CLAIMING MAINTENANCE FOR OUT OF WEDLOCK CHILDREN IN TANZANIA

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A Dissertation submitted in partial fulfilment of the requirements for a Masters in Women's Law, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe
2010

Abstract

Since 1949 women in Tanzania have been forced to claim maintenance for their children born out of wedlock in terms of the little known, grossly out of date and highly unsatisfactory Affiliation Ordinance which was passed into law during the period when the country was under British Colonial rule. In order to improve the lot of these women, who are mostly poor and illiterate in English (the language in terms of which their claims must be made in largely inaccessible District Courts), the Tanzanian Government has recently enacted the Law of Child Act, 2009 in fulfilment of its obligations under both the African Charter on the Rights and Welfare of the Child ('ACRWC') and the Convention on the Rights of the Child ('CRC'). Although the 2009 Act has been signed into law, it is not yet operational. In this research, the writer identifies the discriminatory treatment suffered by unwed mothers and their children under the current system and the extent to which the new Act attempts to rectify it in accordance with its new HR obligations. This is effectively achieved using the unique Women's Law Approach ('WLA') which requires that, throughout her research, the writer use as her starting and constant reference point the lived reality of such women and their children which she sources from a case study of a relevant sample of both urban and rural women in and around Dar es Salaam, Tanzania's capital city. As a result she discovers why so many of these women either do not claim maintenance or abandon their pending claims. Guided overall by the WLA, the writer uses an amalgam of several gender-sensitive methodologies and complementary data collection methods (including information gathered from her respondents and key judicial informants) to identify both positive and negative aspects of the new Act. For example, while it seeks to formalise many positive informal practices calculated to militate against the negative impact of the strict enforcement of the Ordinance (especially the crucial role of Social Welfare Officers whose function ideally makes the whole process more informal and less adversarial), it also highlights the government's lack of preparedness for bringing the new Act into operation, including the lack of relevant court rules for the proposed new Juvenile Courts as well as the training and deployment of court personnel. Perhaps the writer's most valuable suggestion is that instead of giving exclusive jurisdiction over such cases to Resident Magistrates of District Courts (the enforcement of which makes the new Act very problematic), it permits its Primary Court Magistrates to deal with them as well since they already preside over maintenance cases for legitimate children and are more accessible to the public.

TABLE OF CONTENTS

TABLE OF CONTENTS 3
Dedication 6
Acknowledgements 7
Acronyms 9
List of National Legislation cited 10
List of International Instruments cited 10
List of Cases cited 11
CHAPTER ONE 12
1.0 INTRODUCTION 12
1.1 Introduction 12
1.2 A Brief History of the Affiliation Ordinance 13
1.3 Restrictions contained in the Affiliation Ordinance 14
1.4 Relevant Human Rights Standards 17
1.5 A brief History of the Law of the Child Act of 2009 20
1.6 Background to the Research 22
1.7 Statement of the Problem 23
1.8 Objectives of the Research 24
1.9 Original Research Assumptions 25
1.10 Original Research Questions 26
1.11 Revised Assumptions 26
1.12 Revised Research Questions 27
1.13 Scope of the Study 27
CHAPTER TWO 29
2.0 RESEARCH METHODOLOGIES AND METHODS 29
2.1 METHODOLOGIES USED 29
2.1.1 The Human Rights Approach 29
2.1.2 The Legal Centralist Approach 30
2.1.3 The Women's Law Approach 31
2.1.4 The Grounded Theory Approach 32

2.1.5 Legal Pluralism 33
2.1.6 Semi-autonomous Social Fields 34
2.2 METHODS OF COLLECTING DATA USED 35
2.2.1 Interviews with Key Informants 35
2.2.2 Interviews with Individuals 37
2.2.3 Perusal of Court Records 37
2.2.4 Focus Group Discussions 38
2.2.5 Desk Research 38
2.3 Problems encountered in the Field 39
2.3.1 Timing 39
2.3.2 Bureaucracy 40
2.3.3 Negative Social Attitudes 41
2.4 Overall Assessment of the Methodologies 41
CHAPTER THREE 42
3.0 RESEARCH FINDINGS AND ANALYSIS 42
3.1 The Situation in 2003 42
3.2 The Situation in 2009 44
3.2.1 The unreasonably low maximum amount of maintenance 44
3.2.1.1 THE ROLE OF JUDICIAL DISCRETION 47
3.2.2 The unreasonably low Age Limit 49
3.2.3 The Exclusive Jurisdiction of the District Court 50
3.2.4 The Important Function of Social Welfare Officers (SWOs) 53
3.2.4.1 THE INACCESSIBILITY OF SWOS 55
3.2.5 The Problematic Issue of filing a Petition 57
3.2.6 The Problematic Issue of the Payment of Court Fees 58
3.2.7 Excessively long Court Delays 60
3.2.8 The Problematic Issue of enforcing the Rule on Corroboration to prove Paternity 62
3.2.9 The Problematic Issue of Enforcing Maintenance Orders 64
3.3 Lessons that may be learnt from the operation of the Ordinance to date 66
3.3.1 The role played by Social Welfare Officers 66
3.3.2 The amount stipulated as monthly maintenance allowance 67

3.3.3 The Jurisdiction of the Court *67*
CHAPTER FOUR 68
4.0 THE OPERATION OF THE LAW OF THE CHILD ACT OF 2009 68
4.1 THE CONTENTS OF THE LEGISLATION 68
4.1.1 Assessing the amount of the award of monthly maintenance *68*
4.1.2 The Upper Age Limit *69*
4.1.3 The Jurisdiction of the Juvenile Court *69*
4.1.4 The Problematic Issue of Relocating Magistrates from District to Juvenile Courts 70
4.1.5 The Recognition of Social Welfare Officers (SWOs) *73*
4.1.6 The Procedures for presenting a Complaint *74*
4.1.7 Court Fees *75*
4.1.8 Court Delays *75*
4.1.9 The Rule on Corroboration *76*
4.1.10 The Procedure for Executing Maintenance Orders *78*
CHAPTER FIVE 80
5.0 DISCUSSION ON THE IMPLEMENTATION OF THE LAW 80
5.1 What does the experience tell us? 80
5.2 Problems relating to the Juvenile Court 80
5.3 Persistent Problems relating to the Execution of Maintenance Orders 81
5.4 Lack of Training for relevant Personnel 81
5.5 Lack of effective Educational and Awareness Programs 82
CHAPTER SIX 84
6.0 DISCUSSION ON THE LAW REFORM PROCESS 84
6.1 Participation in the Law Reform Process 84
6.2 Conclusion 87
Bibliography 91

Dedication

This work is dedicated to my lovely husband for his moral and material support and for understanding my absence during the whole period of my study.

Also this work is dedicated to my parents Saleh Mnyukwa and Safia Haydary for my upbringing me and making me who I am now. They are the role model in my life.

Lastly, special thanks should go to my family member. sister Zakia Mnyukwa, My brothers Kawiza Mnyukwa, Mwinyihija Mnyukwa and Haidary Mnyukwa. I love you all.

Acknowledgements

I would like to thank God for giving me health throughout my studies. I would like to express my sincere gratitude to Prof. Julie Stewart who is my supervisor. Her valuable guidance, advice and comments during the preparation of Research Assumptions before I went into the field helped me a lot especially with techniques for data collection during the field work. She also assisted me during the writing process of this piece of work. I do remember for valuable contribution and her words of encouragement especially after the Children Bill of 2009 passed by the Parliament of Tanzania. I was confused after realizing that some of my Assumptions were totally challenged and Prof. Julie's advice and guidance were invaluable.

The useful input of Prof. Anne Hellum during the data presentation and preliminary analysis of my research findings at Harare is greatly appreciated.

I also take this opportunity to thank Dr. Amy Tsanga for her support, advice, comments, and suggestions for Field Research in Mutare. Her valuable contribution and techniques opened up my mind during the writing process.

Special thanks should go to Women's Legal Aid Centre for giving me a soft copy of the Children Bill of 2009 which made it easier to revise my assumptions in the field. Many thanks should go to all people whom I had interviewed. Special thanks should go to the Kinondoni Social Welfare Office, and the Judiciary especially its Training Department whose assistance and cooperation made this work possible.

My thanks also go to Cecilie Mariri, without whose assistance in the library, my work would not have been successful. Sedsezai Munyarizi's technical support with computers and Power Point Presentation allowed me to produce a better presentation. The support of

Ms. Rudo Makunike-Bonzo and Ms. Blessing Tsomondo will always be appreciated. The support of Johnson Chingohozhoro can never be forgotten.

I take this opportunity to thank NORAD for heir financial support during the Programme.

Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
DNA	Deoxyl Nucleic Acid
LHRC	Legal and Human Rights Centre
LMA	The Law of Marriage Act
NGO	Non-Governmental Organisations
SEARCWL	Southern and Eastern African Regional Centre for Women's Law
SWO	Social Welfare Office
TAWLA	Tanzania Women Lawyers' Association
Tsh	Tanzanian Shillings
USD	United States Dollars
WLAC	Women's Legal Aid Centre

List of National Legislation cited

The Affiliation Act, Cap 278 of 1949 R.E 2002
The Law of the Child Act of 2009
The Child Development Policy of 1996
The Constitution of the United Republic of Tanzania of 1977 as amended from time to time
The Law of Marriage Act, Cap 5 of 1071 R.E 2002

List of International Instruments cited

African Charter on Human and Peoples' Rights
African Charter on the Rights and Welfare of the Child
Convention on the Rights of the Child
Convention on the Elimination of All Forms of Discrimination against Women
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ("The African Protocol on Women's Rights")
Universal Declaration of Human Rights

List of Cases cited

The names of the parties of the case have been omitted because this is prohibited by law: see section 14(3) and (4) of the Affiliation Act. Any person breaching the said sections is liable to a fine not exceeding Tsh 2000 (equivalent to US$1.50) or to imprisonment for a term not exceeding three months or to both the fine and imprisonment.

X vs A, Affiliation case no 36 of 2007 at Ilala District Court.

X vs. B, Affiliation case no 53 of 2000 at Kinondoni District Court

X vs. C, Affiliation case no 3 of 2008 at Ilala District Court.

X vs. D, Affiliation case no 6 of 2006 at Temeke District Court. When the case went on appeal it was Miscellaneous Appeal no 188 of 2006 at the High Court of Tanzania, Dar es salaam Registry.

X vs. E, Affiliation case no 13 of 2008 at Temeke District Court

X vs. F, Affiliation case no 36 of 2007 at Ilala District Court.

X vs. G, Affiliation case no 6 of 2008 at Ilala District Court

X vs. H, (1968) H.C.D. 253

X vs. I, Affiliation case no 1 of 2003 at Morogoro District Court. When the case went on appeal it was Civil Appeal no 193 of 2008 at the High Court of Tanzania, Dar es salaam Registry.

CHAPTER ONE

1.0 INTRODUCTION

1.1 Introduction

In Tanzania the Affiliation Ordinance deals with maintenance of children born out of wedlock. The Ordinance was enacted in 1949 during the colonial period when the country was under British rule. At that time the country was called Tanganyika. It is still called the Ordinance because the law was enacted during colonial rule. Since 1961 when the country got its independence from British rule all laws enacted by the Parliament of the United Republic of Tanzania have been called Acts.

The Ordinance poses challenges and discriminates against both the single mothers and their children based on marital status. The provisions of the law are not favourable to them. Examples of unfavourable provisions include: the difficulties involved when one institutes a claim; the fact that the maximum amount of monthly maintenance allowance is fixed at Tsh 100 (US$0,08); a minor on whose behalf a claim is made cannot exceed a relatively low upper age limit; the rule of corroboration is enforced in order to prove paternity; and there are difficulties associated with the execution of a maintenance order where a single mother fails to prove paternity. The judicial discretion exercised by magistrates plays a significant role in the enforcing of the provisions of this Ordinance, although some of its provisions are ignored.

Due to some of these challenges and the government's need to adhere to human rights standards which demand the equal treatment of all human beings, Parliament passed, in November 2009, the Law of the Child Act which tries to cure the problems experienced by single mothers and their children who are governed by the Ordinance.

But even since the passing of this Act I have noticed that not all the challenges and problems have been effectively dealt with. This is due to the fact that it seems that things are not yet ready for the implementation of the Law of the Child Act of 2009. For example the logistics of establishing the juvenile court seem not to have been carried out, especially in view of the fact that little has been done in respect of the staffing of the courts. Also, in respect of the rule on corroboration, single mothers who cannot prove paternity find DNA tests ordered by the courts too expensive. The modes of execution of court orders have not been clearly set out in the new legislation. It simply refers to the punishment that must be administered but now how to administer it. Furthermore, the prescribed punishment might not be in the best interests of the child. Although the current work being done by the Social Welfare Office is partially recognized, the training and empowering of the social welfare officers is questionable.

1.2 A Brief History of the Affiliation Ordinance

When Tanzania was a British Protectorate, the maintenance rights of children born out of wedlock were recognized by the Enactment of the Affiliation Ordinance of 1949 ("**The Affiliation Ordinance**"). It became operational on 15th July 1949. It was amended in 1964 by Act No 14. The legislation regulates affiliation proceedings as opposed to those governed by the Customary Law Declaration Order, No 279 of 1963. The Ordinance deals with the maintenance of children born out of wedlock.

