

# Prostitutes, Orphans, and Entrepreneurs: The Effect of Public Perceptions of Ghana's Girl Child Kayayei on Public Policy

Sheryl Buske

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PROSTITUTES, ORPHANS, AND ENTREPRENEURS:  
THE EFFECT OF PUBLIC PERCEPTIONS OF  
GHANA'S GIRL CHILD *KAYAYEI* ON PUBLIC POLICY

SHERYL BUSKE\*

ABSTRACT

For a variety of reasons, including the growing disparity in resources and opportunities between Ghana's mostly rural North and its urban South, the numbers and patterns of internal migration have changed dramatically over the last twenty years. Historically the province of men, and later women on a temporary basis that was tied to the rainy seasons, young girls between ten and sixteen years of age now make up the majority of the North-South migrants.

The lives of these girl migrants, who live and work in Ghana's markets as porters, known locally as *kayayoo*, are complex and multifaceted. They endure great hardships and are exposed to increasing risks as they struggle to survive while living and working on the streets. As more and more girls travel to the southern cities from their homes in the North, and fewer and fewer of them return on a permanent basis, the number of girl porters on the street at any given time is growing. This growth has had several consequences. The presence of more and more girls on the streets has created greater competition for everything—from jobs to sleeping spaces. Another consequence has been the change in the public perception of the girls. In the past, when the porters were mostly adult women and their numbers were fairly constant, they generally remained below the public's radar. More recently, however, as young girls outnumber adult women working in the markets and when there are not enough jobs to go around, when more girls are turning to prostitution to make ends meet and when the overall scarcity of resources has given rise to greater and more frequent violence, the public has begun to take notice of the girls.

The Ghanaian public has responded to their swelling numbers and increasing visibility in different ways. To some, the girl porters

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\* Sheryl Buske, Assistant Professor at Charlotte School of Law, served as a Fulbright Scholar to Ghana during the 2011–2012 academic year and spent countless hours in the markets with the *kayayei* girls. Immeasurable thanks to the Fulbright Scholar program for making this research possible, to Sister Olivia at the Street Children's Project in Kumasi for her guidance, wisdom and humor, and for always asking "So what?", to fellow Fulbrighter Kelli Summers for technical assistance, and enormous gratitude and respect for all the girls who allowed me into their lives and trusted me with their stories.

are dirty, street criminals to be avoided. To others, they are victims of circumstances and deserving of benevolence and protection. To others still, the girl porters are no different than any other person who makes a rational decision to relocate in an attempt to improve their situation and they are therefore not entitled to any special treatment or deference.

In the fifty-plus years since its independence, Ghana has developed public policies across a range of critical areas. Three of these areas—child labor, education, and health care—are particularly relevant to the girl porters and reflect a range of punitive, protectionist, and laissez-faire social policy models. This Article argues that the *kayayei* girls do not benefit from these key public policies because, in part, the government officials who determine the shape and reach of public policy, and the frontline people who are tasked with its implementation and administration, are the very people who view the girls as prostitutes, orphans, or entrepreneurs. Quite simply, numerous problems in the sprawling Ministries system, including the lack of systematic oversight, inconsistent practices across districts, limited resources, and insufficient personnel training have resulted in a system in which individuals exercise enormous deference in public policy implementation. The consequence for the girls, then, is that more often than not whether they can access the benefits of public policies depends on one person's perception of girl porters. It is no surprise then that, because much of the public's perception of the girls is negative or indifferent, the girls have largely failed to benefit from public policies.

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## INTRODUCTION

For a variety of reasons, including the disparity in resources and opportunities between Ghana's mostly rural North and its urban South, the numbers and patterns of internal migration have changed greatly over the last twenty years. Historically the province of men,<sup>1</sup> and later women on a temporary basis that was tied to the rainy seasons, young girls between ten and sixteen years of age now make up the majority of the North-South migrants.<sup>2</sup>

The lives of these girl migrants, who live and work in Ghana's sprawling markets as porters, known locally as *kayayei*,<sup>3</sup> are complex and multifaceted. They endure great hardships and are exposed to increasing risks as they struggle to survive while living and working on the streets. As more and more girls travel to the southern cities from their homes in the North, and fewer and fewer of them return on a permanent basis, the number of girl porters on the street at any given time is growing.<sup>4</sup> This growth has had several

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1. Stephen O. Kwankye et al., *Independent North-South Child Migration in Ghana: The Decision Making Process* 11 (Dev. Research Ctr. on Migration, Globalisation & Poverty, Working Paper T-29, 2009), available at [http://www.migrationdrc.org/publications/working\\_papers/WP-T29.pdf](http://www.migrationdrc.org/publications/working_papers/WP-T29.pdf) (noting that head portering in Ghana was initially a "male domain").

2. Stephen O. Kwankye et al., *Coping Strategies of Independent Child Migrants from Northern Ghana to Southern Cities*, 24 (Dev. Research Ctr. on Migration, Globalisation & Poverty, Working Paper T-23, 2007) [hereinafter Kwankye et al., *Coping Strategies*], available at [http://www.migrationdrc.org/publications/working\\_papers/WP-T23.pdf](http://www.migrationdrc.org/publications/working_papers/WP-T23.pdf) (noting that the presence of younger girls migrating to the South is a "relatively recent phenomenon").

3. "*Kayayei*" is the plural form of "*Kayayoo*," a term which is used by the Ga people, a Ghanaian ethnic group, to describe the girls and women who work as porters in the urban markets by carrying loads on their heads in large metal pans or bowls for a fee. Muriel Adjubi Yeboah & Kwame AppiahYeboah, *An Examination of the Cultural and Socio-Economic Profiles of Porters in Accra, Ghana*, 18 NORDIC J. AFR. STUD. 1, 2 n.1 (2009). The term "*kayayoo*" itself reflects the very history of the *kayayei*: "*kaya*" is the Hausa word for "load," which reflected the early dominance of men as porters, and the relatively recent addition of "*yoo*" rendered the word female. Kwankye et al., *Coping Strategies*, *supra* note 2, at 8.

4. See Mariama Awumbila, *Internal Migration, Vulnerability and Female Porters in Accra, Ghana*, POPULATION ASS'N OF AM.: 2007 ANN. MEETING PROGRAM 1-2 (2007), available at <http://paa2007.princeton.edu/papers/70865>.

consequences. The presence of more and more girls has created greater competition for everything—from jobs to sleeping spaces. Another consequence has been the change in the public perception of the girls. In the past, when the porters were mostly adult women and their numbers were fairly constant, they were largely invisible to the public—just another aspect of urban living. More recently, however, as young girls outnumber adult women working in the market and when there are not enough jobs to go around, when more girls are turning to prostitution to make ends meet and when the overall scarcity of resources has given rise to greater and more frequent violence, the public has begun to take notice of the girls.

