al. v. The Hon. Attorney General, at 3 [2007] (High Court of Tanz. at Arusha) (unpublished petition) (on file with author).

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Petition Heard in High Court Tanzania*, 50% BLOG (May 23, 2008), <http://tanzaniasfuture.wordpress.com/2008/05/23/petition-heard-in-high-court-of-tanzania/>.

³¹⁰ Press Release, CAUCUS FOR CHILDREN’S RIGHTS (Nov. 27, 2009), available at [http://www.ccr-tz.org.uk/files/Press%20Release_CCR_RUPA_27Nov09\(1\).pdf](http://www.ccr-tz.org.uk/files/Press%20Release_CCR_RUPA_27Nov09(1).pdf).

³¹¹ *Id.*

³¹² *Id.*

The Caucus for Children's Rights has stated it intends to appeal the Court's decision.³¹³

D. THE FUTURE

There are some recent indicators that public attitudes about street children in the Kilimanjaro region are changing. A recent survey of public perceptions indicated a growing awareness among the public of the underlying causes of children migrating to the streets.³¹⁴ While admittedly limited, the survey nonetheless revealed a majority of the respondents felt that *umaskini* (poverty) was the cause or a contributing factor to children migrating to the streets.³¹⁵ Respondents identified orphanhood followed by abuse, neglect, discrimination, or conflict in the homes as the second and third most common factors respectively.³¹⁶ Notably, the top three factors identified by community members as the reasons children end up on the streets concerned circumstances not of the children's making. Only a small number of respondents, about five percent, indicated the children choose to live on the street because they are *wakorofi* (hooligan), *watundu* (stubborn) or *wajeuri* (disagreeable).³¹⁷

IV. CONCLUSION

In many places, round-ups and detention are used as a substitute for care and protection of street children. Treating children in need of care as criminals only reinforces the notion that street children are the problem. Instead, we should be focusing on the "real issues" which are the "lack of social protection for [children]," breakdown in traditional family and community systems, and the absence of laws or enforcement of laws that protect children.³¹⁸ Our focus and resources must shift from penalizing children to the "social injustices, political neglect, and structural imbalances" that have created, and contributed to, their existence.³¹⁹ Indeed, street children are an "embarrassing, visible reminder of a society's failure to provide for and protect its

³¹³ *Id.*

³¹⁴ "PERCEPTION" SURVEY, *supra* note 106.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ THINK PIECE, *supra* note 19.

³¹⁹ AGYA BOAKYE-BOATEN, UNDERSTANDING THE STREET CHILDREN PHENOMENON 16 (2008).

most vulnerable children.”³²⁰ Nonetheless, for many governments it is just easier to ignore and blame them.

³²⁰ WERNHAM, *supra* note 1, at 22.