Although the Ordinance was enacted in 1949 and amended in 1964, its contents and effectiveness remain a mystery to the majority of Tanzanians. It is clear that information about the contents and effectiveness of this maintenance law is important for policy makers and others interested in improving the status of affected women and children. For government departments, donor agencies and NGOs, it is important to ensure that development policies directed at increasing family income levels actually result in improvement of the lives of women and children not just men and that in countries with

scarce resources, women and children should receive their fair share of those resources.(Armstrong, A 1992)

The enactment of the Affiliation Ordinance was based on the fact that the basic principle underlying maintenance is founded upon the proper upbringing and development of children, no matter who they are. They deserve a good education, good health care and protection from abuse and neglect. All children deserve good treatment. The primary responsibility to provide maintenance for children rests with their parents. The parents, the Government and other adults must think about what is good for children at all times. When making any decision about a child the most important concern for the Government, parents and adults must always be the best interests of the child. This has placed a duty on the system to recognize children's rights and to see to it that effective assistance to children is carried out in a participatory way.

There is no dispute that the current Affiliation Ordinance in Tanzania is outdated and useless. The onus is now on the state to change its policies and laws and make them compatible with the Convention on the Rights of the Child with as much speed as when it ratified the Convention in 1991. By ratifying the Convention, the Government promised to respect and promote the rights enshrined in it. The fact is that the Affiliation Ordinance does not provide a conducive environment for a single mother to institute a claim for maintenance for her child born out of wedlock.

1.3 Restrictions contained in the Affiliation Ordinance

The Ordinance is full of restrictions which militate against the easy obtaining of maintenance for children born out of wedlock. In addition to the burden of being the sole maintainers of their children, single mothers face major delays and other challenges when seeking maintenance in terms of the Ordinance. The restrictions include:

(a) The maximum amount of monthly maintenance is too low

Statutory guidelines exist to assist the court in determining the amount of a maintenance award. Section 5(3)(a) of the Ordinance gives power to a magistrate to make an order against the putative father for payment to the mother of the child or its custodian a monthly sum not exceeding one hundred Tanzanian shillings a month (equivalent to US$0.08) for the maintenance and education of the child. The amount is ridiculously low in the present economic conditions.

(b) The exclusive Jurisdiction of District Courts is too restrictive

District Courts are vested with exclusive jurisdiction to hear cases dealing with the maintenance of children born out of wedlock (in terms of section 2 of the Ordinance). A woman who wants to claim maintenance under the statute for an illegitimate child does not have a choice of courts. She must file her claim in a District Court. District Courts are less accessible to Tanzanians than Primary Courts and so the issue of the cost (in terms of travelling and accommodation expenses) of instituting and completing a claim through the District Courts becomes problematic.

(c) The Child's upper age limits for terminating Maintenance Orders are too low

The Ordinance under section 7 provides that the court shall not enforce the maintenance order once the child attains the age of sixteen. In addition the law provides that if the

putative father makes an application and shows good cause the court may order that the maintenance order should cease when the child attains the age of fourteen years. This age is critical in the education of a child who also needs money for food, clothing, shelter and other basic needs.

(d) The compulsory Rule on Corroboration is too restrictive

Section 5(2) of the Ordinance provides that the evidence of the mother needs to be corroborated by other independent evidence to the satisfaction of the Magistrate in order to judge the person summoned as a putative father of the child. Therefore if the father denies paternity and the mother fails to get independent evidence of this fact, the case is dismissed.

(e) The Procedures for filing a Petition are too restrictive

Under section 3(d) of the Ordinance the application for maintenance is made by the complainant on oath to a magistrate with jurisdiction in the place in which she resides. The only possible way for this oath requirement to be met is by putting it in the form of a petition and presenting it to the court. The petition must be in English according to section 13(2) of the Magistrate's Court Act in which the record and judgment of the district court are also in English. The majority of the single mothers who claim maintenance are unable to draw up this petition because most of them neither read, write nor speak English.

(f) The System governing the Payment of Court Fees is problematic and restrictive

The High Court is given power under section 15 of the Ordinance to make rules prescribing the fees. Those rules include a provision for the remission of the fees and costs when the person liable to pay them has no means to do so. The provision of the fees limits applicants who are not aware of the remission and do not have money to pay the court fees because the criteria of remission of the fees and costs are not stated in the Ordinance.

(g) The Procedures for executing Maintenance Orders are too restrictive

Maintenance orders can be executed by the payment of the sum into the court as provided for under section 5(5) of the Ordinance. If the putative father neglects or refuses to pay, the court may order the distress and sale of his goods and chattels to satisfy the debt in term so of section 5(8) of the Ordinance. The last alternative punishment is given under section 5(9) of the Ordinance in which the court may order the detention of the putative father as a civil prisoner for a term not exceeding three months unless he pays the money due if insufficient funds from the sale of his property are obtained. These punishments do not always guarantee that single mothers will secure receipt of the money in terms of the maintenance orders in their favour.

1.4 Relevant Human Rights Standards

The failure of the Government of the United Republic of Tanzania to amend the Affiliation Ordinance since 1991 [when it ratified the United Convention on the Rights of the Child (CRC)] shows that the country is not as committed as it claims to be in the protection of the rights of children born out of wedlock and their mothers. Although a poor country like Tanzania may not be able to enforce and uphold all the rights in the Convention and the Charter on Children's rights, the Conventions still impose these obligations on the Government and the Government has agreed to accept them as a set of

goals which it must aspire to reach in order to guarantee the rights of children including the children born out of wedlock.

According to the words of Article 1 of the **UDHR** (which is referred as the mother of all Human Rights Instruments):

> *All human beings are born free and equal in dignity and rights.*

It is very unfair to have an unfavourable state of affairs which may discourage single mothers from enforcing the rights of their children born out of wedlock. The fact is that the Ordinance does not only pose challenges to single mothers, it also prejudices the best interests of the child.

Convention on the Rights of the Child ('CRC') and the African Charter on the Rights and Welfare of the Child ('ACRWC')

The Human Rights standards require the financial capacity of both parents to be taken into consideration when making an order for a maintenance allowance. There is no need for national legislation to fix a maximum amount to be paid by either parent. The provision of Article 27(2) of the CRC and Article 20(1) of the ACRWC requires the financial capacity of both parents to be considered in awarding the amount for maintenance.

Furthermore Article 27(4) of the CRC and Article 20(2) of the ACRWC impose a duty upon the state to ensure that children's right to an adequate standard of living is respected. This role includes assisting parents to provide financial and other types of support to their children and creating mechanisms to ensure that parents or other persons who have the duty to support the children actually fulfil their obligations.

In fulfilling the duty imposed under the said provisions, the state is also required to provide material assistance and support programs particularly with regard to nutrition, clothing and housing where parents or others are unable to provide the standards of living to which children are entitled. (Shaffer, M. 2001)

Also Article 1 of the CRC and Article 2 of the ACRWC define a ‘child’ as any person below the age of eighteen. This means that maintenance order shall be enforced until the child attains eighteen years, provided that, if the child is in continuing education in which he or she needs financial assistances from the parents, for the best interest of the child the maintenance order shall be enforced even after the child attains eighteen years of age.

Again, Article 2 of the CRC and Article 3 of the ACRWC reinforce the principle of non-discrimination: every child is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Convention and in the Charter irrespective of the child’s or his or her parents’ or legal guardians’ birth or other status. Therefore, the human rights standard does not discriminate against a child based on his/her birth status.

Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (“The African Protocol on Women’s Rights”)

Article 8 requires the state party to take all the appropriate measures to ensure effective access by women to judicial and legal services and the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone on the rights of women. The state under the same article is required to reform existing discriminatory laws and policies in order to promote and protect the rights of women.

Convention on the Elimination of All Forms of Discrimination against Women

Article 1 is of much important in this piece of work as it defines the term discrimination against women to mean any distinction, exclusion made on the basis of sex which has the effect or purpose of impairing the enjoyment by women irrespective of their marital status.

Under Article 2(b) the state party is required to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to adopt appropriate legislative and other measures where appropriate prohibiting all forms of discrimination against women.

International Covenant on Civil and Political Rights

Under Article 26 women should not be discriminated against on the ground of other status such as marital status. That is to say all women should be treated equally without considering their marital status.

Beijing Platform for Action

Tanzania has been compliant under Article 26 where it does not restrict the operations of NGOs such as WLAC, TAWLA, LHRC by doing awareness program and assist magistrates to be gender sensitive. The National Gender Policy is a direct result of the influence of this Platform.

1.5 A brief History of the Law of the Child Act of 2009

In 2001 the Attorney General of Tanzania is reported to have informed the Parliament of the United Republic of Tanzania that the country's laws on child care expenses for non marital children would be amended. He was responding to a member of parliament who remarked, *inter alia*, that the laws on child care expenses for non marital children were outdated and useless. (Mniwasa, E.2003)

In November 2009, the Children Bill was tabled by the Minister for Community Development, Gender and Children, Honarable Margareth Sitta before Parliament. The deliberation of the Bill took two days and on 4th November, 2009 members of Parliament unanimously passed it.

The lessons that have been learnt from the implementation of the Affiliation Ordinance is that the Ordinance is largely ignored by key stakeholders like the Judiciary including Judges and Magistrates. Even many legal and human rights NGOs which promote women's rights do not know of or promote the provisions of the Ordinance. Its provisions are essentially useless and they discriminate against women and children based on marital status and they are outdated because they do not work well in the present economic conditions.

Furthermore, the multiple role played by the Human Rights Instruments in which the country is a party result in the Ordinance not to be in use. This is due to the fact that the provisions of the Ordinance violate some aspects of the Human Rights like the Convention on the Rights of the Child which have come into operation after the enactment of the Ordinance. Therefore by whatever means, there was a need to have new law which can address issues about children as stated in the Conventions.

On 20th November, 2009 at the celebration of the 20th Anniversary of the Convention on the Rights of the Child, the Presidents assented to the Law of the Child Act and it became law. According to section 158(1) of the Law of the Child Act of 2009, the Affiliation Ordinance now will be repealed when the Law of the Child Act comes into operation. But

according to section 1(2) of that Act, it shall only come into operation on such a date as the Minister for Community Development, Gender and Children may by notice publish in the Gazette. This essentially means that the Affiliation Ordinance is still in operation despite the fact that the President has assented to the Law of the Child Act, 2009. So far, nothing has been stated concerning the Affiliation Ordinance and whether some of its provisions will be suspended following the coming into operation of the Law of the Child Act especially in relation to the establishing of Juvenile Courts under the new Act.

1.6 Background to the Research

Before embarking upon this study, my research assumptions were mainly framed by the Affiliation Ordinance, text books, material from the internet and the little experience I had on the maintenance of the children born out of wedlock. The aim was to assess the extent to which maintenance law as it is currently used benefits women and recognizes areas of improvement or alternative fora offering easy access to maintenance.

In the beginning, I had five assumptions, but during the data collection exercise, I realized that my assumptions needed to be revisited due to the existence of the Social Welfare Offices that plays a significant role in mediating maintenance claims for children born out of the wedlock.

Before I revised my assumptions, I heard on the radio there was a Children Bill which would soon be presented in the parliament for discussion. The Enactment of the law of the Child Act of 2009 and its presentation in the Parliament for discussion, resulted in some of my assumptions being challenged. After the Bill was passed on 4th of November, 2009, naturally I felt that there was now a need to revisit some of my assumptions.

The challenge which I foresee relates to the implementation of the Law of the Child Act after the President has signed it into law are highlighted. This paper will analyze some of the challenges concerning the implementation of the Bill and offer some recommendations.

1.7 Statement of the Problem

The majority of women who institute maintenance claims are poor and are not literate in the area of the law. Since they are poor they cannot raise their children without the support of their male counterparts. This has forced the majority of the women to institute maintenance cases even though they wished not to do so because of the limitations and challenges which they face in respect of maintenance cases.

The question of whether or not the quantum of maintenance orders is sufficient is very subjective. In the Affiliation Ordinance, the amount is fixed. The amount stipulated under the Ordinance is very unrealistic with regard to present living conditions. Judicial discretion is used to determine the amount to be awarded as monthly maintenance allowance. Criteria such as the respective income/wealth status of the parents are used by the court to determine the amount.

Women have been generally awarded maintenance orders but only in very few cases have they been able to enforce them. The procedures for execution of this order are complicated and sometimes discourage single mothers from following through with their claims. Sometimes the litigants conduct their own private ways of enforcing court orders. To what extent such private negotiations work, this is one of the objectives of this research.

Thus the research sets out to describe, explain and understand women's legal position with regard to maintenance and with the aim of improving women's status.

1.8 Objectives of the Research

1. To investigate whether the maximum amount stipulated by the Affiliation Ordinance as the monthly maintenance allowance discourages some mothers from instituting a claim for maintenance for their children born out of wedlock.

2. To find out whether the limit on the age of a child for whom maintenance may be claimed discourages some mothers from claiming on their behalf.

3. To find out what hindrances single mothers might face because of the requirement that claims for maintenance be instituted in the District Court.

4. To discuss the consequences of the lack of awareness of the existing law.

5. To analyze the relationship between mothers ignorant of the procedures of the court (such as filing petitions, paying court fees and the need for corroboration) and their connection with the reason why they do not file claims for maintenance on behalf of their children.

6. To unearth the challenges and difficulties which single mothers face:

6.1 When cases are delayed;

6.2 In relation to the complex procedures relating to the execution of their maintenance orders and how they contribute to their failing to file their claims or abandoning their pending claims.

7. To find out if the judicial discretion exercised by the Magistrates/Judges in the application of case law relating to the amount awarded for maintenance is reasonable in the present economic conditions.

8. To assess the weakness of the Law of the Child Act of 2009 in providing for the maintenance of children born out of wedlock and which challenges, if any, might oppose its implementation

1.9 Original Research Assumptions

The following were my initial assumptions at the time when I started to collect data in the field, *i.e.*, before the 4th of November, 2009.