Drawing on the author's own empirical research as a Fulbright Scholar in Ghana,<sup>5</sup> and that of others, Part I of this Article begins with an overview of the history of internal migration and the historical practice of head portering in Ghana before moving on to a brief discussion of the current practice of head portering among adolescent and young girls. Part II takes up a discussion of the public perception of the porters. Part III describes specific child labor, education, and health care public policies. The Article then argues that the views of the government officials who determine the shape and reach of public policy, and the frontline people who are tasked with its implementation and administration, drastically limit policy implementation with respect to *kayayei* girls due to individual biases of the girls as criminals, victims, and entrepreneurs. Quite simply, numerous problems in the sprawling Ministries system, including the lack of systematic oversight, inconsistent practices across districts, limited resources, and insufficient personnel training have resulted in a system in which individuals are given enormous deference in public policy implementation. The consequence for the girls, then, is that more often than not whether they can access the benefits intended by public policies depends on one person's perception of

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5. Over the course of the Fulbright Appointment, the author conducted three major surveys, with the help of translators, in Kumasi, Ghana. The Community Survey (1119 respondents) focused on public perception of the *kayayei* girls. The goal of the Community Survey was to obtain an understanding of what the general public thinks about the growing presence of young girls in the markets working as *kayayei*. A second survey, the *Kayayei* Survey (737 respondents), explored the reasons the girls migrate to the cities and what their life is like once they arrive. A third survey, the Parenting Survey (231 respondents), focused exclusively on *kayayei* who have a child or have been pregnant. The goal of this survey was to explore the special situation of pregnant and parenting *kayayei*. In addition to the formal surveys, the author conducted focus groups with small groups of girls; the focus groups were informal and topics were determined by the girls. In addition, the author spent considerable time at the Street Children Project's Drop-In Center talking with the girls and the NGO staff. Finally, much of the author's understanding of the daily lives of the *kayayei* girls came from days and days spent in the streets with them as they went about their normal routines.

girl porters. It is no surprise, then, that because much of the public's perception of the girls is negative or indifferent, the girls have largely failed to benefit from public policies.

## I. INTERNAL MIGRATION AND THE HEAD PORTERS OF GHANA

Internal migration in Ghana has changed drastically in the last twenty years or so. Migrants have gone from being primarily men to adolescent girls in search of jobs as *kayayei*.<sup>6</sup> The experience of the girls on the streets has also changed dramatically. What was once a temporary situation with controlled risks is now a permanent situation for a growing number of the girls who face daily challenges to simply surviving.

### *A. Internal Migration in Ghana and the Historical Practice of the Kayayei*

Intra-country migration, from the rural northern regions (the Northern Region, the Upper East Region and the Upper West Region) to the urban southern regions,<sup>7</sup> has always existed in Ghana.<sup>8</sup> As far back as the British colonial period, and stretching through to the current time, the northern regions have largely been viewed as the source of labor necessary for the South.<sup>9</sup> More recently even, since Ghana's independence in 1957,<sup>10</sup> the post-colonial government's policy of concentrating resources in the southern urban regions has resulted in significant imbalances in the development between the

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6. See *infra* Part I.A–B.

7. Ghana is divided into ten regions, including: the Volta Region, the Eastern Region, the Greater Accra Region, the Upper East Region, the Central Region, the Western Region, the Ashanti Region, the Brong-Ahafo Region, the Northern Region, and the Upper West Region. K.A. TWUM-BAAH ET AL., GHANA STATISTICAL SERV., GHANA CHILD LABOUR SURVEY 1 (2003), available at <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=690> (explaining that the ten administrative regions are then “further divided into 110 districts, which are the basic units of administration”).

8. For a detailed discussion of the history of internal migration in Ghana, see Kwankye et al., *Coping Strategies*, *supra* note 2, at 6–7; Stephen O. Kwankye, *Independent North-South Child Migration as a Parental Investment in Northern Ghana*, 18 POPULATION, SPACE & PLACE 535, 535–50 (2012) [hereinafter Kwankye, *Migration—Parental Investment*], available at <http://iussp2009.princeton.edu/papers/90834>; see also Kwankye et al., *supra* note 1; Awumbila, *supra* note 4, at 1.

9. Awumbila, *supra* note 4, at 1; Kwankye et al., *Coping Strategies*, *supra* note 2, at 6 (noting that the North was, and is, the “labour reserve” of the South); Ann M. Oberhauser & Muriel A. Yeboah, *Heavy Burdens: Gendered Livelihood Strategies of Porters in Accra, Ghana*, 32 SING. J. TROPICAL GEOGRAPHY 22, 23 (2011) (stating that current migration patterns have “historical roots” in the colonial era when the North was considered a labour reserve).

10. *The World Factbook: Ghana*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html> (last visited Jan. 10, 2014).

North and South.<sup>11</sup> As a result, very little effort or resources have been invested in developing the North.<sup>12</sup> Schools and hospitals have suffered in particular.<sup>13</sup> In contrast, and at the same time, significant efforts and resources have been invested in developing the South.<sup>14</sup> One of the consequences to the southern development at the expense of the North is the high concentration of poverty in the northern regions, the highest in the country, which has, not surprisingly, directly contributed to the increasing rates of North-to-South migration.<sup>15</sup> Notably, the increase in the depth and breadth of poverty in the North has occurred even while the poverty levels across the country as a whole have decreased.<sup>16</sup>

Not only have the numbers of North-to-South migrants looking for better opportunities increased dramatically, but changes in migration patterns are also evident. Historically, it was almost exclusively Ghanaian men who traveled from the rural North to the urban South in search of employment.<sup>17</sup> By the early 1990s, as conditions continued to deteriorate in the North, women joined the long line of people going south in search of better opportunities.<sup>18</sup>

In Ghana, women have traditionally been “highly economically active,” most significantly in the informal markets.<sup>19</sup> Once in the cities, the women generally join the *kayayei* workforce because it requires very little initial investment.<sup>20</sup> As part of the informal labor force, the *kayayei* are self-employed. The women work in the markets carrying goods, in large metal pans on their heads, in and out on

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11. Kwankye et al., *Coping Strategies*, *supra* note 2, at 5–6; *see also* Kwankye, *Migration—Parental Investment*, *supra* note 8, at 535–36 (noting the historic “spatial imbalance in development” in Ghana).

12. Awumbila, *supra* note 4, at 1; *see also* Kwankye et al., *Coping Strategies*, *supra* note 2, at 5–6 (noting that government development priorities have been “skewed” in favor of the South).

13. Ernest Harsch, *Closing Ghana’s National Poverty Gap: North-South Disparities Challenge Attainment of Millennium Development Goals*, U.N. AFR. RENEWAL (Oct. 2008), available at <http://www.un.org/africarenewal/magazine/october-2008/closing-ghana%E2%80%99s-national-poverty-gap>.

14. Awumbila, *supra* note 4, at 1; *see also* UNICEF, CHILDREN IN GHANA 23 (2009) (noting statistics from the Ghana Statistical Service show that although poverty declined across the country, it actually increased in the three northern regions).

