

## **CHAPTER FIVE**

### **INTERPRETATION AND ANALYSIS OF THE FINDINGS**

#### **5.1 Introduction**

In this chapter information gathered is organized and analysed according to themes that have resonated throughout the research concerning the orphaned children and their entitlement to family property following the death of their parents from the HIV/AIDS pandemic. For example themes such as orphaning, experience of loss by orphans, stigmatization, vulnerability, insecurity, overcrowding, emotional and psychological trauma, the financial or economic impact, legal entitlement to family property and the social capital available to orphaned children, were drawn out of the data gathering process. This was from both primary and secondary sources including the literature review which was used as a springboard or a reference check for analysing the findings.

#### **5.2 Orphaning and the experience of loss by orphans**

What prevailed from the research as well as literature was that despite the variety of definitions of what constitutes an orphan, a common denominator was that “*orphaning is a process*”. (AIDS orphans in Africa. Building an Urban Response 2001:53). HIV/AIDS put children in a highly compromised position where in search of care and protection they were moved from one location to another. Regrettably even after finding a home they still lost to the pandemic people with whom they had bonded thus becoming repeatedly orphaned.

What also surfaced from this research was that with the scourge of the HIV virus on the young and economically active members of society, children became orphaned at a very young and premature age and were forced to take over adult roles and responsibilities of household headship where they were expected to care for the younger siblings or the elderly and frail in the family. For example in one case during the study one of the 4

children whose mother had died of HIV/AIDS related illnesses was only ten days old and the eldest of the four siblings was only 10 years old. In another case a 15 year girl who was interviewed had already started looking after her frail mother who had been diagnosed with HIV/AIDS and her 10 year old brother whom she also had to assist with homework. As the pandemic continues its spree at the expense of human lives households that are subsequently headed by orphans will continue to increase thus posing a challenge to government, civil society and other role players to stand together to ensure that children retain their rights to secure tenure and are protected against any form of exploitation.

### **5.3 The role of the extended family**

The role played by the extended family in providing support to the orphaned children, came out very strongly in the majority of the responses. Most of the children in the study had aunts and uncles, grandparents and eldest siblings looking after them. They were mainly singled out as providers of care and accommodation to the orphaned children despite existing limitations such as finance and overcrowding which seemed to cut across all the HIV/AIDS households. With the rate of unemployment in Winnie Mandela Park estimated at 70%, it should be expected that families who extend a hand in caring for the children would in one way or another experience financial strains as well as overcrowding. Midgley (1995:89) alludes to the additional financial strains suffered by families who receive orphans from families directly or indirectly affected by HIV/AIDS, or volunteer as caregivers. The challenge therefore is to establish mechanisms to support these extended families.

On the other hand, without undermining the important role played by the extended families one should not lose sight of the fact that amongst these families there are also those who volunteer to care for the orphans out of malicious intentions to abuse the grant. The latter was evident in one case shared by the HIV/AIDS Counsellor during the study where a person who had taken over the custody of the children was found to abuse the children's grant for her own gain and the children had subsequently stayed away from

school due to shortage of school fees. She was subsequently investigated and the children later removed from her custody.

Whilst the role played by some of the extended families in the study was very significant and highly commendable, the danger was the creation of pseudo family structures where children remained perpetual minors and never attained their rights of ownership over family property. The challenge in this regard is for government to put in place stringent policies or a legislative framework that would ensure a smooth transference of family property to children when they reach a contractual age and are ready to take over ownership of family property.

#### **5.4 The role of the Community, and other support structures**

Though few, cases that were reported to the officials or the public, were an indication of the community's involvement and a growing awareness of issues pertaining to HIV/AIDS in the community. In some cases where orphaned children were allegedly thrown out of their original homes by their caregivers, responses commonly indicated that the community or neighbourhood came forward and volunteered to accommodate them despite constraints and limitations they were already experiencing, such as finance and overcrowding.