1. The amount stipulated by the Affiliation Ordinance as a monthly maintenance allowance and the limit of the age of maintenance may discourage some mothers from instituting a claim for maintenance.

2. The requirement that the claim for maintenance be instituted in the District Court and the lack of awareness of the existence of the law result in some of the mothers not instituting a maintenance claim on behalf of their children.

3. The ignorance of court procedures (such as filing petitions, paying court fees and the need for corroboration) may result in some mothers not instituting claims for maintenance on behalf of their children.

4. Court delays of cases and complex procedures for the execution of maintenance orders may discourage some mothers from instituting their claim and cause others to abandon their case altogether.

5. Judicial discretion exercised by the Magistrates/Judges in case law pertaining to the amount awarded which is not provided for in the Ordinance, may not as quantum be reasonable enough to sustain present living conditions and cost.

1.10 Original Research Questions

Based on the above assumptions, the following were my research questions.

1. Does the amount stipulated by the Ordinance as a monthly maintenance allowance and the limits on the age of maintenance discourage some mothers from instituting a claim?

2. Does the requirement that the claim for maintenance be instituted in the District Court and a lack of awareness of the existence of maintenance law result in some of the mothers not instituting a claim?

3. Does the ignorance of the procedures of the court like filing petitions, payment of court fees and the need for corroboration result in some mothers not filing a case for maintenance?

4. Do court delay and complex execution procedures discourage some mothers from instituting a claim and others to abandon their cases?

5. Does the judicial discretion exercised by the Magistrates/Judges in the case law concerning the amount awarded which is not provided for in the Ordinance result in the award of too small an amount to sustain present living conditions?

1.11 Revised Assumptions

During the field research when the law of the Child Act of 2009 had been passed by the Parliament of Tanzania on 4th of November 2009, the following assumptions were framed:

1. NGOs may need to reconsider the techniques of disseminating information to the people. However even when people receive information, they may be unable to register their complaints because of the excessive distances they need to travel to social welfare offices (SWO) in order to do so.

2. The requirement of the maintenance cases to be presided over by resident magistrate in the juvenile court may result in some difficulty. The adjudication of cases may discourage some of the mothers from instituting a claim.

1.12 Revised Research Questions

1. Does the NGO's need to reconsider the techniques for disseminating information to the people since, even if their information has reached the people, they may still have no access to justice, because of the excessive distance to a social welfare office (SWO) in order to register complaints?

2. Is the requirement of the maintenance cases to be presided over by a resident magistrate in the juvenile court likely to result in some difficulty? Does the adjudication of cases discourage some of the mothers from instituting a claim?

1.13 Scope of the Study

The detailed research was focused at the Dar es Salaam Region in all three districts that is Temeke, Kinondoni and Ilala. The research was conducted to analyze the legal process of

the Affiliation Ordinance in relation to single mothers in Tanzania. Some references are also made to other regions when the need arise to do so.

CHAPTER TWO

2.0 RESEARCH METHODOLOGIES AND METHODS

This chapter presents the methodological framework used during the field study. It also presents the methods used to collect data. Problems encountered in the field will also be discussed.

2.1 METHODOLOGIES USED

2.1.1 The Human Rights Approach

A human rights framework is an entitlement or legal claim which a person has by virtue of being a human being. Human rights are protected by the many treaties or agreements that governments have signed which oblige them to ensure these rights and freedoms are upheld. (English, K and Stapleton, A. 1997)

I used this approach to perceive that mothers married/unmarried and their children should be treated similarly/equally in matters of maintenance.

The approach helps me to assess how Tanzania as a signatory and ratifier incorporates the International Human Rights Conventions into its national laws. By ratification of the Conventions, the Tanzanian government is legally required to protect and promote all the rights contained in the Conventions.

2.1.2 The Legal Centralist Approach

The legal centralist approach is a perspective that focuses on the state law or state recognized and enforced law and mechanisms and institution for interpreting these norms. (Bentzon, A.W.etal.1998). Legal centralism was my starting point at the time I was preparing these research assumptions. I used this approach because I understand that the state law is the most important normative order and all other norms creating and enforcing social field in situation and mechanism are illegal, insignificant or irrelevant. By applying this framework in maintenance law the state has in fact attempted to deal with maintenance of children born out of wedlock through the Affiliation Ordinance.

In applying legal centralism I examined the state laws and norms that are applied by the courts which includes legislation and case law relating to the rights of non marital children. I also analyzed legal publications dealing with the subject. The objective was to analyze what the law provides and to uncover gaps in the state law. (Mniwasa, E. 2003)

The approach was also used to ascertain the current legal position and legislation which regulate maintenance, and to analyze whether there were differences between what the law provides and what happens on the ground. Legal centralism relying solely on legal sources would have ousted the social context related to maintenance problems. However, rarely does the law answer the people's needs as envisaged by the centralist approach which gives power to law. This methodological gap underlying a legal centralism approach does not indicate exactly how women who go to the court to seek maintenance experience problems. Their experience and lived realities are not considered and for this reason an alternative theoretical framework was needed. (Magutu, A. 2009)

2.1.3 The Women's Law Approach

The principal methodology in the research is the women's law approach. The women's law approach was selected as it takes women experiences, lived realities and not the law as its starting point. (Dahl, T.S 1987)

> *"The methodology of women's law is cross-disciplinary and pluralistic: and calls for a rather free use of available material wherever it can be found. It is done from the perspective of one looking from below. The women's perspective implies the wish to see both laws, reality from the women's point of view."*

The approach was useful during the field as it helped me to assess how the single mothers are perceived by the law from a woman's perspective when decided to institute the maintenance cases for their children who are born out of wedlock and whether they succeeded in enforcing their orders or not.

This approach was useful to me as l collected empirical data about the lived experiences of women. I considered evaluating the Affiliation Ordinance to verify what it provides for. Then I proceeded to hear from the women themselves what problems they face as a result of the provisions in the Ordinance. Women were free to share their own stories and experiences in their own words. Thus the women's law approach was useful as it records and analyses female life situations and values and reveals issues and dynamics that are seldom evident in the male dominated legal culture. Such an eclectic approach offered me a variety of tools to engage with in light of the lived realities of women who want to enforce their orders and guarantee the sufficiency of the awards that they get. (Chawafambira, C.2009)

2.1.4 The Grounded Theory Approach

The grounded theory approach is an iterative process in which data and theories, lived realities and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. (Mniwasa, E 2003)

In applying the grounded theory in the present study the aim was to engage empirical knowledge about gender relations and people's customs and practice in Tanzania in constant dialogue as a means of building concepts and theories related to the maintenance of a child born out of wedlock. The theory shaped the data gathering process. It is thus an enabling methodology for the women's law approach as it is based on the principle of taking the women as the staring point of departure in analyzing their position in law and society.

The approach was useful because when I started my research I didn't know about the Social Welfare Offices (SWOs), because the Affiliation Ordinance is silent on matters of Social Welfare. But when I commenced work I realized that the SWO plays a significant role on dealing with cases of maintenance for the child born out of wedlock. Therefore, I took time to visit SWO's to know what they do exactly concerning maintenance claim for children born out of wedlock.

In order to equip myself with this approach, I had to have empirical knowledge about the lived realities of both men and women. The aim was mainly to find out the parents' attitudes towards maintaining the child born out of wedlock. I collected data from the single mothers/fathers, child, and Social Welfare Officers in all three Districts of Dar es salaam region, its Magistrates and its personnel in Non Governmental Organizations. The empirical data collected from all these people gave me a clear picture on how maintenance issues for children born out of wedlock are perceived in the society.

2.1.5 Legal Pluralism

Legal Pluralism recognizes that law has many sources and that there are sources outside state law which generate important regulatory norms. Customary laws, Religious laws, Morality and Community mores are example of such norms.

In this study the legal pluralism approach enabled me to expose the interaction between the formal legal position that is the general law and customary law position/religious law. The approach was very useful as it enabled me to understand other factors that possibly pressure women from not making use of the maintenance law. Legal pluralism recognize that, law is not the only regulatory force that operates in people's lives and that there are other norms which govern social institutions like the family meeting, church which at times influence the choice people make.

The approach was useful because it helped me to understand how other laws like the customary law can interact with the lives of women. During the perusal of the court files I found in the case of X vs. A the respondent refused to maintain his child on the ground that the parties were married under the customary law after giving birth to their first born in which according to the customs of their tribe the child born out of wedlock can not be maintained by the fathers.

The clear understanding of legal pluralism can be seen in the following words. (Stewart, J. 1997)

> *"There are many diverse elements that have to be brought together to provide a holistic picture of women's problems and needs in relation to the law. However*

within the African context one of the most important tools that researchers need is a thorough understanding of legal pluralism."

2.1.6 Semi-autonomous Social Fields

The concept of semi-autonomous social fields as propounded by (More, S. 1978) considers the effect of a plethora of normative orders which emanate from other institutions other than the state, which affect the decision that a woman can make. This approach helped me to understand the influence that the Social Welfare Officer has on the maintenance issues of the child born out of wedlock. The approach was effective in establishing why the formal procedure of instituting cases in the court of law is the last resort and why most people would rather first go to the Social Welfare Officer to review the matter before going to the court. Even though it is not provided under the Ordinance but the magistrates prefer to have the matter being solved at the SWOs and the SWOs should issue the certificate that they have failed to reconcile the parties before the applicant files a petition in court. Therefore, the whole system of the maintenance relied on the SWOs in which if the respondent does not comply with the order of the SWO, is where now the applicant may file the petition in court.

In this regard cognisance was taken of the fact that most women who are making use of the maintenance law are likely to be situated in a family of some sort and therefore there is likely to be an intersection between different systems of values. The SWOs conduct the informal procedure of hearing the matter in which they don't expose parties into the adversarial system hence at the end of the day the parties are on speaking terms. A conciliatory approach like the SWO is an appropriate choice rather than going directly to the court because at the end of the day it leaves the parties as enemies which is not good for the best interest of the child.

The approach was crucial in the field as it tries to find out how the law or the lack of it interacts with children born out of wedlock and their lives and how it explains why single mothers are discouraged from instituting a claim. Children born out of wedlock and their mothers are taken as the starting point and this prompted me to include empirical data about the lived realities of women's lives. I also used this approach to find the gap and to propose the way forward to fill it. But later on in the Law of the Child Act of 2009, the SWOs get statutory recognition.

2.2 METHODS OF COLLECTING DATA USED

Methods are the techniques used in collecting data. I used both primary and secondary methods in collecting data in the field. The primary sources include:

2.2.1 Interviews with Key Informants

I interviewed the resident magistrates who preside in the District court since they are the ones who hear maintenance cases of children born out of wedlock. I also interviewed the Justice of the Court of Appeals who is also the Chairperson of the Training Department in the Judiciary to get his view on the Law of the Child Act especially on the logistics of establishing the Juvenile Court and the whole plan of sending the Resident Magistrates to preside on maintenance cases of the children born out of wedlock in the primary court building.

The Justice of the court of Appeal was a very important key informant during the data collection exercise especially after the Law of the Child Act was passed by the Parliament of Tanzania. The aim of my interview with him was to understand how the judiciary intended to implement the Act after the President assented to it. At first I asked for the appointment to interview the Chief Justice on the same issue, but I could not get chance to see the Chief Justice due to his busy schedule. He had the burden of preparing

for Law Day in addition to his normal duties. Fortunately, the Chief Justice directed me to one of the Justices of the Court of Appeal. I was fortunate to get that chance of conducting an interview with him three days before I left for Zimbabwe.

An Interview with the resident magistrate who presides in the Kisutu Juvenile court was essential in order to capture her view on the experience in determining cases in the Juvenile court.

In interviewing these key informants, I was trying to get insight as to whether in their view the maintenance law was meeting the demands of the women who use it. The majority of these key informants were of the view that there was room for improvement of the Affiliation Ordinance. For example a resident magistrate with more than ten years experience on the bench who is also a member in the Training Department at the Judiciary took the view that Affiliation Ordinance has to be revisited.

In relation to the Law of the Child Act of 2009, some of the key informants are worried about the implementation of the law once it has been assented to and become law and officially gazetted to come into operation. They are of the view that, it is better if operation is postponed if there is no enough money to fund the implementation exercise.

The table below represent the number of the key informants interviewed

Status/Title	Number(s)
Justice of the court of Appeal and a chairman of Training Department	1
Member of a Training Department but also a former resident magistrate	1
Resident magistrate at Kisutu juvenile court	1
Resident magistrate at District courts level in Dar es salaam	3

2.2.2 Interviews with Individuals

In the field I interviewed a total number of forty four (44) respondents as presented in the table below

Status/Title	Number(s)
Social Welfare Officers	5
Legal Officers	3
Single mothers	25
Single fathers	11

I used an interview guide that contained open ended questions to facilitate my interview. The interview guide covered the themes being researched upon. The questions were very clear and in a very simple language for the ordinary person to understand. This method was useful since the interviewees were willing to be interviewed. In case of any misunderstanding it was easy to seek clarification. But sometimes I faced some difficulties on using this method since some of the respondents were reluctant to talk especially about their personal experiences and some were not free to respond as they believed that the information would reach the father of their child and he does not like this type of information to be known by a stranger (researcher).

2.2.3 Perusal of Court Records

I perused court records thoroughly to see the number of women who had made use of the law. Perusal of the court files was intended to get a general view of the monetary orders and to assess whether the orders are being enforced or not.