15. Awumbila, *supra* note 4, at 1.

16. *Id.*

17. *Id.* at 1–2.

18. ERIC BEAUCHEMIN, CATHOLIC ACTION FOR ST. CHILDREN & UNICEF, THE EXODUS: THE GROWING MIGRATION OF CHILDREN FROM GHANA’S RURAL AREAS TO THE URBAN CENTRE 1 (Dec. 1998–Mar. 1999), available at [http://www.streetchildren.org.uk/\\_uploads/Publications/4.The\\_Exodus\\_-\\_The\\_Growing\\_Migration\\_of\\_Children\\_From\\_Ghana%E2%80%99s\\_Rural\\_Areas.pdf](http://www.streetchildren.org.uk/_uploads/Publications/4.The_Exodus_-_The_Growing_Migration_of_Children_From_Ghana%E2%80%99s_Rural_Areas.pdf); *see also* Awumbila, *supra* note 4, at 1–2.

19. Seema Agarwal et al., *Bearing the Weight: The Kayayoo, Ghana’s Working Girl Child*, 40 INT’L SOC. WORK, 245, 245 (1997).

20. *Id.* at 245–46.

foot. Several factors contribute to the need for human transport, as opposed to moving goods via trucks and other vehicles.<sup>21</sup> First, for example, the human congestion of the markets makes vehicle traffic very difficult and slow.<sup>22</sup> Second, because much of what is bought and sold in the markets is for resale by other petty traders, the loads tend to be bigger and heavier than the average customer is interested in carrying, but still too small to require a van or truck for transport.<sup>23</sup> Third, the *kayayei* system allows the customer to keep their goods in sight at all times which is believed to prevent theft.<sup>24</sup> Finally, many of the markets have developed and sprawled across the land in rabbit warrens of narrow alleyways, tunnels, and steep stair passages which make vehicle traffic impossible.<sup>25</sup> In total, these factors likely mean that the porters will be a market necessity for the foreseeable future.<sup>26</sup>

### *B. The New Reality of the Kayayei Girls*

More and more the female migrants traveling south in search of *kaya* jobs are young girls.<sup>27</sup> The earliest waves of the girls tended to be older adolescents who traveled during the rainy seasons with the intention of working in the markets short-term and then returning to their northern villages after they earned some money.<sup>28</sup> Recently, however, girls as young as eight years old are making the trips south.<sup>29</sup> Equally worrying, they are staying longer in the cities, and many never return home.<sup>30</sup> There is much to be said about the daily reality of the *kayayei* girls, however, that discussion is outside the scope of this Article. Instead, the following brief overview of their day-to-day lives is intended as background and context for the discussions that follow.<sup>31</sup>

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21. *Id.*

22. *Id.* at 246.

23. *Id.*

24. *Id.*

25. For example, the Kejetia Central Market in Kumasi, often described as the largest open-air market in West Africa, is reported to cover over twelve hectares and have more than ten-thousand traders. *Kejetia Market*, GHANA NATION, <http://www.ghananation.com/tourism/Kejetia-Market.asp> (last visited Jan. 10, 2014).

26. Agarwal et al., *supra* note 19, at 246.

27. Awumbila, *supra* note 4, at 1–2; see also Kwankye, *Migration—Parental Investment*, *supra* note 8, at 535 (describing the north-south migration of children as a “relatively new development”).

28. Awumbila, *supra* note 4, at 3.

29. *Id.* at 2.

30. Interview with Sister Olivia, Director, Street Children’s Project, Kumasi, Ghana (Nov. 3, 2011) (on file with author); see also Beauchemin, *supra* note 18, at 30–31.

31. For a detailed discussion about the day-to-day lives of *kayayei*, see Agarwal et al., *supra* note 19; James Adu Opere, *Kayayei: The Women Head Porters of Southern Ghana*, 18 J. SOC. DEV. AFR. 33, 33–48 (2003).

### 1. *Why They Go*

The reasons behind individual girls' migration to the South for *kaya* work are as varied as the girls themselves. Poverty is often cited as the catch-all reason.<sup>32</sup> It is certainly true that most of the girls come from poor families, but poverty alone does not explain why the girls migrate. There are, after all, lots of very poor families whose daughters do not go south to work in the markets.<sup>33</sup> What, then, accounts for the difference? It is poverty *plus* something else.<sup>34</sup> Poverty alone, without more, is generally not enough to cause children to move to the streets. For example, researchers in Tanzania have identified the "something else" as abuse in the home, or the death of a caretaker.<sup>35</sup> In the context of Ghana's *kayayei* girls, "something else" includes: parental requirement, escaping abusive families, "bright lights syndrome," and the "fostering" system.<sup>36</sup>

*Parental Requirement:* Sending their daughters south to work in the southern markets is a common "coping strategy" for poor families.<sup>37</sup> For some parents, it is a "strategic economic investment" against poverty.<sup>38</sup> Sending the girls to the markets accomplishes two key things: parents no longer must bear the cost of the departed girl, and parents usually receive some remittance from their daughter's earnings.<sup>39</sup> Indeed, in a survey by the author of 737 *kayayei* girls (*Kayayei Survey*), the most common reason given by the girls for migration to the markets was "parental requirement."<sup>40</sup>

32. Christiana Kangsangbata, *Streetism and Child Labour in the Wa Municipality of Ghana: A Gender Analysis of Drivers*, 1 *STUD. GENDER & DEV. AFR.* 14, 19 (2008) (noting poverty is "known to be a major cause of child labour").

33. See KAMAL FAHMI, *BEYOND THE VICTIM: THE POLITICS AND ETHICS OF EMPOWERING CAIRO'S STREET CHILDREN* 119 (2007) (arguing that poverty and family dysfunction, without more, fail to explain why the "vast majority" of children in poor, dysfunctional families don't end up on the streets).

34. HANNAH JOHNSON ET AL., *MKOMBOZI CTR. FOR ST. CHILDREN, RESPONSES TO CHILD VULNERABILITY—WHY DO CHILDREN MIGRATE TO THE STREETS IN TANZANIA?* 6–7 (2005), available at [http://mkombozi.org/publications/research\\_report/2005\\_09\\_research\\_report\\_child\\_vulnerability.pdf](http://mkombozi.org/publications/research_report/2005_09_research_report_child_vulnerability.pdf).

35. *Id.* at 7.

36. See *infra* Part I.B.1.

37. Kwankye, *Migration—Parental Investment*, *supra* note 8, at 535–36; see also Agarwal et al., *supra* note 19, at 247 (noting that many girls are sent to the southern markets specifically to "undertake the *kaya* business"); JULIETTE TUAKLI ET AL., *WORLD EDUC. GHANA, SITUATIONAL ANALYSIS OF VULNERABLE CHILDREN IN GHANA* 23 (2006), available at [http://ghana.worlded.org/Docs/ghana\\_vulnerability\\_study\\_jun06.pdf](http://ghana.worlded.org/Docs/ghana_vulnerability_study_jun06.pdf) (noting that parental expectations are the "driving force" behind girls going to work).