Other support structures that were actively involved in providing a service to HIV/AIDS affected households in Winnie Mandela Park were, among others, the Family and Child Welfare Department, Department of Social Development, Non-Governmental Organisations such as the Ward AIDS Forum and the Local clinic. The Ward AIDS Forum was evidently playing a pivotal role in unifying all the organizations by facilitating open discussion forums where all organizations met once a month in a local community hall and discussed HIV/AIDS related issues and programmes aimed at promoting HIV/AIDS awareness in the jurisdictional areas of Ekurhuleni Municipality. (Cnlr. Hlatshwayo pers comm., 2003/10/03).

For future research it would be ideal to probe further the background and scope of activities of the latter for the maximum benefit of the community. Findings from previous research have established that effective interventions to assist orphans and affected children should be based in and owned by the affected communities themselves (Department of Social Development 2002:9; Stine 2001:115). HIV/AIDS has a history of crippling the communities, particularly households which are headed by children and driving them to extreme poverty and perpetual dependence.

There is anecdotal evidence of HIV/AIDS people and families being unable to provide care without support and a tendency to draw on a wide range of formal and informal networks to address their needs. (Midgley 1995:89). Therefore a challenge exists for a strong partnership between civil society already involved in Winnie Mandela Park, government and other service providers to work in concert by pulling together all the resources so as to serve a wider community to eradicate poverty. This is particularly important for orphaned children who, after the death of their parents, struggle to earn a decent living.

### **5.5 Stigma and disclosure**

Scholars such as Walker et al (2004:20; Duggan 2000:12) assert that AIDS has a social stigma associated with being primarily sexually transmitted and that children orphaned by the pandemic are stigmatized because of being associated with the disease. When looking at the results of the study, the picture is not different. For example, when interviewed none of the respondents spoke openly and directly about HIV/AIDS. For the researcher this sometimes lead to the difficulty in engaging freely with the respondents during the interviews particularly with child respondents. Comments from the HIV/AIDS Counsellor enunciated this view:

*“When we try to find out about the course of illness of a family member during home visits families mostly blame it on witchcraft. This makes it very difficult to help the family when they live in denial”.*

The same sentiments were shared by the Ward Councillor ( pers comm., 2003/10/07) when he commented about the few cases of HIV/AIDS in Winnie Mandela Park that had been brought to his attention by some members of the community. He pointed out that:

*“When people do not disclose their HIV/AIDS status or that of their family members it is difficult to know how to help them”.*

The above testimonies allude to the fact that in most communities HIV/AIDS is still viewed in a negative light. Those who are affected or infected experience discrimination and ostracism which evoke feelings of insecurity and a perpetual fear of disclosure. The repercussions thereof are that any form of intervention that could have prevailed in favour of these households gets thwarted. A case in point is that of Mrs Lepitse in the study who, whilst dying from an AIDS-related illness, preferred to remain in the custody of her children where she was deprived of adult care rather than being returned to her family in Lesotho.

*“I’ll rather die here with my children. The only thing I wish for is to get an identity document so that I can apply for a house for my children”.*

The side effects of the stigma associated with HIV/AIDS have a much more devastating effect on children who are orphaned by the pandemic. For example once it is discovered that their parents have died due to an AIDS-related illness, they inevitably become vulnerable to multiple forms of abuse such as being driven out of the house by their caregivers or relatives (Loening-Voysey 2000:106).

To dispel the myths about HIV/AIDS, it is imperative to make the community aware that this condition can still be overcome and that people can still continue to lead normal lives. As Walker et al (2004:12) puts it “The new openness is about coping with the stigma rather than removing it...”

## 5.6 Psychological and emotional trauma

The results of the study have confirmed that children who lose their parents or important caregivers to HIV/AIDS related illnesses become traumatised even much earlier when their parents' health condition starts to deteriorate and consequently spend more days in hospital and away from them. Children who are raised by a single parent suffer a double-loss when, subsequent to the death of the parent, their caregivers or any of their siblings also die from the disease (Loening-Voysey 2000:105).