I perused about forty files in the District court level and three files in the High Court. In my own assessment from perusing the records, I was of the view that the awards being given did not meet the requirements of the women who use the maintenance law.

In addition, in my perusal I had noticed that few cases reach the final stage of judgement. Many of the cases have been dismissed for want of prosecution. Among forty files perused in the District court, ten cases reached the final stage of judgement and of these only one applicant came back to the court to enforce the court order when the respondent did not comply with it. The remaining thirty case files were dismissed for want of prosecution due to the non appearance of the parties.

2.2.4 Focus Group Discussions

I conducted two focus group discussions. One focus group discussion with single mothers aged 17-25 and the other focus group with fathers aged 25-30. Through this method I managed to get the feelings of the respondents as far as the issue of maintenance of children born out of wedlock is concerned, and how the law affects the smooth administration of justice. Also the issue of referring the matter to the SWO before the parties rush to the court was well covered. In the focus group discussion I separated the respondents according to their sex to give them confidence to speak.

The limitation in this method was that sometimes it was difficult to control the discussion since each respondent wanted to share his/her experience at the same time. Somehow there was a problem of keeping the discussion flowing, keeping track of the data and directing the discussion. In a few cases, some of the respondents were reluctant to give comments or to give their experiential data on the topic.

2.2.5 Desk Research

The secondary method of collecting data was used in this research. The information was gathered through reading various text books, dissertations, national legislation, human right instruments and the internet on the matter.

This method was very useful as it laid a good foundation for me to be able to analyze the legal process of the Affiliation Ordinance. The method gave me an insight of where to probe more, and which groups to interview in order to obtain relevant data.

Through this method, it was easy to get the statistics on the number of complaints brought in the SWO per day and the number of cases filed in court. This method was useful because it helped me to determine how many single mothers filed petitions in court and continued with the case until its final disposition and how many were dismissed for want of prosecution This method posed some challenges because in some courts I was not able to get enough case files which had reached the stage of judgment and in the High court some cases were still pending.

2.3 Problems encountered in the Field

2.3.1 Timing

I effectively collected data from the field for a period of three months. The time was just enough for the coverage of the topic. I had a very tight timetable to visit various places in which to find the respondents. Sometimes I came back from the field exhausted and still I had to compile what I had gathered in the field. But it was advantageous because I managed to meet with almost 95% of the important respondents I planned to and managed to interview different people like the Chief Justice. Instead of meeting him I was directed to the Justice of the Court of Appeal, Resident Magistrates presiding in the District court, single mothers, fathers, social welfare officers etc.

2.3.2 Bureaucracy

I ran into the bureaucratic process at the Ministry of Community Development, Gender and Children. I sent by hand the letter to ask for appointment to conduct interview, on 5th October 2009 with the officer(s) concerned. Unfortunately, I was not able to get the chance for the interview before I left for Zimbabwe to complete the process of writing up.

I attempted to follow up more than ten times, but it was not possible to conduct these interviews. It reached a stage where I would ask to meet with the senior officers who deal with research in the Ministry. However, it was not possible but it was not possible to meet with him/her due to the ethical rules of the Ministry. .

The clerk insisted that office procedures be followed. This involved making applications in writing and waiting for responses. But it took long time to get responses on that matter. Sometimes the reply from the clerk was that the file was no where to be seen. At the last minute the clerk told me sometimes it is difficult to get the chances for the interview so it is better to find an alternative place for conducting research. Though I tried to impress upon them the need to have interview with some of the officers from the Ministry, and that the interview would not take more than two hours, but they seemed not to understand.

At last they advised me to go to the Women's Legal Aid Centre (WLAC), the Tanzania Women Lawyers' Association (TAWLA) or the Legal and Human Rights Centre (LHRC) as an alternative place for interview and they insisted that, there were some researchers who decided to find other places to conduct interview since it was difficult in their place of work.

2.3.3 Negative Social Attitudes

In the place which I live (Kigamboni) I had a hard time when I was conducting an individual interview with single mothers. Since in the case of some of them, the putative fathers of their children deny paternity, some people think that I was teaching those women to bring the fathers of their children into the court so as to have them imprisoned.

Society has the perception that, once a person goes to the courts what follows is imprisonment. They are not aware that the first alternative is for the court to order the putative father to pay monthly maintenance allowance to his/her child. Imprisonment is the last resort after the all other means to have been proved unsuccessful.

Some women interviewees thought that I would teach single mothers to go to the court so that their sons can be imprisoned. Their sons are those who are responsible for maintaining the child and they often do not provide maintenance. In one case a woman went to her mother in law (the putative father's mother) to tell her that I am advised her to go to court to file a case against the father of the child in order to bring in the money for maintenance.

2.4 Overall Assessment of the Methodologies

This chapter has been looking at the various methodologies and methods used in the research. The methodologies chosen were very helpful because it assists to use some of the classic example like that of the SWOs which has never been thought before embarking into the field research. The findings from the field will reflect the extent to which these methodologies and methods were used.

CHAPTER THREE

3.0 RESEARCH FINDINGS AND ANALYSIS

3.1 The Situation in 2003

In 2003, Mniwasa, E wrote a long essay at the Southern and Eastern African Regional Centre for Women's Law titled 'Maintenance of Illegitimate children in Tanzania: A right or rhetoric?' He did a review of the Affiliation Ordinance. The aim of the paper was to examine the efficacy of the law providing for maintenance of non marital children in Tanzania. I set out his major arguments below.

He discussed several limitations in the administration of justice by courts that adversely impact on provision of maintenance to non marital children. Though he did not do empirical research, the following was the analysis of the Ordinance.

Mniwasa noted that giving exclusive jurisdiction to the District Magistrate is problematic because it prevents applicants who reside far away from district court from accessing justices. The applicants especially mothers who do not have financial capacity can not institute Affiliation cases or attend Affiliation Proceedings. Non attendance of the courts by the mothers results in the dismissal of the case for want of prosecution.

Also that that the amount stipulated under the Ordinance is seriously inadequate and it is very difficult for unmarried mothers to apply for money for education and maintenance of children.

According to Mniwasa in some circumstances it is very difficult for single mother to secure independent evidence to corroborate her claim about the paternity of the child. The

author analyzes different types of evidence including the Birth Certificate, DNA and the challenges which poses to mothers.

Through perusing of different case files Mniwasa come to know that, in awarding the amount the court is no longer using the Ordinance. Judicial discretion is used to determine the amount. This is because the amount is inadequate to cater for maintenance and education of the non marital child.

He also poses some challenges on the enforcement of maintenance order. She analyze that, all the methods provided by the Ordinance are not favorable for single mother if the father did not comply with the court order. .

Mniwasa stated that maintenance of non marital child ends at a very critical age when the child needs money for the education. The Ordinance did not comply with the age of majority provided by the Constitution, Law of Marriage Act and the Child Development Policy which is eighteen years.

He concluded by stating that the statutory provision which discriminate against non marital children and violate rights of unmarried mothers should be repealed or challenged in courts of law and declared null and void.

Even though in 2003, the review was done on the Ordinance, but still there was need to do empirical research in 2009 as far as the Ordinance is concerned though some of the result seem to be identical. The aim was to look on the emerging issues like the SWOs and shifting the role to them, the criteria used on judicial discretion to award the amount, the private arrangement on maintenance issues when the judgment is delivered or after dissolving issues in the SWOs. Also to present the empirical research done in order to help the law makers even though the enactment of the law has already being done, but to keep them aware if the need for amendment later on rise. But also for those utilizing the law when it come into implementation.

In addition to that, the critical analysis of the new law that is the Law of the Child Act of 2009 which will repeal the Ordinance when it come into operation, and what could and should have been learned from the Ordinance is one of the importance of this piece of work.

3.2 The Situation in 2009

The study examined how does the Affiliation Ordinance operates in relation to single mothers.

3.2.1 The unreasonably low maximum amount of maintenance

Statutory guidelines exist to assist the court in determining the amount of a maintenance award. The major problem in Tanzania relates not to maintenance of legitimate children but to maintenance of children born out of wedlock. Section 129 of the Law of Marriage Act which deals with maintenance of children born in wedlock requires the parents to pay maintenance according to their means, no fixed amount is provided. Under the Affiliation Ordinance the maximum award is one hundred shillings, a sum which has not changed since 1949. The Ordinance under section 5(3)(a) gives power to the magistrate to make an order against the putative father for the payment to the mother of the child or to any person who may be appointed to have the custody of the child a sum of money not exceeding one hundred shillings a month (equivalent to USD 0.08) for the maintenance and education of the child.

The wording of the Ordinance is very clear to the extent that, the amount which is paid as a monthly maintenance allowance should not exceed one hundred shillings (USD 0.80) per month. The putative father may also be ordered to pay expenses incidental to the birth of the child and for the funeral expenses of the child if it has died before the making of such order as it has been provided for under section 5(3)(b) and(c) of the Ordinance.

All respondents interviewed including magistrates at the District level, have the opinion that the law is outdated and needs to be amended. The amount stipulated can not accommodate present economic conditions.

A resident magistrate who presides in the Temeke District court where commented:

> The law is outdated; I am not using the Law completely on awarding the amount even though that is our guidance.

Another magistrate presiding in the district court stated that:

> Always I give the parties power to bargain. I asked how much the putative father can manage to pay, if the amount is too small, then I can intervene.

The style used by the magistrate to give chance to the parties themselves to agree on the amount seems to be tactful because neither of the parties afterward will complain of the amount as unreasonable or high. This reduces the number of appeal to the higher court on the ground that the amount is unreasonable or high.

The different styles used by the magistrates shows that the structural component of the legal system which is obliged to make sure that the law is functional seems to be reluctant to use the law as it is in the Ordinance. Since the amount is unreasonable and if the court strictly follows what the law states, majority of the single mothers including those who have instituted the case would have been discouraged from instituting the claim.

One of the respondents who is a single mother had this to say when she came to know of the amount stipulated in the Ordinance

> When I heard that the amount which is stipulated by the Act is Tsh 100/, I am discouraged to file a case since the amount is

> nothing.' Because I know the father of this child if he will be aware of the amount he will insist on what the law state and may reduce the amount which he used to give me.

A single woman like that one may not wish to go to court because she is afraid that, the putative father might insist on what the law states.

The unreasonably low amount awarded by the Ordinance is also ignored by the Legal officers working with the NGO's dealing with promoting Women's Rights. A legal officer in one of these NGO's stated that

> The amount (Tsh 100 equivalent to 0.08USD) is very unreasonable in the present economic condition. Before drawing the petition I ask the mother the reasonable amount in which the father of the child can afford to pay as monthly maintenance allowance.

The findings show that, those utilizing the law are not adhering to the amount which the single mothers can be awarded as monthly maintenance allowance for the child born out of wedlock. This amount cannot cater for a child expenses in the present economic conditions. The NGOs in the information dissemination campaign do not state exactly what the law provides on the amount to be awarded to single mothers as monthly maintenance allowance. Because it is clear that, by doing so it will discourage some of the single mothers from instituting the claim.

During the field research it was revealed that some single mothers do not know that the courts exercise judicial discretion on awarding the amount. They have the idea that the court strictly follows what the law states. This discourages them from instituting maintenance cases against the putative father of their children. During the interview a single women aged 35 years who is a petty business women selling *maandazi, chapati* and vegetable stated that:

> About seven years ago my friend told me that the amount which is stipulated by the Act for the maintenance of children born out of wedlock is Tsh 100. I didn’t go to the court to institute maintenance case for the father of my child because I know the amount which is awarded by the court is too small. What can I do with Tsh 100?

There are many single women in the Kigamboni area who opt to do petty business and the money obtained is used to maintain their children instead of going to the court to apply for such a low amount. The majority of them who knows about the law, are not aware that magistrates exercise judicial discretion on awarding the amount.

Some courts have been awarding sums far in excess of the amount set by the Ordinance. They use judicial discretion to determine the amount which a putative father must pay as a monthly maintenance allowance.

3.2.1.1 THE ROLE OF JUDICIAL DISCRETION

The resident magistrate with whom I conducted an interview said:

> The amount is very unreasonable; always I use judicial discretion on awarding the amount to be paid by the putative father. The amount depends on father’s income. But majority of the applicants who came before the court, their respondents don’t have enough amount of money compared to what the applicant prayed to be given. Therefore I left to the parties to decide themselves the amount which is reasonable and can be afforded by the father.

Judicial discretion which was based on the assessment of the father’s income is mostly used to determine the amount to be paid by the putative father as monthly maintenance

allowance. For example in the case of X v B, the District court of Kinondoni ordered the putative father to pay 40,000/= (30.5USD) as monthly maintenance allowance.

In another case at Ilala the presiding magistrate ordered the putative father to pay 35,000/= (27USD) as monthly maintenance allowance though the net salary of the putative father was 37,104.85/= (29USD) after the necessary deductions like National Social Security Fund, Pay as you earn and a loan from Azania Bancorp Limited. The court awarded this amount by considering the other means for the putative father to sustain his own life such as allowances at his place of work which can be topped up from his net salary.

It seems that judicial discretion is well exercised by the magistrate since few cases went to the High court for appeal. This is supported by the magistrate who stated that:

> Sometimes we order the parties to bring the salary slip if they are formally employed. Few cases are brought in the High court for appeal.

Although there are some appeal. In one case (X v D) the appellant appealed from Temeke District court to the High court in the Dar es Salaam registry, but her appeal was not sustained because she failed to prove before the court of law how much the putative father was receiving per month as a salary. There was no evidence in the lower court which shows how much the respondent received per month. The view of the honorable Judge was recorded in the case file as follows:

> Since the appellant does not know how much the respondent is getting, and in the lower court there is no such evidence, if the respondent was receiving 100,000 per month,(equivalent to 77USD) 20,000 (equivalent to 16USD) is correct..