38. Kwankye, *Migration—Parental Investment*, *supra* note 8, at 536.

39. See *id.* at 541.

40. Sheryl Buske, *Kayayei Survey*, Responses to Question 30 (2011) (on file with author). Other studies have found "parental requirement" to be the reason for migration

The girls' responses to their parents' decisions varied greatly. Some girls, for example, saw nothing wrong with their parents' decision and were more than willing to contribute to the family finances.<sup>41</sup> Others resented the decision for a number of reasons, including: it interrupted their school attendance,<sup>42</sup> they missed their family and wanted to go home,<sup>43</sup> and they felt it was wrong of their parents to expect children to work to support the family.<sup>44</sup>

"*Exodus Factor*" or the "*Bright-Lights Syndrome*": A growing number of the girls are migrating to the South as a result of what has been called the "*Exodus Factor*"<sup>45</sup> or the "*Bright-Lights Syndrome*."<sup>46</sup> Unrelated to any cultural, religious, or even economic reason, the exodus factor is simply the "follow the crowd" rationale in that "everyone is leaving so I must also leave."<sup>47</sup> The impetus for this decision is often greatly influenced by the perception that it is easy to "get rich" working in the markets—a conclusion evidenced by the (comparative) wealth in goods and money girls proudly display when they return to their villages for visits.<sup>48</sup> Further, some girls report

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for as many as half of the girl *kayayei* in Kumasi; see also Kwankye, *Migration—Parental Investment*, *supra* note 8, at 540–41.

41. For example, many of the girls were proud of their ability to contribute to the family finances. As one sixteen-year-old girl said, "I am the oldest so it is my responsibility to help my parents cater for my brother and sisters. This is how we are." Sheryl Buske, *Kayayei Survey*, Book 3 #011412 (2011) (on file with author).

42. For example, a fifteen-year-old girl who had previously started primary school, but was unable to complete it because her parents sent her to work in the markets, was unhappy with her parents because "I should be in school now instead of in the market." Sheryl Buske, *Kayayei Survey*, Book 5 #020912-145F (2011) (on file with author).

43. A twelve-year-old girl who had been sent to the markets by her "auntie" more than a year before said she would "be happy to go home as I miss my mother and my sister. I feel sad without them." Sheryl Buske, *Kayayei Survey*, Book 4 #031112 (2011) (on file with author).

44. For example, one fourteen-year-old girl who had been working in the markets for more than three months felt it is a parent's responsibility to see to children instead of children having to provide for the family. She said, "[c]hildren should not be made to work to survive." Sheryl Buske, *Kayayei Survey*, Book 6 #021912-249M (2011) (on file with author).

45. Yeboah & Appiah-Yeboah, *supra* note 3, at 13–14.

46. Ruth Payne, *Voices from the Street: Street Girl Life in Accra, Ghana*, 16 (Ctr. for Dev. Areas Research, Dep't of Geography, CEDAR Research Paper No. 40, Jan. 2004) available at [http://www.streetchildren.org.uk/uploads/Publications/3.Voices\\_from\\_the\\_Street\\_-\\_Street\\_Girl\\_Life\\_in\\_Accra,\\_Ghana.pdf](http://www.streetchildren.org.uk/uploads/Publications/3.Voices_from_the_Street_-_Street_Girl_Life_in_Accra,_Ghana.pdf).

47. Yeboah & Appiah-Yeboah, *supra* note 3, at 13–14.

48. *Id.* at 14; see also MAX ASSIMENG, SOCIAL STRUCTURE OF GHANA: A STUDY IN PERSISTENCE AND CHANGE 228 (2d ed. 1999) (noting that historically, amenities such as water and electricity, movies and readily available goods were only available in the cities); JOHN ANARFI ET AL., DEV. RESEARCH CTR. ON MIGRATION, GLOBALISATION & POVERTY, VOICES OF CHILD MIGRANTS: "A BETTER UNDERSTANDING OF HOW LIFE IS" 14 (2005) available at [http://www.dfid.gov.uk/r4d/PDF/Outputs/MigrationGlobPov/Voices\\_of\\_Children.pdf](http://www.dfid.gov.uk/r4d/PDF/Outputs/MigrationGlobPov/Voices_of_Children.pdf) (quoting a thirteen-year-old *kayayoo* who "developed the desire to come to Accra after observing those who have returned to my home town from Accra. They have nice

that even when they do not want to join the crowd going south, they are often pressed, even forced, to go by parents and family who want the same money and goods they see other girls who have gone to the cities sending home to their families.<sup>49</sup> There is “considerable prestige,” i.e., bragging rights, to having been to the city—whether personally or being related to someone who has.<sup>50</sup>

Similarly, many girls say they migrated because they wanted their independence.<sup>51</sup> In fact, independence was the second most common reason given for migrating, after parental requirement.<sup>52</sup>

“*Fostering*” System: There is another aspect of the Ghanaian culture, a practice particularly common among the Dagomba, the largest ethnic group in Northern Ghana,<sup>53</sup> which greatly contributes to young girls migrating to the southern cities to work as *kayayei*.<sup>54</sup> The practice is to “give” young girls to extended family members, primarily paternal aunts, as a way of strengthening family ties.<sup>55</sup> The “giving” of the girls effectively ends parental responsibility for them and imposes that responsibility onto the aunts who are expected to raise the girl as their own.<sup>56</sup> As the economic situation in the North has deteriorated, the practice has become strained. Very often the aunts send the girls to work in the markets on their own.<sup>57</sup> Alternatively, the aunts “give” the girls to third parties who are supposed to look after them as they work in the markets.<sup>58</sup> These girls are often treated as bonded labor and subjected to all forms of abuse and neglect.<sup>59</sup>

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clothes, straightened hair and a lot of things like utensils and sewing machines . . . so I decided to come so that I can also get these things”).

49. Interview with Sister Olivia, Director Street Children Project Drop-In Center, Kumasi, Ghana (Nov. 1, 2011) (on file with author); see also Kwankye, *Migration—Parental Investment*, *supra* note 8, at 536.

50. ASSIMENG, *supra* note 48, at 228 (noting how someone returning to the village after being in the city is the “centre of attraction”); see also Beauchemin, *supra* note 18, at 25 (noting the peer pressure involved when the girls visit their villages wearing miniskirts, high heels, and make-up).

51. Beauchemin, *supra* note 18, at 28.

52. Sheryl Buske, *Kayayei Survey*, Responses to Question 30 (2011) (on file with author).

53. IBRAHIM MAHAMA, *HISTORY AND TRADITIONS OF DAGBON*, at i (2004).

54. Yeboah & Appiah-Yeboah, *supra* note 3, at 13.

55. *Id.*; MAHAMA, *supra* note 53, at 146–47.