The responses of children in the study acted out the trauma in a variety of ways such as, among others, crying, and reluctance to talk during the interview, playing truant from school, stealing, overprotection of younger siblings and feelings of anger. For example, in one case a child who was being interviewed accused her frail mother of not loving her and preferring her elder sister and younger brother to her. When asked why she was crying, she explained thus:

*“There is nothing I do that my mother sees as right but if my elder sister does something wrong, like not coming back home at night she ignores it”.*

The behaviour of some of the children who were reported to have joined street gangs and another arrested for shoplifting can be viewed as an indication of feelings of anger and resentment postulated in Michael (2001:53). Alluding to this view, the HIV/AIDS Counsellor stated that in one of the affected households they had to quickly remove the children from their uncle's custody as soon as they had received a report that the boy had stopped going to school and had joined a street gang.

Children who are moved away from the family of origin into the custody of another family suffer another trauma as they are challenged to adjust not only to the family but are also estranged to a new circle of friends and an unfamiliar neighbourhood. To endorse this view, Duggan (2000:16) points out that feeling of isolation and estrangement from peer group which results from AIDS-related stigma are particularly painful for

adolescents. Against this backdrop, it is therefore not surprising that most of the children, when asked if they would consider returning to the original home when they grow up, responded with a positive affirmation.

## **5.7 Vulnerability**

Viewed in the context of AIDS, vulnerability according to Loening-Voysey et al (2001:5) can be taken as referring to children living in a household where the duty bearer is ill with AIDS. It also refers to children living in a household that takes in orphaned children. This definition fits in well with the findings in the research where most of the responses indicated a mixed-bag of children who were cared for by their grandparents, ailing parents or by other siblings. In such circumstances children could be vulnerable in various ways. For example, as Chambers (1995:175) puts it, they can be “*exposed to a state of defenselessness where they could fall victim of abuse and any other social anomalies*”. A typical example was where reference was made to children who had been chased out of the house by their caregiver after the death of their parents and were given accommodation by neighbours. In another case, one of the children whose mother had been diagnosed as HIV positive, had started showing signs of rebellion against a male caregiver who had befriended their mother and had offered them a place to stay with him on his premises. Many questions could be asked about the root cause of this child’s rebellious behaviour. For example, had the man started making advances at her and taking an advantage of their mother’s frail condition and dependence on him?

Vulnerability has also been looked at from other perspectives such as, learnt helplessness, powerlessness and from a tripartite explanation consisting of entitlement, empowerment and political economy (Gilbert et al 2002:9). Against this backdrop, the study showed that by virtue of being taken over by caregivers who were mostly relatives, were deprived of any possessions, homes or any forms of entitlement which they rightfully qualified to inherit from their deceased parents. Because of their young age, one would say they were pushed into a position of learnt helplessness where they had no voice or political will to

defend their case. They became victims of the old traditional adage that “in the African culture no child is an orphan”.

Another predominant factor which seemed to cut across in all households in the study was financial vulnerability. The majority of the Caregivers’ dependence on the State grants, contributions from neighbours, support from the local clinic and other charitable organizations was a clear indication of an inability of these households to survive without any external help. Endorsing this view anecdotal evidence tabled in the Government Gazette (1997:89) has proved that, “individuals and households affected by HIV/AIDS turn to a number of sources for financial support”.

The fact that these families resided in shacks and had children of their own meant that taking in additional children would stretch their already strained financial resources beyond the limit. For the children who are taken in as orphans the strain added on them is exacerbated by the already existing trauma which started at the time of observing their parent(s)’ state of health deteriorating and ultimately dying from the pandemic, a condition which renders them emotionally vulnerable (Department of Social Development, undated:5)

### **5.8 Entitlement of orphans to family property and policy implications**

Various scholars such as, among others, Wright (2001:15) and Loening-Voysey (2000:106) have revealed that children orphaned by HIV/AIDS are in one way or another robbed of their rights of ownership or possession of family property when their parent(s) die. In this study different responses have confirmed these notions, as highlighted in the excerpt below:

*“When they (HIV/AIDS Counsellor and Child Welfare Social Workers) removed our mother to Thokoza when she was very ill, our uncle and his wife and children moved in to stay with us”.*