But the appellant was in need of Tsh 50,000 (equivalent to 38USD) per month. It was very difficult to establish where the figure of Tsh 100,000 came from if there was

evidence which shows how much does the respondent receiving per month. It seems that, the appeal judge was not gender sensitive in taking into consideration the other income of the respondent if any, in reaching her judgment. Since in most cases there are some allowances in the work place which are not included in the salary. Her reasoning differed from the resident magistrate of Ilala District in which even though the respondent produced a salary slip, other income of the respondent was considered in reaching her decision. Therefore, the appeal judge did not take into consideration other means of the respondent in order to help the single mother to get the amount she prayed in which she thought that it might be reasonable for maintenance of the child.

3.2.2 The unreasonably low Age Limit

The Ordinance under section 7 provides that the court shall not enforce the maintenance order if the child attains the age of sixteen. Additionally, the law provides that, if the putative father makes an application and shows a good cause, the court may order that the maintenance order should cease when the child attains the age of fourteen years. This is different with the child born in wedlock because there is no age limit. Under section 2 and section 129 of the law of Marriage Act, the father is required to maintain his/her children even if the child attains the age of eighteen. However, the Affiliation Ordinance does not define the expression 'good cause.' Also the case law has not defined what constitutes good cause. The definition of good cause is very subjective, what is good cause for me might not be good cause for you. There is a danger for the provision to prejudice the interest of the child if it will not be used wisely.

The maintenance of the child born out of wedlock ceases at a critical moment when the child attends school and need the money for education, medical services, food, clothing and other necessities. Additionally, the law is silent on who should provide maintenance for the non marital child after the discharge of the putative father. It is logical to presume that, the mother will be solely responsible for maintaining the child. (Mniwasa, E.2003)

During the field research it was observed that the order for maintenance is enforced even if the child attains the age of sixteen years. In the perusal of the case files, there was not even a single file in which the putative father petitioned the court to stop maintenance order on the ground that her/his child attained the age of sixteen years. Though in all files there was no evidence to show that the maintenance order had been enforced.

I am of the view that those fathers who provide maintenance may have entered into a private arrangement after getting the court order. The law does not require the maintenance order to be enforced when the child attain 16 years of age. Precise findings were not revealed during the field research.

But when some of the women became aware on the limit of the age of maintenance, they were discouraged from filing the petition on the ground that, at the age of sixteen, the child really needs the maintenance of his or her father, because on that age the child is in secondary school where the school fees are high. Some of the respondents (single mothers) during the focus group discussion were of the view that:

> If there is limit on the age of maintenance (16 years) for children born out of wedlock, then there is no need to file the case.

The provision of the law really discourages some mothers from instituting cases because that is the critical age in which the child needs maintenance from both parents. On the ground that provision seems not to be enforced. This may be due to the fact that the Ordinance was being largely ignored.

3.2.3 The Exclusive Jurisdiction of the District Court

Currently the district courts are vested with the exclusive jurisdiction to entertain cases dealing with the maintenance of children born out of wedlock. A woman who wants to

claim maintenance under the statute for an illegitimate child does not have a choice of a court. She must file her claim in the District court as it has been provided for under section 2. However for a child born in wedlock the claim for maintenance can be instituted to the courts which are located closer to their residences. The option is given either in the primary court, district court or a resident magistrate's court. This is according to section 76 of the Law of Marriage Act (LMA).

The issue of distance and cost seem to be problematic in the institution of cases for children born out of wedlock in which it is obligatory for the case to be instituted in the district court. This results in some of the single mothers not to file a claim because sometimes they may not have enough money to cover their travelling expenses. In some other regions the District Court is located very far from the residents and there is no reliable transport for reaching the court. But even in places where reliable transport is available, litigants still need to have money to reach to the court.

The 98% cases for maintenance are filed by single mothers who really can not raise children on their own. Some of the single mothers are still under parental care, that is they are still maintained by their parents, some they are unemployed and some are involved in petty business activities in which they don't make a profit of more than Tsh 2000 per day (equivalent to 1.5USD). Therefore it is difficult for them to get enough money to cover the cost of travel.

In an interview with a single mother aged 25 years who sells cakes for a living as to why she did not file maintenance cases, she stated that:

> Who is going to give me a bus fare to Temeke District court? From here to Temeke District court is very far, you can not walk, where can I get Tsh2000 to go to the court? It is better if I can use that money to boost up my capital.

The above complaints were received during the interview from more than ten single mothers at Kigamboni area in which they really wish to file cases but the problem is financial incapacity. Some even they asked me for the financial assistance to go to the court.

It is astonishing that the law took such a long time to change to accommodate the current position for maintenance cases by allowing them to be instituted in the primary court in which most people will get justice. Another respondent stated that:

> It is not very far to reach to the District court if you have enough money for bus fare, but I can not walk from here to the District court. If the case could be instituted in the primary court it could be easy to walk.

This shows that the majority of the single mothers have been discouraged from instituting maintenance claims in the court due to distance. It is really very difficult for those who do not have a reliable income to follow up to their cases.

Based on the above findings I was not very surprised during the perusal of the case files to find that, many of the Affiliation cases (more than thirty files) had been dismissed for want of prosecution due to non appearance of the parties. In some case files it was recorded that:

> The case is withdrawn for non appearance of the parties as per Order IX Rule 3 of the Civil Procedure Code.

One of the opinions obtained through research as to why these cases should be instituted in the District court was that the nature of the matter seems to be very sensitive. It is very difficult for the father to deny the paternity for the child born within wedlock as there is a presumption that if the parties are married the child born within that marriage is presumed to be the child of those spouses unless one of the spouses proves otherwise.

Therefore the matter can be entertained in the primary court since no further complications arise.

Surprisingly, at the time these statements were recorded, I knew that some years back a certificate holder was the primary court magistrate and the diploma holder was the district court magistrate who seems to be competent to determine the matter. But the situation now has changed. The certificate holder is today the court clerk and the diploma holder is the primary court magistrate. However, under the new Child law, the primary court magistrate with the same diploma seems not to be competent to adjudicate cases involving children born out of wedlock.

3.2.4 The Important Function of Social Welfare Officers (SWOs)

In the Affiliation Act there is no legal provision which requires a women claiming maintenance to have first referred the matter to a Social Welfare Office. However, in practice the matter is first referred to a SWO before filing at the court.

One of the assumed responsibilities of the Social Welfare Office is to receive complaints from single mothers/fathers on maintenance issues regarding children born out of wedlock. But in practice complaints are received from single mothers.

The social welfare officer invites the applicant and the respondent to a meeting at which the parties must discuss their differences and attempt to come to an agreement. The officer also counsels both parties, carries out social investigations whenever necessary to discover the amount which single fathers receive if they have failed to agree on the amount of maintenance with the mother. Once they have done this, they are able to determine the exact amount which a person can afford to provide as a monthly maintenance allowance for his/her children. They do not using the Ordinance to determine the amount.

The procedure of hearing the matter in the SWO is very informal. This helps to make the parties comfortable as they discuss maintenance issues for children born out of wedlock. The parties are reminded that, the best interest of the child depends on the receipt of maintenance from both parents.

Essentially, in practice, a lot of affiliation cases have been instituted through the SWOs in the first instance as compared with the court. The number of complaints in the SWOs is very much higher as that filed in court. For example in the Kinondoni SWO, about 10-15 of the Affiliation complaints are received per day which is almost to 200 per month, and about two to three million (equivalent to USD 1700-2500) collected every month from the fathers.

The same applies to Temeke and Ilala District in which not fewer than five affiliation complaints are filed per day. This shows that more work is done by the SWO than by the court. This is different with the court in which it can take even a week without the case being filed. This was grasped during the interview from the court clerks who were finding the court files to give me. In both courts they stated that, there are few Affiliation cases filed in the court so it could be some how difficult to get many files.

It is my observation that, the number of cases filed in the SWO is attributed to the procedures of conducting trials that are very informal, and the speed of hearing the matter, in which, if no complications arise, and if the parties comply with the request, it may sometimes take only two days for the matter to reach a final decision. Amicable solutions will be reached something; which is very different from the court.

A resident magistrate presiding in the District court stated that:

> Even though there is no pre-requisite under the law for the parties to go to the SWO before filing the matter with the court, but we ask them to go there because sometimes the matter may

> end up there. This will reduce the number of cases in the courts
> as they can be dealt with there.

On perusing the court files I discovered that all cases which deal with the maintenance of the child born out of wedlock are accompanied by a certificate from the SWO to the effect that the matter has been considered by them and that they have failed to reconcile the parties or get them do agree on the amount. This probably also explain that the number of women do not go to the court.

3.2.4.1 The Inaccessibility of SWOs

There is an established social welfare office in every district throughout the Dar es Salaam region. But a major problem that arises is the paucity of SWOs near residential areas of the community. For example, about twenty women were interviewed in the Kigamboni area which is within Temeke District. There is a SWO situated within the Temeke Municipal offices. However, the women interviewed have not gone to that office even though they have never received maintenance from the putative fathers of their children.

A major discouragement for them is the distance, the time it involves and the cost of travel involved. It cost about Tsh 2000 for a trip, which is the equivalent to 1.5USD. This is a large amount of money for employed or unemployed women especially if one considers that it may take more than of five or six trips before the matter is determined by the SWO especially if there is any complication and both the parties do not comply with the request. This discourages women from instituting maintenance cases in the courts of law because the preliminary stage of reporting the matter to the SWO was difficult to accomplish. Furthermore the court demands to see a certificate from the SWO and realizes that it has failed to deal with the matter, before the case can be instituted in court.

The problem is not only to be found at Temeke district, but also in other districts like at Ilala and Kinondoni in which the social welfare office is located at the centre of the district that is within the Municipal office. In the case of people who live in the area like Pugu, Kijichi, Gongo la Mboto, Kipawa (within Ilala District) Kunduchi, Mbezi, (within Kinondoni District no SWO is located near them.

The location of the SWO in the centre of town prevents applicants who reside far away from the centre from accessing its services. The applicants, usually mothers who do not have financial resources, can not afford the traveling cost and can not travel long distances to claim for maintenance of the child in the SWO.

From the above it is clear that, some mothers fail to institute a claim for maintenance. As a result they use the meagre resources they have for the maintenance of their children instead of using it to generate other income in the form of a successful claim. At the end of the day they remain poor while the putative father may be well able to maintain the children.

It appears that, locating the SWO and Municipal in the same building also may cause confusion among the local inhabitants. So a person does not know where to go to complain. If they don't know where to complain it means there will be few complaints in which women's and children's suffering is expressed in court.

This was confirmed by the single mother during the interview who stated that:

> I don't know if the SWO is within the Municipal building, because for my knowledge the Municipal office does not deal with the cases of maintenance for children born out of wedlock.

The situation is worse in other parts of the Tanzania because there are no SWOs in other districts. This was confirmed by the Social Welfare officer of Kinondoni District who stated that:

> In other places in Tanzania, at the District level, the SWO can not be found though they are required to be available in every district.

So the preliminary stage of the matter where the determinations are made by the SWO are not carried out. This occurs even though the Affiliation Act of 1949 does not require the matter to be referred to the SWO before being sent to court. Therefore this does not mean that in other places if the SWO is far from the residence, the parties do not institute maintenance claims.

3.2.5 The Problematic Issue of filing a Petition

Maintenance cases are instituted in the District court by filing a petition. Under section 3(d) of the Ordinance the applicant is required to make a complaint on oath to a magistrate for a summons to be served. In practice the only way to present a complaint with oath is by way of petition. Therefore the applicant needs to draw up the petition and present it in the court. The petition should state clearly the amount to be awarded as monthly maintenance allowance and that the respondent is the putative father of the child and that he has neglected to maintain the child If the respondent had been sometimes providing maintenance, the petition should state this as it will help the court in adjudicating the case.

Petitions are mostly drawn up in the English language perhaps because the language which is used at the District court for recording the proceeding is also English. The majority of the single mothers who claim maintenance are unable either to speak or to write English. Therefore it is difficult for them to go to the court directly to file petition without first going to the NGO's organization which deals with the provision of a legal aid service free of charge to ask for their petition to be drawn up.

One of the applicants interviewed on how she managed to file the petition in the language which she does not understand, stated that:

> Before I didn't know that the petition should be presented in the court, I went directly to the court with my letter from the SWO but the court clerk direct me to draw the petition to accompany my letter from the SWO. I Thank God the court clerk directed me to these NGO's in which I had my petition drawn.

On the perusal of the court files, all complaints are accompanied by petitions which are drawn up in English. The situation is different with that of the maintenance of children born in wedlock in which the option is given to them to file maintenance cases in the primary court. This gives them an opportunity to use Swahili since it is the language which is used in the primary court. More importantly, there is no need to present a petition: the applicant states her complaints and the magistrate record them and thereafter, the summons will be served on the respondent.

It was observed that, the procedure of filing the petition seems to be complicated for single mothers who claim maintenance for their children. Apart from not being aware of the procedure some did not know where to find these NGO's. For others it is difficult to reach these NGO's since they are not located near their residential areas. Most of these NGO's are urban based where by in some district they are not found. For these litigants traveling cost continue to be problem.

3.2.6 The Problematic Issue of the Payment of Court Fees

The High Court is given power under section 15 of the Ordinance to make rules prescribing the fees and cost payable in any proceedings in the Act and those rules shall include the provision for remission of the fees and costs when the person liable to pay those fees and cost has no means to do so. The fees range from Tsh1500-2000 (equivalent to USD 1.25-1.50).