56. Yeboah & Appiah-Yeboah, *supra* note 3, at 13; MAHAMA, *supra* note 53, at 146–47.

57. Yeboah & Appiah-Yeboah, *supra* note 3, at 13.

58. Interview with Sister Olivia, Director Street Children Project Drop-in Center, Kumasi, Ghana (Nov. 11, 2011) (on file with author); see also Yeboah & Appiah-Yeboah, *supra* note 3, at 13.

59. For example, the author got to know one little girl who regularly came to the Street Children’s Project Drop-In Center fairly well. “N” was about five or six years old and had been given to one “auntie” who later passed her onto another “auntie” who eventually took her to Kumasi. Her “job” was to look after the auntie’s nine-month-old

There is also a variation on the “fostering” system. Recognizing that the word “[s]lavery is a loaded term, particularly in Africa,” some researchers have identified a practice they argue amounts to a modern day version of slavery.<sup>60</sup> More and more often young girls are arriving in the markets after their parents or guardians have “given” the girl to a “madam” who promises to employ the girl for a period of time—usually two years—and then send her to a vocational training school or provide her with things such as sewing machines.<sup>61</sup> Accounts by the girls themselves, however, reveal that very few of them ever actually receive the promised reward.<sup>62</sup> Instead, before the two years expire, the girls will be thrown out or will run away because the situation has become intolerable.<sup>63</sup>

*Escaping Abuse or Arranged Marriages:* Finally, some girls migrate without their families’ knowledge, consent, or blessing because they are running from abuse and/or neglect.<sup>64</sup> Almost fifteen percent of the girls interviewed reported they left home because of abuse from their parents or other relatives.<sup>65</sup> Several girls noted that even though their lives on the street are difficult, they prefer it over living at home where they were abused. For example, a sixteen-year-old girl who had been working on the street for almost a year said, “at least here I am free from my aunt’s abuse.”<sup>66</sup>

A smaller number of girls said they migrated to avoid an arranged marriage. Arranged marriages are particularly common among the Dagomba.<sup>67</sup> The marriages are arranged by the parents, often without any prior relationship between the two people, and can be arranged when the couple are still children.<sup>68</sup> The girls

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son. At the auntie’s house, “N” was responsible for feeding and bathing the infant and doing his laundry. During the day, while the auntie worked in the market, “N” spent most of her day at the NGO center looking after the baby. Center staff nominally kept an eye on her and the baby, but she was mostly left on her own to look after the child. When the Center was closed, “N” spent the time sitting with the infant in the sun on the curb at a busy intersection. When asked about the “auntie,” she stated that she had never seen her before the day when the first auntie gave her to the woman. “N” is a sweet child with heavily kohled eyes; she misses her mother and wants to go home. Interview with Sister Gladys, Social Worker, Street Children’s Project, Kumasi, Ghana (Nov. 21, 2011) (on file with author).

60. Beauchemin, *supra* note 18, at 37.

61. *Id.*

62. *Id.*

63. *Id.*

64. Sheryl Buske, *Kayayei Survey*, Responses to Question 30 (2011) (on file with author).

65. *Id.*

66. Sheryl Buske, *Kayayei Survey*, Book 8 #012912-112F (2011) (on file with author).

67. *Who Are the Dagomba*, GHANA NEWS-SPYGHANA, <http://www.spyghana.com/who-are-the-dagomba> (last visited Jan. 10, 2014).

68. *Id.*

sometimes see running away to work in the markets as a way to avoid an arranged marriage.<sup>69</sup> As one fifteen-year-old girl explained, “I do anything I like without family interference now. I was forced to marry a man I never loved but now I have made my own choice of the man to be with forever.”<sup>70</sup>

## 2. *Their Life in the City*

*Kayayei* have been research subjects for more than two decades, however, the research has only recently begun to specifically focus on *girl kayayei*. A basic profile was developed first, and then more recent research began to focus on the girls’ day-to-day lives in the streets.<sup>71</sup> Slowly, a multidimensional picture of the girls is emerging. As others have noted, “[f]igures and dry facts, however, do not do justice to the rich diversity of street children’s backgrounds, nor to the poignancy of some of their stories.”<sup>72</sup>

*Demographic Characteristics:* The girls come primarily from the three northern regions of Ghana—the Northern Region, the Upper East Region and the Upper West Region.<sup>73</sup> These are the most economically deprived regions.<sup>74</sup> As the Dagomba are the largest ethnic group in the North, it is not surprising that the majority of the *kayayei* girls are Dagomba.<sup>75</sup> Most of the girls are older adolescents—more than half are between fifteen and eighteen years old;<sup>76</sup> younger

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69. For example, one sixteen-year-old girl said, “[m]y life at home was better than this but I was escaping an early marriage and it was necessary to leave.” Sheryl Buske, *Kayayei Survey*, Girls Book 6 #021512-56M (2011) (on file with author).

70. Sheryl Buske, *Kayayei Survey*, Girls Book 64 #0201412-92F (2011) (on file with author).

71. See Opare, *supra* note 31, at 33.

72. Beauchemin, *supra* note 18, at 32.

73. Opare, *supra* note 31, at 42 (concluding that almost eighty percent of the *kayayei* are from the northern regions); Kwankye et al., *Coping Strategies*, *supra* note 2, at 10 (concluding that sixty percent of the *kayayei* girls were from the Northern Region). These findings are consistent with the author’s survey which revealed that slightly more than sixty-five percent of the girls were from the Northern Region. Sheryl Buske, *Kayayei Survey*, Responses to Question 8 (2011) (on file with author).

74. For example, eighty percent of the people living in three northern regions are poor and seventy percent are extremely poor. Kwankye et al., *Coping Strategies*, *supra* note 2, at 6; see also UNICEF, NATIONAL REPORT GHANA: GLOBAL STUDY ON CHILD POVERTY AND DISPARITIES 18 (2009), [http://www.unicef.org/socialpolicy/files/Ghana\\_reportdesign\\_July2010.pdf](http://www.unicef.org/socialpolicy/files/Ghana_reportdesign_July2010.pdf) (noting that poverty actually declined in Ghana since the early 1990s except in the northern regions where it has actually increased).