What was also evident from the findings in this study was that many households hide behind an African cultural belief that has been mentioned in previous chapters where no child is an orphan in the presence of neighbours, the community and members of the extended family. Sadly this seems to be used as a shield to clandestinely take over ownership of the house, title deed and the rest of the property rights from the children. This translates into a situation where children become perpetual minors who are continuously dependent and sometimes pushed into learning other unscrupulous means of survival. A case in point is that of Thabo (19) who joined a street gang and Thandi (19) who was arrested for shoplifting. The delay by Local Council in issuing title deeds which was alluded to by one of the Ward Council Housing Officials (per comm., 2003/05/15), further jeopardizes the chances of children in case they find themselves in a situation where they are required to prove ownership of property by their deceased parents.

Such cases and many others confirm that unless clear policies and mechanisms are put in place children will continue to be victims of exploitation and deprivation of their human rights such as entitlement to family property. Officials in the study demonstrated clear knowledge and understanding of the processes and procedures for the transfer of property rights in the event of children becoming orphans. However, most families in the study seemed to lack clarity on how to go about applying for the transfer of a title deed in their name as indicated in one of the responses below.

*“When we went to the office to apply for the papers for the house, they wanted the birth certificates which we did not have and we were turned back”.*

Inconsistency in understanding of the existing inheritance procedures can be interpreted as a lack of communication between the government and its constituents. It also indicates a gap in policy which requires immediate response from the decision and policy makers. Until constructive interventions are put in place and communicated to a level of understanding by all beneficiaries we will continue to have a situation that is plagued with questions such as “what will happen to transfer of properties if both parents die or

what should happen to the housing subsidy if the parents die?” The Mgolombane case cited in Cape Times (September 29, 2003) of the two Khayelitsha girls who were nearly kicked out of their father’s home after his, sets a good precedent for the desperate call for government and other decision makers to review inheritance laws and policies which mitigate in favour of children’s human rights especially the right of entitlement to family property.

## **5.9 Overcrowding**

In the study households in which the orphans were accommodated had large families due to siblings not moving out of the house after reaching the age of maturity. In some cases there were three-generation families residing in the same shack and with all their children staying with them. The highest number of family members housed under the same roof was 11. This was exacerbated by the fact that most of these families had only been formally allocated stands with no properly built top structure. The most common form of accommodation were the self built shacks. This meant everyone squeezed in the same small room used as a make shift for all purposes including the sale of liquor, in some cases. Under such circumstances lack of privacy becomes a foregone conclusion as indicated in some of the responses included in Chapter 4.

Historically, Black families voluntarily or involuntarily are expected to accommodate children who are left destitute by their parents. As indicated in Centre for Policy Studies (2001:54), it is shameful and undignified in African cultural tradition to have children turn to strangers for help while parents’ sisters and brothers become bystanders. The downside of such belief systems and cultural practices, as indicated in this study, is that most families who accommodate orphans into their homes are themselves already overextended. Undoubtedly, this culminates not only in overcrowding but also places a financial burden which inevitably calls for government assistance. The other tragedy is that without privacy children and especially girls, become vulnerable to many forms of violence and abuse such as rape. They are also deprived of space to play, a condition

which, among others leads to “irritability, restlessness and bad temper all round” (Walker et al 2004:58; Pringle 1992:111)

## **Conclusion**

In summary the findings of this study did not differ significantly from those in the literature on key themes that were discussed, namely, overcrowding, vulnerability, stigma, insecurity, financial impact, psychological and emotional trauma and other challenges facing children who are orphaned by the HIV/AIDS pandemic.

What has also emerged from this Chapter is that HIV/AIDS is not only a health related issue but a social problem that requires a joint strategy by government and civil society to resolve. If the Constitutional rights of children particularly orphans who are the main sufferers of the pandemic are to be protected, government and other decision makers face a much greater challenge. There is a need to review policies and mechanisms on the ground that address the inheritance rights of children in order to prevent them from additional scars or trauma of being exploited by their caregivers. The limitations of this study and recommendations are presented in the next chapter.