On the ground, about 95% of the applicants for maintenance file their applications in *forma pauperis* in which the applicant files an action as a pauper due to poverty. (Mniwasa, E 2003). Out of twenty women interviewed, only three were able to pay for the court fees. In the 40 files perused, no one had paid the court fees as the matter was filed under the *'forma pauperis'* rule in which the applicant's petition is admitted without paying any money.

In one case X vs E, though the applicant filed in *forma pauperi* the receipt of court fees was seen in the applicant file. It was not confirmed whether the court refused to admit her application despite of attaching a certificate from the NGO's to file under *forma pauperis* or she has paid without knowing the usefulness of the certificate.

A similar problem was also experienced by one of the clients of an NGO in which their client was prevented from filing the application under *forma pauperis*. During the interview, the legal officer stated that:

> We write the letter to the court to admit the petition of our client without court fees. In most cases the petition are admitted, but there is one customer who come back to complain that her petition was rejected and she was required to pay court fees.

The criteria for requesting that some women pay court fees while others file without paying are not clear. Perhaps the courts clerk are not aware of the provision of the law in which the nature of these kind of cases can be filed without paying the court fees if the applicant had no means to do so.

Based on the above finding, one may discover that some women who are in need of instituting maintenance cases are discouraged by the court fees especially when they hear that it is not in all cases that the court allows petitions to be filed without the payment of the court fees. Because they know that cases are admitted by paying the court fees.

3.2.7 Excessively long Court Delays

Under the Ordinance there is no provision which necessitates the speeding up of maintenance cases despite the sensitivity of the matter that is meant to serve the best interest of the child. This depends on receiving maintenance from both parents.

The delaying of the cases is one of the major complaints from respondents which discourage them from instituting their cases. Others decide to abandon their cases. During the field work exercise among fifteen respondents interviewed as to why they did not institute cases in a court of law while they did not receive maintenance form the putative fathers of their child, all claimed that the delaying of the cases discouraged them from instituting a case. Therefore it is better for them to use that time to find money for their children rather than wasting time in a court in which it may take even three years for the case to be finished. One of the respondents stated:

> My neighbour instituted the case two years ago and up to now the matter is still pending, she is now tired and she abandoned the case, she has just waste her time.

The other respondent was of the view that:

> It is better to use my time wisely to do petty business rather than to file case since it will waste my time because the case may not end up within a year.

This suggests that, case delays are a major challenge for single mothers once they have decided to file maintenance cases for their children. In the case of an employed woman, she may risk losing her job if she is absent for too many days and in the case of an employed woman, probably working in the informal sector, she loses the income she might have had that day. (Armstrong, A. 1992)

Upon perusal of the case file, few cases reached the final stage of the judgment. Among the forty files perused, only five cases have judgments. Some of the cases were abandoned by the parties and this is probably due to the delay. The other two cases were withdrawn by the applicants voluntarily for the reason that the cases take a long time to be concluded. I met a respondent in the court building with whom I conducted an interview.

> I am tired to continue with this case because it is almost a year now and still there is no hope for the matter to reach the final decision.

Again on the perusal of court files, in the case of X v F it was recorded that:

> My honour I decide to withdraw this case because it waste my time and I don't have enough time to have follow up.

The above case was instituted on 23rd November 2007 and the applicant who is a single mother prayed to withdraw on 3rd June 2008 and the prayer was granted on the same day. It is almost six months from the day of instituting a case and still the case was not yet set down for hearing.

The problem of the delaying of cases often involves court procedures such as serving a summons on the putative father. Sometimes this can even take three weeks before summons is served. Also a reply to the petition takes some time. Apart from the fact that serving summons may take long time, the magistrate is empowered to refuse to issue summons on the respondent unless he is satisfied that there is reasonable cause to believe that the man alleged to be the father of the child is in truth and in fact the father of that child. Also the magistrate has to determine whether the application for a summons is made in good faith and not for any purpose of intimidation or extortion as it is provided under section 4 of the Ordinance.

The question which remained unanswered is when magistrate may adjudicate that the man is in truth the father of the child and that the application is made in good faith. It is apparent that, before hearing of the evidence one can not determine if the application is made in good faith or not, and it is procedurally incorrect for the court to hear the evidence of the applicant without the respondent being informed and present. On which ground can a court refuse to issue summons to the putative father? Is it the court is not satisfied that there is no reasonable cause to believe that the man alleged to be the father is in fact the father of the child. But on perusal of the case files, refusal to issue summons based on the provision was not recorded. However, in the case of X v G the respondent stated that the application by the applicant was not made in good faith but for the purpose of intimidation and extortion, her claims were not considered.

Non attendance of the respondent and applicants for adjournment of the case are other reasons for a case being delayed. Sometimes the timetable in the court diary is full to the extent that there is no free day to be found in the diary. This may result in the case being adjourned for a month without considering the sensitivity of the matter. Though it is in the interest of the justice system to see the matter through to finality, cases are still delayed. Justice delayed is justice denied. Some people abandon their case on account of delays as they may wait for as long as three years without the case reaching finality. The records I perused indicate that it takes on average one to three years for a court to resolve affiliation cases. (X v I). When this cases are pending for a long time, the burden of maintaining the child rests with the mother alone while it is the parental duty to take care of their children according to their means.

3.2.8 The Problematic Issue of enforcing the Rule on Corroboration to prove Paternity

Under section 5(2) of the Ordinance, the evidence of the mother needs to be corroborated by other evidence to the satisfaction of the Magistrate in order to judge the person summoned as a putative father of the child.

> The provision is supported in the case of ***Cole v Manning*** that it is necessary for evidence of a single mother of a non marital child to be corroborated in some material particular in order to prevent the danger which would arise if her statement were admitted without confirmation.

The same was also confirmed by more than two magistrates during the interview on how they perceive the evidence of the single mothers on proving her case. One of the magistrates presiding at the District court stated that:

> The evidence of the single mother alone is not enough to judge that the alleged father is really the father of the child born out of wedlock. We normally require the mother to bring any other evidence to corroborate with her evidence, for example the evidence of any person who know about their relationship, or sometimes we ask the mother to bring the child and to see if in one way or another the child resemble the father or Birth Registration if any corroborate his paternity.

This suggests that, if no other independent piece of evidence is available and the mother in one way or another fails to bring the child into the court, the burden of maintaining the child lies on the mother alone. Magistrates are allowed to insist that children be brought to court through judicial discretion. However, not all magistrates exercise that discretion.

But it has to be borne in mind that sometimes it may be very difficult for the evidence of the single mother to be corroborated with an independent piece of evidence especially if the affair was conducted in secret. It may be that at the time they engaged in that relationship, some were students. Others were housemaids and were not be able to reveal the truth to anybody concerning their relationship, with the putative father of the child until the pregnancy became known. Therefore, if the alleged father denies paternity, then

there is no any other way except taking the responsibility of maintaining the child alone. During the interview, a single mother stated that:

> I can't go to the court because the father of my child denied paternity and he is somebody's husband.

Furthermore, some of the single mothers interviewed seem to have failed to get a Birth Certificate for their child, even though there is no difficulty in obtaining one. But the mother can not use Birth Registration to prove paternity because the law prohibits the registration of the father's name without his acknowledging paternity and signing the birth register. In such situations the spaces for the father's name in the child's birth certificate are left blank. (Mniwas, E.2003)

The rule of corroboration is a serious issues in the law of evidence and in some particular cases, in which failure to observe the rules once it is mandatory to do so, will result to dismissal of the case. This is supported by the following court records:

> Failure to present corroborative evidence may result in the dismissal of the case. In the case of X v H, the High court of Tanzania held that, if the applicant fails to present corroborative evidence to support her allegation of fatherhood, the claim against the alleged putative father should be dismissed.

Sometimes the parties fail to corroborate their evidence with independent evidence. For example in one of the cases, respondent denied paternity, and the court ordered him to under go a DNA test. Unfortunately he did not come back to the court, no certificate of DNA evidence of paternity was in the court file. The case was dismissed for want of prosecution since the applicant was also failing to appear.

3.2.9 The Problematic Issue of Enforcing Maintenance Orders

Maintenance orders are usually given in the form of an order for monthly payments to be made to the applicant. However, the findings show that these orders are seldom obeyed by the man against whom they are made. Enforcement of the maintenance order was found to be the biggest problem encountered in using the state court system in a maintenance claim. (Armstrong, A. 1992)

The maintenance order against the putative father can be executed in several ways in the Affiliation Ordinance as it has been provided under section 5(5), (8) and (9). The putative father can pay the money into the court and the same will be paid to the mother or a custodian. But in the case where the putative father neglects or refuse to pay the court may order distress and sale of his goods and chattels to satisfy the order. If insufficient property is obtained, the court may order detention of the putative father as a civil prisoner for a term not exceeding three months unless he pays the money due.

On the case files perused in the court, in only one case which has a judgment, the applicant wished to execute it. Because after three months had elapsed without the respondent executing his part, the applicant came back to the court to demand execution because the respondent neglected to provide maintenance for the child. However, in the case file there is no record which shows that the respondent complied.

In the interview with a magistrate at the District level, he agreed that the procedure for execution is some how not favourable depending on the nature of the case. But he stated that:

> Not that all of these cases are not executed because of procedure. Some applicants don't even follow court procedure and when the case ends, they engage in their own private negotiation to receive the money. So it is not necessary for them to come here if the father maintains his child.

The statement was also supported by another resident magistrate at the District court who said that:

> Sometimes they bring the money to the court and sometimes they do have their private negotiation.

These suggests that the enforcement of the maintenance orders using the state court system complicated as it needs the applicant to file another case if the respondent fails to execute his part in which case delays will still be inevitable. This results in some of the parties engaging in private arrangements in which the terms and conditions will be favourable to them. The private arrangement is like the one which is used by the SWO in which the parties are given chance to agree themselves on how the father will execute his part. This way seems to be very successful especially if the parties agree themselves on the easiest way of enforcing the order. This option leaves the parties as friend unlike in the court in which the father often consider the woman an enemy to because she takes him to court again for failure to execute his part. The last resort will be imprisonment.

My observation is that, an unmarried mother may secure an Affiliation order but might fail to execute it. This is due to the fact that sometimes it is difficult to trace the putative father and once traced he might not have enough money to pay his fine. In such a situation, a non marital child with his or her mother will be left without any remedy. Also imprisoning the putative father will not guarantee that he will pay maintenance for the child especially where he really does not have any resources. Thus imprisonment of the putative father may not be relevant to the child and his/her mother where the imprisonment does not facilitate payment of maintenance for the non marital child. (Mniwasa. E 2003)

3.3 Lessons that may be learnt from the operation of the Ordinance to date

3.3.1 The role played by Social Welfare Officers

It was evidenced during the field research that the social welfare officers are key players in securing maintenance for children born out of wedlock. This is because the matter should first be referred to them before the application is sent to the court. Though there is no prerequisite requirement under the law for the matter to be referred to them, but because they deal with vulnerable children and in order to work for the best interest of the child, it was assumed that the matter should start there.

3.3.2 The amount stipulated as monthly maintenance allowance

There is no dispute that the amount is ridiculously low for the present living condition. There is no need to fix by way of legislation a maximum amount a respondent should be ordered to pay in the form of maintenance because the value of money devalues over time as a result of factors such as inflation, etc. A claimant can always return to court at a later date and apply for an increase in maintenance if it is in the best interests of the child.

3.3.3 The Jurisdiction of the Court

There is no apparent reason as to why the maintenance cases for children born out of wedlock should be instituted in the District court while for those born in wedlock a wider option is given to them because the case can be instituted in the primary, district or resident magistrate court. The need for maintenance cases to be instituted near the residence of the local people is of a great importance.

CHAPTER FOUR

4.0 THE OPERATION OF THE LAW OF THE CHILD ACT OF 2009

4.1 THE CONTENTS OF THE LEGISLATION

4.1.1 Assessing the amount of the award of monthly maintenance

The Law of the Child of 2009 gives guidelines by which to measure the adequacy of maintenance. Under section 44 of the law, the court is required to consider the following matters when making a maintenance order:

(a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;

(b) any impairment of the earning capacity of the person with a duty to maintain the child;

(c) the financial responsibility of the person with respect to the maintenance of other children;

(d) the cost of living in the area where the child is resident and;

(e) the rights of the child under this Act.

The law is of great importance because it gives some guidance in determining the adequacy maintenance. The section obliges both parents and relatives if any as a primary individual to which their income may be considered when it come the issue of maintenance. The extended family seems to be covered by the law because the financial

responsibility of the person with respect to maintain other children has been considered. In addition the law guarantee the rights of the child as of paramount importance when consider maintenance.

4.1.2 The Upper Age Limit

Section 47 of the law provides that, the maintenance order of the child expires when the child attains the age of eighteen, is gainfully employed or dies before attaining the age of eighteen. But under section 48(1) the court has power to continue the enforcement of maintenance order after a child has attains eighteen years if the child is engaged in a course of continuing education or training.

It is up to the parent or child or any other person who has the custody of the child to make an application before the court to enforce the maintenance order after the child attains the age of eighteen years. This creates the possibility for an action to be brought to court by any person to enforce a maintenance order within forty five days (45) after the order is made or is due as it has been provided under section 48(2) and (3).

It is clear that the law conforms with Article 5(5) of the Constitution of the United Republic of Tanzania of 1977 (as amended form time to time) and paragraph 2 of the Child Development Policy of 1996. These instruments defined the child as a person below the age of eighteen.