75. Kwankye et al., *Coping Strategies*, *supra* note 2, at 8.

76. For example, see *id.* at 10; Theresa Yaaba Baah-Ennumh et al., *The Living Conditions of Female Head Porters in the Kumasi Metropolis, Ghana*, 3 J. SOC. & DEV. SCI. 229, 234 (2012). This is consistent with the author’s survey, which found the girls ranged from nine to eighteen years old, that the largest groups of girls (eighteen percent) were seventeen years old and the average age of the girls was 14.2 years. Sheryl Buske, *Kayayei Survey*, Responses to Question 2 (2011) (on file with author).

girls—between ten and fourteen years old—account for roughly thirty percent of *kayayei* girls.<sup>77</sup> Although some of the girls have lost both parents, most of the girls have parents they remain in touch with on a regular basis.<sup>78</sup> A significant number of the girls had never been to school.<sup>79</sup>

*Daily Working Life:* Their working days are long, typically eight to twelve hours per day, six days a week.<sup>80</sup> The girls report they typically earn between one and five cedis (less than three USD) per day.<sup>81</sup> They generally work in the markets or bus stations—anywhere someone will likely need something carried.<sup>82</sup> They negotiate their fees on a customer by customer basis.<sup>83</sup> Fees are based on the distance the goods must be carried as well as the weight and size or bulkiness of the load.<sup>84</sup> There is a preference for porters who are not

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77. Kwankye et al., *Coping Strategies*, *supra* note 2, at 11–12. The physical demands of *kayayei* work tend to prevent the youngest and the smallest girls from working. The job requires the ability to carry heavy loads long distances over a difficult terrain. Young girls generally do not have the necessary strength and/or balance. Additionally, young girls have a difficult time attracting customers because of the preference for older girls.

78. The author's survey found that roughly eighty percent of the girls have living mothers and slightly more than a third of them had been in contact with their mother within the last thirty days. Likewise, about sixty percent of the girls have living fathers, but only about fifteen percent of the girls had spoken to their fathers in the last thirty days. Sheryl Buske, *Kayayei Survey*, Responses to Question 4–7 (2011) (on file with author). *But see* Oberhauser & Yeboah, *supra* note 9, at 27 (finding the percentage of girls between eleven and fifteen was only about eleven percent in a study of *kayayei* girls conducted in Accra).

79. Yeboah & Appiah-Yeboah, *supra* note 3, at 9; Kwankye et al., *Coping Strategies*, *supra* note 2, at 11–12; Kwankye, *Migration—Parental Investment*, *supra* note 8, at 538; *Girl Child Labour in Agriculture, Domestic Work and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana and Ecuador*, 1 INT'L LABOUR OFFICE 231 (2004), available at <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=339> (citing research which determined that, in the northern three regions, more than seventy percent of girls six years old and older had never been to school in contrast to the national average of about thirty-five percent); Kwame Akyeampong, *Revisiting Free Compulsory Universal Basic Education (FCUBE) in Ghana*, 45 COMP. EDUC. 175, 187 (2009) (noting that as many as forty percent of six to eleven-year-old children were out of school as compared to the national average of fifteen percent). Similarly, the author's survey revealed more than half (fifty-five percent) had never been to school, twenty-seven percent had started primary school, but only nine percent had completed primary school. Sheryl Buske, *Kayayei Survey*, Responses to Question 11 (2011) (on file with author).

80. Roughly sixty percent of the girls worked eight to twelve hours per day and the majority (sixty-eight percent) worked six days a week. Sheryl Buske, *Kayayei Survey*, Responses to Question 24, 25 (2011) (on file with author).

81. Sheryl Buske, *Kayayei Survey*, Responses to Question 26 (2011) (on file with author).

82. Kwankye et al., *Coping Strategies*, *supra* note 2, at 14.

83. Sheryl Buske, *Field Notes*, Mar. 5, 2012 (on file with author); *see also* Agarwal et al., *supra* note 19, at 251.

84. *See* Agarwal et al., *supra* note 19, at 251 (stating the girls carry all manner of things on their heads). For example, the author routinely saw girls carrying live chickens,

also carrying a child on their backs.<sup>85</sup> Indeed, the presence of a child makes it doubly difficult for the girl to attract customers because she is often perceived to be weaker, less able to carry heavy loads or go longer distances.<sup>86</sup> She is also often thought to be clumsier, putting the goods at risk of damage if she falls or stumbles.<sup>87</sup> During the fee negotiations and over the course of the job, the girls are often physically and verbally abused.<sup>88</sup>

Because the girls need every job they can get, they will rarely turn down a job to carry a load regardless of the size and/or weight of it or the distance it must be carried.<sup>89</sup> Consequently, the “onus” to decide that a particular job is too much for a young girl rests with the customer who has a competing interest in obtaining the lowest price which is usually obtained from the youngest girls.<sup>90</sup> This means the youngest and smallest often carry loads that are simply too big or too heavy for their young bodies.

*Life on the Streets:* The girls face numerous risks living and working on the streets. The primary risks are socio-economic and are mainly related to their living conditions.<sup>91</sup> For example, the girls often struggle to make enough money in a day to buy food.<sup>92</sup> They also face difficulties in securing a safe place to sleep at night.<sup>93</sup> They

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sewing machines, fruits and vegetables, shoes, undergarments, charcoal, and boxes of canned food. Sheryl Buske, *Field Notes*, Nov. 9, 2011 (on file with author).

85. Agarwal et al., *supra* note 19, at 251.

86. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Mar. 5, 2012 (on file with author).

87. *Id.*; see also Agarwal et al., *supra* note 19, at 251.

88. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Mar. 5, 2012 (on file with author); see also Agarwal et al., *supra* note 19, at 251; Opore, *supra* note 31, at 44 (describing exchanges between the *kayayei* and their women customers as some of their “bitterest experiences” and providing an example of a woman customer who boarded a bus and drove away after throwing only half of the agreed upon fee out the window at the girl).

89. Kwankye et al., *Coping Strategies*, *supra* note 2, at 14.

90. *Id.* The girls point out, though, that “children under 18 are not strong enough to carry most loads and if they accidentally spoil it, they are severely beaten.” Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Mar. 5, 2012 (on file with author).

91. Kwankye et al., *Coping Strategies*, *supra* note 2, at 13.

92. The biggest expense for the girls is food with nutritional value. Sheryl Buske, *Kayayei Survey*, Responses to Question 28 (2011) (on file with author). Obtaining “good” food that they can afford is difficult for them. The girls mostly rely on precooked food because they don’t have cooking facilities of their own. Food that is purchased on the street, locally known as “chop,” is often unsafe and makes them sick. Alternatively, it tends to be very high in carbohydrates, but without any other real nutrition. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 5, 2011 (on file with author). As one girl noted, “I do not eat and feel healthy as I did at home.”