4.1.3 The Jurisdiction of the Juvenile Court

The resident magistrate (degree holder in law) is the one who by law is required to preside over cases of maintenance in the juvenile court. The Chief Justice is given the power to re-designate any primary court building as a juvenile court. This is provided

under section 97(2) and (3) of the Act. Jurisprudentially, this is a good idea in terms of the women's law approach because it brings justice to the local people.

Section 99(1)(c) of the law requires the proceedings to be as informal as possible and made by enquiry without exposing the child to the negative effects of adversarial procedures. This means that the juvenile court will take a more conciliatory approach toward litigation, preferring to encourage negotiation and reconciliation between the parties. The presiding magistrate has to deal with these problems rather than treating the case strictly as a maintenance one.

4.1.4 The Problematic Issue of Relocating Magistrates from District to Juvenile Courts

Major problems will arise regarding the implementation of the law. This is due to the fact that, currently, a degree holder is the resident magistrate and he/she presides in the district court which is situated at the district level.

Although there is a plan to send the resident magistrate to the primary court, the plan cannot be implemented this year. This was also confirmed by the Justice of the Court of Appeal who had this to say concerning the plan:

> It will be very difficult for the new plan to be executed this year, may be after three years this will be possible since the plan to send the resident magistrate to the primary court needs a lot of money. This year we will have a General Election and most public funding will be directed to the election.

It is really doubtful if the law can be implemented when the Minister publish in the gazette to come into operation this year. The Justice of the Court of Appeal was of the view that, even though women will continue to suffer under current discriminatory law, it will be good in one way or another if the President delays his assent to the Children

law, because once he has assented the Affiliation Ordinance will be repealed. The Justice of Appeal was not aware if the President had already assented on 20th November, 2009. Even I was not aware that it had apparently been assented. I came to know on March in corresponding by email from UNICEF (Dar es Salaam office) and from Caucus for Children Rights whose office based at Arusha. Both organizations stated that the president do assent on 20th November, 2009.

The plan to send resident magistrates in to the primary court are still at an administrative stage and can not be implemented for this and next year. This was also confirmed by the member of the Training Department at Judiciary who stated that:

> Though I am not an administrator, but I think it will be impossible for the plan of sending the resident magistrates to primary court to be matured this year and next year, may be after three years.

If the law will come into operation this year, it may result in a great loophole in which we will have only a few cases to be accommodated in primary court building designated as a juvenile court in those areas in which the primary court is near situated in the same building with the district court. The problem of allowances to a resident magistrate will not arise. But the majority will not be served since the primary courts are far from the district court and the problem of distance will be twice as great as in the past as it will involve the movement of the resident magistrates who presided in the juvenile court from their duty station.

Even if the judiciary decides to have a temporary arrangement to send the resident magistrate in to the primary court building re- designated as a juvenile court, it will still pose some challenges since the movement from one point to another will involve expenses such as transport allowances and a per diem paid to resident magistrates. The crucial issues concern the whole plan and logistics of temporary arrangements which may be adopted by the Judiciary to solve the problem. How many times can a magistrate visit

a juvenile court for the purpose of determining cases? Once for a week or twice? Is it possible for the magistrate to appear if there is only one case? How about the means of communication from the primary court to a resident magistrate? Is it to be by email, phone or post? Taking into consideration that in some places in which the primary courts are situated, there is no reliable means of communication. How will the plan work if there are enough cases? Will the state be willing and able at that time to fund the exercise? How can a magistrate reach to the juvenile court especially if it rains heavily? Will the plan take into consideration the present infrastructure of our country especially in the mountainous areas like in Lushoto in which if it rains heavily accessibility is impossible. This may result in cases being adjourned until further notice? If the Judiciary takes this decision will it help local people or create more problems for them?

Significantly more should be done to improve the situation once the law will come into operation later this year. It really needs the commitment of the state to fund the exercise. Otherwise the good plan which on paper can not become realistic on the ground.

I am still of the view that there are no apparent reasons why cases should not be presided over by a primary court magistrate. If cases of maintenance of the children born in wedlock can be adjudicated by the primary court magistrate why can similar cases of the children born out of wedlock not be heard by the primary court magistrate also?

It is my observation that, the criteria of legal education used are not appropriate in the adjudication of these cases taking into consideration that both types of official have legal knowledge. What matters is the experience of all concerned is sensitivity of the matter at hand. If the law gave more power to the Chief Justice to appoint an experienced primary court magistrate to adjudicate the matter, things might have been much better, especially at the time in which the law may come into the operation and the plan is difficult to implement.

Therefore, it is my opinion that if the law school curricula for diploma students could be changed, even a primary court magistrate could adjudicates these cases. This may be a more tactful solution because we will have a reasonable number of personnel to deal with maintenance cases. This may cause one to think that the aim of the law is to protect the anonymity of the putative father on becoming known if he has an affair with a certain woman in the surrounding area by considering the requirement of the Affiliation Ordinance in which these cases are instituted in the District Court.

4.1.5 The Recognition of Social Welfare Officers (SWOs)

In the Child law there are provisions which recognize the SWO. For example under section 20 provides the duties of the social welfare officer.

The partial recognition of the role of SWO in the law might not bring much efficiency into the determining of maintenance cases when it comes to implementation. Since de facto in the mean time, SWOs process more cases than the courts do. There is no provision in the law which recognize their current job of inviting the applicant and the respondent to a meeting at which the parties must discuss their differences and attempt to come to an agreement. If the strict provision of the law will be followed, either few cases will be instituted in the court as the applicants will be afraid that they will be intimidated by the court procedures or more cases will be instituted in the court in the first instances since the matter are not referred to the SWOs for consideration.

The law under section 34(1) gives power to the SWO in which its officers may apply to the court to confirm the parentage of the child. Also under section 45(1) and (2) the court may request a social welfare officer to prepare a social investigation report on the issue of maintenance before consideration and the court is bound, after making such an order to consider the social investigation report prepared by the social welfare officer. It is also mandatory under section 99(1)(d) for the social welfare officer to be present during the conducting of proceedings in the juvenile court.

Additionally, currently, only those who got the chance to go to the office for assistance received maintenance and this leaves a huge number of those in need unassisted because they do not know of the existence of SWOs.

It will be of great value if the social welfare office could be established in every district nation wide and in every district there should be more than one office. This will make it easier in terms of accessibility by the social welfare officer to be present during the conducting of proceedings in the juvenile court as the law requires and it will be much easier to conduct the social investigation report by visiting the local people residence in which no much costs if any will be covered.

4.1.6 The Procedures for presenting a Complaint

The Chief Justice under section 99(1) of the Child Act is empowered to make rules on the procedure for conducting proceeding in the Juvenile court. Since the procedure for filing the petition in English seems to be problematic, it is expected that, the current procedure for filing complaints in the primary court will be used in order to ensure that justice is not only done but seen to be done.

Furthermore if one takes into consideration that these NGO organizations do not exist in the interior of the country the requirement of filing petitions in English will not be fair even if those cases are going to be heard by the resident magistrate. It is to be hoped the complaints will be filed and recorded in Swahili because that is the language which is used in the primary court in order for justice to be accessed by many people.

A better solution is that a form drawn up in simple and clear language understood by everybody should be available in the court in where the applicants who know how to read and write should fill in the form. The court personnel should be there to help those who

can not fill in forms for themselves. This may help a lot of applicants because the procedure of filing a petition will no longer be daunting.

4.1.7 Court Fees

The law is silent on the payment of court fees. It is not yet known whether the Chief Justice will make rules to require the applicant to pay court fees as is the custom in the Affiliation cases and other civil cases. Because experience shows that even in the primary court in order for the case to be admitted, the applicant should pay court fees unless she or he made an application to file as a pauper. Since experience shows that majority of the women can not pay the court fees, I am suggesting that there is no need in these cases to demand that women pay court fees. This will also ensure that the best interest of the child is considered because a woman can not have an excuse of filing the petition for not having the court fees. It is not disputed that, apart from the court fees, the cost of transport to the court and income lost by having to take time off work to file the case and attending the hearing must also be calculated.(Armstrong, A.1992) Therefore, unnecessary costs should be eliminated if we really want to protect the interest of the child.

I personally support the remarks of the President of the United Republic of Tanzania in the Silver Jubilee of celebrating quarter of the century of the Court of Appeal of Tanzania. He stated that:

> Inaccessible justice is also justice denied. And I see two main obstacles to justice. The first is cost in terms of time and money. The second is the onerous procedural and bureaucratic complexity that I believe could be lessened.

4.1.8 Court Delays

Section 99(1) of the Law of the Child Act requires that the juvenile court to sit as often as necessary. This is a step ahead as it gives special attention to the maintenance cases. Probably this may reduce the problem of case delays that result from the busy schedule of the court. However, delays on other technicalities may still be there if there is no change in the attitude towards a respondent who applies for an adjournment.

In essence, it will be of more benefit if there could be a circular from the Judiciary to the effect that those magistrates who will be assigned maintenance cases should not be assigned too many other cases in order to give him/her ample time to deal with these cases.

4.1.9 The Rule on Corroboration

In the Child law under section 35, the court shall consider the following as the evidence of parentage in the case of:

(1) The name of the parent entered in the Register of Birth kept by the Registrar of the child;

(2) Performance of the customary marriage by the father of the child;

(3) Public acknowledgement of the parentage; and

(4) DNA results

The above methods will be used for children born out of wedlock because for children born in wedlock there is a perception that when the spouses are married the child born within that marriage is presumed to be the child of the spouse unless one proves otherwise.

The ways of proving paternity under the Child law is not different from that of the Affiliation Ordinance and will still cause difficulty for some single mothers to prove especially when the father denies paternity.

The modern way of testing paternity by having a DNA test which is recognized by the law may be difficult to implement among the most needy class of people because it is very expensive and some of them can not afford this procedure. Among ten men interviewed as to whether they can manage to afford to pay none of them was ready to do so as it costs a lot of money and they can not manage to find it on their income. Also modern methods for testing paternity such as DNA profiling, are not available to the majority of the mothers in the country as a whole.

I am of the view that in order for the justice to be seen to be done and not only to be done, the Government should bear the costs of the DNA test. The test should be free of charge in the Government Hospital at the District level and whenever necessary, the Government should bear the travelling cost to and from the hospital in order to administer justice and to give the child the right to be maintained by his father.

It is very difficult for a single mother to get an independent piece of evidence to corroborate her evidence. Even in the Child law the methods are unrealistic to the majority of women. It really needs the state to intervene on DNA test as it will be the best possible solution for mothers, but issues of cost will probably prevail.

Significantly, the best interest of the child will be in question as far as corroboration of evidence is concerned especially if the father denies paternity. The only method will be the DNA test. Under section 36(2) and (3), if the court is not satisfied with the independent evidence of the mother, the court upon the request or *suo moto* may order a DNA test to be conducted. The court shall make an order as to which party shall bear the cost associated with a DNA test.

It is apparent that the law did not take into account the financial status of most people as it is difficult for them to afford the cost for DNA. Even if that will be the court order, its enforcement will be difficult especially if one does not have that facility available locally.

4.1.10 The Procedure for Executing Maintenance Orders

In the law of the Child Act the methods of executing the maintenance orders are not specifically laid out. The law impliedly recognizes the private negotiation or other methods which seems appropriate between the parties on maintenance issues. The law specifically states that any person who has custody of a child who is the subject of maintenance order is entitled to receive and administer the maintenance order of the court. On the ways in which that person receives relief, the law is silent.

Alternatively, under section 51 the law provides that if the putative father fails to supply necessities for survival and development of the child, he commits an offence and he is liable on conviction to a fine of not less than five hundred thousands shillings is equivalent to USD 376 and not more than five million shillings, equivalent to USD 3803. Alternatively, a person may be imprisoned for a term of not less than six months and not more than three years or to both.

The above punishment shall apply subject to the condition that the order of parentage has been made in respect of the father under which he shall have the duty to contribute towards the welfare and maintenance of the child to supply the necessities for the survival and development of the child and still he neglects to do so as it is provided under section 41 and 46.

In essence this means that, the law recognize the responsibility of both parents to maintain the child and the one who has the custody of the children should receive the

maintenance from the other parent. If the person fails to execute his/her part she/he had committed an offence.

The most efficient way of enforcing a maintenance order is to demand that the money to be deducted from the salary of the one against whom the maintenance order is made if he/she is employed. The arrangement should be done between the court and the employer. If he/she is not employed, sending him/her to the community work might be the best solution in which the income obtained thereof can be paid to the one who has the custody of the child for the maintenance of the child. Now the onus is upon the state to organize for the community work to provide a continuing program for those who fail to provide maintenance for their children. Imprisonment will serve no useful purpose.

CHAPTER FIVE

5.0 DISCUSSION ON THE IMPLEMENTATION OF THE LAW

5.1 What does the experience tell us?

If one look back to the Ordinance and the way it is applicable, it may not prevent one from thinking that there will be some challenges on the implementing and utilizing of the Child law of 2009 when it come into operation. This is due to the fact that, it appears that law are in place but things are not ready for the new law to be applicable. The following remain problematic areas.

5.2 Problems relating to the Juvenile Court

The provision of the Ordinance on where to institute a case causes some problem to the majority of the single mothers due to distance and travelling costs which are involved. This result many women to opt out. The new law brings justice to the people by establishing the juvenile court which will be near residential areas of the local people. But the problem might happen on the capacitating staff and institutional development like in Judiciary and Social Welfare Offices.

The whole plan of the juvenile court depend on the capacitation of staff of the courts and social welfare offices because a resident magistrate is the one who by law is required to presides in the Juvenile court. It is well known that, the plan to send resident magistrates to the primary courts can not be implemented this year. Therefore in order for the juvenile court to work, the state should fund the exercise to cover allowances and per diem of the magistrate. For the social welfare officer who by law is required to be present when the proceeding is conducted in the juvenile court is also questionable. Because

there is no social welfare office in other places of the country at the district level. It means even social investigation reports will be difficult to obtain if the court wants this to take place in determining the amount to be paid as maintenance allowance.

It is not yet to be known if the Government and some donor agencies have been prepared to fund the exercise taking into consideration that we are heading to the General Election in October this year. Also it is yet to be known if the Minister will order some of the provisions of the Ordinance to be applicable when the Child law comes into operation. But from the experience, there was no point in time in which some of the provisions of the law have been suspended after it has been repealed.

5.3 Persistent Problems relating to the Execution of Maintenance Orders

The Ordinance poses some challenges on the execution of the court order. The Child law seems to have failed to provide the solution for enforcing the maintenance order. An unmarried mother may secure an Affiliation order but might fail to execute it. The fine which is stipulated by the law does not take into consideration the circumstances of ordinary people. The fine seems not to be constructive as it will not change attitudes. I think the law could have been given the discretion of the Magistrate to adjust the fine depending on the income/ wealth of the parties.

5.4 Lack of Training for relevant Personnel

In order to effectively implementing and utilizing the Child law, training of the potential personnel is inevitable. Training is rarely given to the social welfare officers and court personnel. There is need for these personnel to be capacitated in terms of training form time to time so as to effectively use the law.

It was mentioned during the interview with the Chairman of the Training Department of the Judiciary that, every worker at the Judiciary is entitled not less than forty hours of training per year. But in practice that is not the case because a worker can finish a whole year without attending any training. It is really doubtful in regard to the child law if magistrates will be conversant with the law. The major problem is the availability of enough funds for training.

The NGO's, Judicial College and other trainers need to work hand in hand to prepare training materials, training manuals, forms and do some research into effective use of the law so that every personnel to do what is required to do by the law. Otherwise the good law on paper may not be matched by the practice.

5.5 Lack of effective Educational and Awareness Programs

Awareness is a critical factor in making sure that the laws benefit its subjects. It is not disputed that the Ordinance was not known to the majority of the women, community leaders and the population at large. Most of them are not aware of the contents of the law. It was uncovered during the research that NGO's plays significant role on information dissemination. But it was also observed that, NGO's need to rethink their mode of information dissemination since some of the methods which they currently use proves some failure as it does not reach the majority of the women. The use of the radio program, brochures, television and newspapers to disseminate information proves some failure. Sometimes it is difficult for a woman to get an opportunity to watch television because they don't have one. Others don't get enough time to listen to the radio due to the patriarchal system which deals with the distribution of work at the household level. The researcher was able to uncover that, majority of the women does not use radio as one of the appropriate methods of getting information as many of the NGO's think. Hence some of them don't even know of the existence of these forms of assistance.

It is my observation that, simple and efficient methods of disseminating information are needed: like having public lectures to the local people residence or establishing paralegal units in every ward/district or providing indoor training, the use of the cell phone and the distribution of pamphlets in public places like in hospitals in which the single mothers may gather/collect when they go to the clinic seems not to be used. All these avenues of assistance are being neglected.

The successful implementation of any law in a country depends on good communication of that law to its people. Not only do the officials in the country need to know the law but also the subjects need to be well informed of their rights if those rights are to be enforced and protected. Because right is not a privilege, something should be done for the children to have a standard of living guaranteed under the law.

I personally support the statements from the Caucus for Children Rights of Tanzania Office which remarked that:

> The key challenges as we move forward is to ensure that this law does not remain an empty gesture for children, there must be more lobbying for:
>
> * Regulation that are practical and achievable to ensure that the terms of the Act can be enforced;
>
> * Continual monitoring of the Act as it plays out on the ground and advocacy for any amendments that may be needed;
>
> * Financing of the Act with increased funding and staffing for the Social Welfare Department and juvenile justice agencies;
>
> * Public information so that all duty bearers and parents fully understand their roles in building better world for children and their mothers

CHAPTER SIX

6.0 DISCUSSION ON THE LAW REFORM PROCESS

6.1 Participation in the Law Reform Process

The smooth running of any plan needs the actual participation of all stakeholders whom they are going to take part in the implementation of that plan. It is doubtful if all important stakeholders have been involved at all in the preparation of the Children law. Interviews with the Justice of the Court Appeal reveal that the Judiciary was not fully involved in the preparation of the Child law. The Justice of the Court of Appeal stated that:

> Some years back before the Bill is presented to the parliament, the Chief Justice is given the proposed Bill to give out the comments. The Chief Justice selects the steering committee which will discuss the proposed Bill and give out some recommendations if any for the Bill to be effectively implemented.

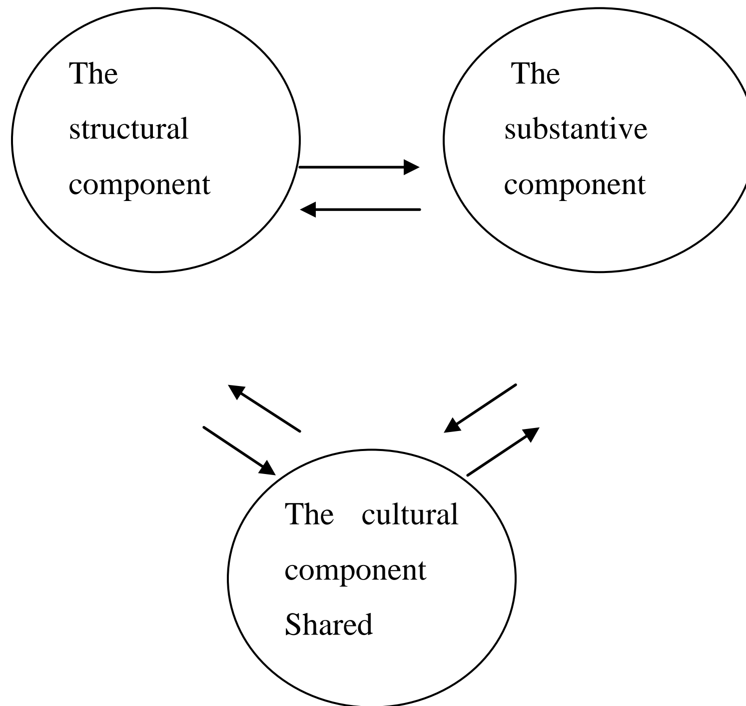
Corresponding by email with the UNICEF Child Rights Specialist-Policy Advocacy and Analysis at Dar es Salamm office (March this year) on whether all stakeholders were involved in the law reform process or not she was of the view that:

> As a normal procedure for law making it is purely government process. Sometimes they do invite stakeholders but it is not mandatory.

It appears that Friedman approach to understanding the structure and interactions of the legal system by breaking it down into by three components: the substantive (the content of the law), the structural (the courts, enforcement and administrative agencies of the state) and the cultural (shared attitudes and behaviours toward the law) was not

considered because some of the personnel who utilizing the law are not aware of what is going on. (Schweler,M.1968)

The diagram below shows the component of the legal system which is in a summary form. The diagram can also be used in the law reform process



As the diagram above illustrates, activities aimed at law reform target the substantive components of the legal system, those aimed at educating people about the law target the cultural component, and those aimed at advocacy within the courts and administrative agencies focus on the structural component of the system.(Schweler,M.1968)

A strategy focusing on the substance of the law is made of activities geared toward changing discriminatory or unjust legislation. The principal activities it might include are

legal and social research to determine the impact of the law on women, and the drafting of alternative legislation. (Schweler,M.1968) This has already been done by changing the Affiliation Ordinance which will be repealed once the Minister publish in the gazette the application of the Child law of 2009.

However, research and lobbying efforts alone are unlikely to produce the desired outcomes unless they are consciously linked to other strategic activities that target the other components of the legal system that is its structure and culture. A strategy focusing on the structural component of the legal system includes activities such as formal legal representation, counsel and advocacy in various forms. The success of the advocacy services is to a large degree contingent of activities which focus on education and awareness raising. (Schweler,M.1968) So far nothing has been done to the structural component. Because up to the time when the data was collected that is early February this year, some of the personnel utilizing the law like the Magistrates and Social welfare officers were not aware of the contents of the law and some they don't have even the copy of the law.

A strategy focusing on the cultural component is made up of the educational strategies which can take a variety of forms like structured community-level legal education programs, media campaigns, public fora, reforms of law school curricula. Their main purpose is to change attitudes and behaviours by raising awareness about the legal status of women and how the law functions to women detriment. (Schweler,M.1968) Also this has yet to be done. It is yet to be known if the personnel responsible for educational strategies wait until the law comes into operation or there is a problem of funds.

It is my observation that, even though some important stakeholders involves like civil organizations, legal experts, academics and children themselves who advocated for the amendment of the law during the public hearing which was said to have been took place in September and October last year. (Caneron, S.2009) But the process of involvement left majority of the citizen not aware of the contents of the law.

The importance of coordinating law reform is to achieve the objective of the legal system by making the law functional for those who have least access to resources within the legal system and thus are the most vulnerable to injustices. Therefore without direct interaction between lawyer or advocate and client or participants these activities will not achieve their objectives. The women clients themselves need to become the participants and to see their own problem as legal problem in order to gain the confidence they need to press their demands. (Schweler, M.1968)

It seems that, the plan of establishing the juvenile court which will deals with the hearing of maintenance cases is not yet in place. Even though there is no need to have a new building since the primary court building will be designated as a juvenile court but the challenge remains to the court personnel who are expected to preside over those cases. Taking into consideration that, when the Minister publish in the gazette a day for the application of a child law, the Affiliation Ordinance will be repealed thus if the plan of establishing the juvenile court is not carried out, there will be a problem on where to accommodate the cases.

In some areas the law might be implemented because in those areas the primary court is near to the district court and resident magistrate's court. It could be easy to assign the resident magistrate to preside over the juvenile court in order to hear maintenance cases. But in other places, the primary court is far from the district and resident magistrate court; therefore the plan could not be easily implemented unless the state funds the exercise of sending the resident magistrate to the juvenile court.

6.2 Conclusion

Tanzania is a party to almost all human rights instrument which obliges countries to inter alia protect and promote the family life for the benefit of its member. On 20th November

1989 many countries in the world including Tanzania came together to adopt the UN Convention on the Rights of the Child. Tanzania signed the Convention on 1st June 1990 and ratified it on 10th June 1991 so it is duty bound to respect it.

Therefore the enactment of the child law is the obligation to Tanzania after ratifying the CRC and ACRWC as one of the way of domesticating and making sure that the legal framework confirm with the international standard. This is because the laws relating to children were many and need to be consolidated by having one law because some of them were not confirm with the CRC and other human right standards like the Affiliation Ordinance.

In addition to that the United Nation Convention on the Rights of the Child Concluding Observation of 2001, 2006 and 2008 to Tanzania insisted on the need to review legal framework. In order to meet the International human rights standard may be that's why they invite some of the external consultants from Oslo, United Kingdom and Netherland. (Corresponding by email from one of the consultants).

All in all there is need for every personnel utilizing the law to know its demarcation as it is required by the law in order to work for the best interest of the child. Therefore there is a need to construct a monetary and evaluation framework which will help to assess how the law is working and how the potential problems are addressed.

In writing this piece of work it is expected that the Law of the Child Act will come into operation soon because now it is on publishing process. This is supported with the corresponding by email from UNICEF representative who stated that

> The publishing process is going on we will soon hear about the Government Notice (GN) number.

But due to some problems which are out of my control I could not able to find out when does exactly the law will come into operation.

My last word to this piece of work is: *"We all have a stake in bringing the law of the Child to life to protect the single mothers and their children from discrimination."*

For easy reference, the following table present the current stages in which all stakeholders for the time being need to focus to in order to use the law effectively when the Minister publish into the Gazette the day in which the law will come into operation.

Stage	Area of law	Activities	Targets	Methods	Problems	Potential outcomes	Corrective Strategies	Progress Assessments
1st stage	Implementing and utilizing	Capacitating staff and institutional development Publication and provision of the law to the Judiciary, implementers	NGO's, trainers, Judicial training institutions, personnel, chiefs etc, those who need to act or intervene	Preparing materials, training manuals ,forms, monitoring Research into effective use of the law	Absence of professionals expertise and understanding of provisions and procedure Lack of access to service providers, Financial constraints	Staff and courts (in)capable of implanting reforms Capacitation of staff, NGO's, courts etc Law passed but no capacitation people use/don't use the law	National training programs if possible lobby donors Assess barrier to utilization and devise appropriate remedies It may be a national governance issue	Ascertain whether staff are able and ready to implement laws Is there interest in new law from community leaders etc.
2nd stage	Dissemination	Preparing broad based multi-directional information campaigns	Population at large, community leaders, religious leaders	Radio, popular theatre, TV, Cartoons, Discussions and simple material for general use	Lack of resources for dissemination, poor, inadequate strategies ,lack of cultural and gender sensitivity	Populations in general have a basic knowledge of the law. Law in place but not known or understood.	Need to mobilize broad based coalitions to spread information. May need to revisit campaign& contents	Determine user rates, both increases and decreases. Assess general level of user understanding

Source: Handout given Prof. Julie Stewart in Research Methods and Methodologies in Women's law lectures (First semester, 2009)

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