93. Accommodation which provides protection from the elements and safety which they can afford is a constant challenge. They are especially vulnerable to attacks and robberies during the night from people in the community as well as police and security

face near daily harassment from government officials, other *kayayei*, and the public.<sup>94</sup> The girls are almost equally divided about whether they feel safe working on the streets during the day—roughly one-third feels safe “most of the time,” another third feels safe “always,” and the final third “never” feels safe on the streets during the day.<sup>95</sup> In contrast, however, the majority of the girls “never” feel safe at night.<sup>96</sup>

### 3. *Why They Stay*

Despite the hardships of living on the streets, almost all of the girls have been on the streets longer than they planned or expected to be.<sup>97</sup> Similarly, the majority of the girls said their life is better living on the street than it was at home.<sup>98</sup> For example, a fifteen-year-old girl summed up the feelings of many when she said, “[l]ife here is a challenge, but it is still better than home where I was always beaten.”<sup>99</sup> Sadly, the “sober and sometimes uncomfortable fact is that for many children, the street is often a better place than a home . . . .”<sup>100</sup>

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guards. In an effort to secure safe accommodation, some girls resort to trading “sex for sleeping places.” The absence of safe accommodations also makes it difficult for them to store their personal belongings. Consequently, many girls own nothing that they cannot carry with them during the day. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 5, 2011 (on file with author); *see also* Kwankye et al., *Coping Strategies*, *supra* note 2, at 13, 22 (identifying “no proper places to sleep” as one of the problems the girls face and discussing how some shopkeepers exploit the girls by charging them to sleep on the verandah in front of the shop); Mariama Awumbila et al., *Socio-Cultural Dimensions of Migration in Ghana*, at 42 (Centre for Migration Studies Technical Paper No. 3, 2011) (noting the daily earnings of *kayayei* are usually not enough to cover their accommodation, food and health care costs and, consequently, they often sleep in groups out in the open); Yeboah & Appiah-Yeboah, *supra* note 3, at 3 (identifying four distinct types of accommodation used by *kayayei*: 1) shared rented kiosks; 2) squatting in unfinished buildings; 3) storefronts or sidewalks; and 4) with relatives).

94. Sheryl Buske, *Kayayei Survey*, Responses to Questions 78, 80 (2011) (on file with author).

95. Sheryl Buske, *Kayayei Survey*, Responses to Question 78 (2011) (on file with author).

96. Sheryl Buske, *Kayayei Survey*, Responses to Question 80 (2011) (on file with author). The girls say they are more vulnerable at night because they are attacked when they are sleeping. Many girls sleep with small knives or razors tucked underneath them for protection. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Mar. 5, 2012 (on file with author).

97. Ninety percent of the girls say they have been on the street longer than they expected or intended. Sheryl Buske, *Kayayei Survey*, Responses to Question 32 (2011) (on file with author).

98. Sixty percent of the girls say their life is better on the streets than it was at home. Sheryl Buske, *Kayayei Survey*, Responses to Question 107 (2011) (on file with author).

99. Sheryl Buske, *Kayayei Survey*, Book 8 #022212-67F (2011) (on file with author).

100. KAMAL FAHMI, *BEYOND THE VICTIM, THE POLITICS AND ETHICS OF EMPOWERING CAIRO'S STREET CHILDREN* 124 (2007).

The girls give two primary reasons for staying on the streets instead of returning home: financial independence and their “freedom.”<sup>101</sup> For girls who come from extreme poverty, earning their own money is a powerful experience. Likewise, for many of the girls, the city offers new and exciting experiences they would never have in their traditional and conservative villages. For many, it is the first time they have had access to shopping, movie theatres, nightclubs, and socializing with men and boys.<sup>102</sup> Compared to life in their villages where most would be working on farms, married, or “doing nothing,” it is not surprising that so many of the girls choose to stay on the streets.<sup>103</sup>

## II. PUBLIC PERCEPTIONS OF *KAYAYEI* AS “STREET KIDS”

The global presence of children living and working on the streets in urban areas has been well-documented.<sup>104</sup> Much of that effort has been concerned with trying to determine just how many children are on the streets.<sup>105</sup> One of the difficulties in making that determination, though, has been the difficulty in arriving at a common definition of who is a street child and should therefore be counted.<sup>106</sup>

One of the most commonly cited definitions is the UNICEF definition that developed from early work done in Latin America which defines street children as “any girl or boy . . . for whom the street (in the widest sense of the word, including unoccupied dwellings, wasteland, etc.) has become his or her habitual abode and/or source of livelihood; and who is inadequately protected, supervised, or directed by responsible adults.”<sup>107</sup> Over time, other definitions focused on whether children were “on” or “of” the street: children “on” the streets are children who work on the streets during the

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101. Sheryl Buske, *Kayayei Survey*, Responses to Question 33 (2011) (on file with author). Other reasons for staying longer than planned were 1) had not yet earned enough money to leave; 2) parents/ family would not permit them to return; and 3) afraid to go home.

102. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Feb. 17, 2012 (on file with author).

103. *Id.*

104. CONSORTIUM FOR ST. CHILDREN: LITERATURE REV., STREET CHILDREN: A MAPPING & GAPPING REVIEW OF THE LITERATURE 2000–2010, at 6, available at <http://resourcecentre.savethechildren.se/library/street-children-mapping-gapping-review-literature-2000-2010>.

105. *Id.* at 6–8.

106. *Id.* at 9.

107. *Id.* (quoting B. GLASSER, HOMELESSNESS IN A GLOBAL PERSPECTIVE (New York: Maxwell 1994)).

daytime but return to their families at night while children “of” the street are defined as children who live on the street full-time.<sup>108</sup>

Terminology has continued to evolve.<sup>109</sup> It is now generally agreed that the term “street children” tends to carry negative connotations.<sup>110</sup> The Committee on the Rights of the Child now uses “children in street situations,” rather than street children, signaling the reality that children engage in a variety of activities on the street and that the “problem” is with the situation and not the child.<sup>111</sup> Research has also moved away from “discrete categories of street lifestyles”<sup>112</sup> towards an understanding of children on the street as children who are “out of place”<sup>113</sup> or, alternatively, that children on the street should be viewed as social actors in their own right.<sup>114</sup>

Research and definitional trends aside, the Ghanaian public rarely see the girls as individuals and instead lumps them all together as amorphous “street children” based on little more than their mere presence on the street and their shared appearance in dirty and torn clothing.<sup>115</sup> Indeed, in the over 1100 community surveys about public perception of *kayayei* conducted by the author in Kumasi, Ghana, during the 2011–2012 academic year, the second most common response when asked for a one-word description of *kayayei* was “street child.”<sup>116</sup> Once lumped together as “street children,” it becomes easy for the public to then pigeonhole them as either criminals/deviants (in the case of girls, as prostitutes), victims (typically orphans) or, sometimes, working entrepreneurs.<sup>117</sup> Once conceptualized broadly as street children, and more specifically as criminals/deviants, victims, or entrepreneurs, the labels then become their “identity” and legitimizes how the public views them and interacts with them.<sup>118</sup>

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108. *Id.* (citing C. SZANTON BLANC, *URBAN CHILDREN IN DISTRESS: GLOBAL PREDICAMENTS AND INNOVATIVE STRATEGIES* (Luxembourg: Gordon and Breach 1996)).

109. UNHCR, *PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN AND/OR LIVING ON THE STREET 10* (2012), available at <http://www.ohchr.org/Documents/Issues/Children/Study/OHCHRBrochureStreetChildren.pdf>.

110. *Id.* at 9.

111. *Id.* at 10.

112. CONSORTIUM FOR ST. CHILDREN, *supra* note 104, at 9 (quoting C. Panter-Brick, *Street Children, Human Rights, and Public Health: A Critique and Future Directions*, 31 ANN. REV. ANTHROPOL. 147, 150 (2002)).

113. *Id.* at 9–10.

114. *Id.* at 10.

115. A common theme thread across the descriptions of *kayayei* was that they “all look alike.” Sheryl Buske, *Community Survey* (on file with author).

116. The most common response, by a very slight margin, was “poor.” Sheryl Buske, *Community Survey*. Responses to Question 20 (on file with author).

117. UNHCR, *supra* note 109, at 28.

118. *Id.* at 31.

Some have argued that because many *kayayei* maintain relationships with their families, *kayayei* should not be considered street children.<sup>119</sup> Given the negative connotations that are often attached to a “street child” label, it is a tempting argument. Still, the existence of relationships with their families is but one factor,<sup>120</sup> and not determinative, as to whether they are part of a larger group of street children, especially given the other realities of their lives. They live and work on the streets and are, for the most part, without adult supervision or assistance and therefore fall within most definitions of street children, even if they are not a “typical” street child.<sup>121</sup> And, given that the inclusion of *kayayei* in the broader understanding of “street child” establishes their eligibility for assistance and programing,<sup>122</sup> it is worth asking if it is a disservice to exclude them from the definition of street children. Still, in light of the history and cultural practice surrounding *kayayei*, they must be understood to hold a unique and special position in the broader spectrum of street children.

#### *A. As Deviants: Prostitutes and Thieves*

The most common public perception, globally, of street children is overwhelmingly negative, that they are nothing more than “hooligans, vagabonds, and criminals.”<sup>123</sup> Tellingly, as one street child explained, “[h]ardly anyone calls us by our own names.”<sup>124</sup> Instead, the language used to refer to them reflects a general contempt, including, for example: *saligomans* (used in Rwanda to refer to “nasty kids”);<sup>125</sup> *pajaros fruteros and las pinanitas* (used in Peru to refer to street children as fruit birds because they steal fruit from the markets and piranhas, respectively, because of their practice of moving as one

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119. Agarwal et al., *supra* note 19, at 248.

120. See CONSORTIUM FOR ST. CHILDREN, *supra* note 104, at 9.

121. See *id.* at 9.

122. See UNHCR, *supra* note 109, at 14.

123. JOE L. P. LUGALLA & COLLETA G. KIBASSA, URBAN LIFE AND STREET CHILDREN'S HEALTH: CHILDREN'S ACCOUNTS OF URBAN HARDSHIPS AND VIOLENCE IN TANZANIA 3 (2003); see also Peter Anthony Kopoka, *The Problem of Street Children in Africa: An Ignored Tragedy* 6, INT'L CONFERENCE ON ST. CHILDREN AND ST. CHILDREN'S HEALTH IN EAST AFR. (Apr. 2000), available at [http://www.streetchildren.org.uk/uploads/Publications/11.The\\_Problem\\_of\\_Street\\_Children\\_in\\_Africa.pdf](http://www.streetchildren.org.uk/uploads/Publications/11.The_Problem_of_Street_Children_in_Africa.pdf) (noting that society tends to view them as “troublemakers, a nuisance or menace” that must be removed from the street).

124. MARIE WERNHAM & CONSORTIUM FOR ST. CHILDREN, AN OUTSIDE CHANCE: STREET CHILDREN AND JUVENILE JUSTICE—AN INTERNATIONAL PERSPECTIVE 13 (2004), available at <http://www.crin.org/resources/infodetail.asp?ID=4382>.

125. Nadine Innes, EMPOWERING PEOPLE TO LIVE THE LIFE THEY LOVE, *Self Esteem Among Street Children in Chennai City* (Jan. 21, 2013), <http://beyondsolutions.net/?p=1785>.

against their “prey”),<sup>126</sup> and *moineaux* (a pejorative term used in the DRC analogizing them to sparrows because they eat food on the street).<sup>127</sup>

In Ghana, *kayayei* have been described in negative terms. More specifically, it is often asserted, with great confidence, that *kayayei* are “prostitutes,”<sup>128</sup> “thieves,”<sup>129</sup> “pickpockets,”<sup>130</sup> and “liars.”<sup>131</sup> Even when the *kayayei* are not painted as prostitutes, thieves, and other criminals, the negative perceptions abound. *Kayayei* are routinely referred to as “impolite” and “rude,”<sup>132</sup> “stupid,”<sup>133</sup> and “crazy.”<sup>134</sup> Public criticism of the *kayayei* is the norm and typical of public perception of street children in general. Several survey participants summed up the general feeling in the community as “everybody hates them.”<sup>135</sup> The vehemency of the criticism, though, is particularly interesting given that the overwhelming majority of the people surveyed (ninety-three percent) stated they had never had a bad or negative experience with a *kayayoo*.<sup>136</sup> One wonders, then, why they felt so strongly, and were so sure of their perceptions. Of the handful of participants who did report having had a bad experience with a *kayayoo*, almost half of those (forty-six percent) were related to fee disputes.<sup>137</sup> Only a few (thirty-four percent) reported that a *kayayoo* had stolen something from them.<sup>138</sup> No one reported an incident involving prostitution.

The girls, too, report that they are treated badly more often than not by the general public.<sup>139</sup> Indeed, when asked who or what presented the greatest danger or difficulty on the streets, the overwhelming response (seventy percent) was “people in the

126. DANIELLE SPEAKMAN, NOTHING BUT A THIEF: THE STREET AND HER CHILDREN 53 (2002).

127. Innes, *supra* note 125.

128. Sheryl Buske, *Community Survey*, Responses to Question 20 (on file with author).

129. *Id.*

130. *Id.*

131. *Id.*

132. Sheryl Buske, *Community Survey*, Book 3 #22112-4 (on file with author).

133. Sheryl Buske, *Community Survey*, Book 3 #030712-10 (on file with author).

134. Sheryl Buske, *Community Survey*, Book 2 #011112-33 (on file with author).

135. Sheryl Buske, *Community Survey*, Book 3 #21312-7 (on file with author). Many survey participants seemed to use “*kayayoo*” and “prostitute” synonymously, noting that “all,” “most of,” and “every” *kayayoo* is a prostitute.

136. Sheryl Buske, *Community Survey*, Responses to Question 18 (on file with author).

137. Sheryl Buske, *Community Survey*, Responses to Question 19 (on file with author).

138. *Id.*

139. For example, a fifteen-year-old girl said, “[p]eople are never nice to me here. The [sic] treat us harshly.” Sheryl Buske, *Kayayei Survey*, Book 6 #021812-23M (2011) (on file with author). Likewise, another twelve-year-old girl said, “[p]eople treat us badly here on the streets so if I [sic] an alternative place to go, I would be happy.” Sheryl Buske, *Kayayei Survey*, Book 1 021712-142M (2011) (on file with author).

community.”<sup>140</sup> The girls report being shouted at, insulted, beaten, and generally treated badly on a daily basis—as one sixteen-year-old *kayayoo* put it, “[w]e are not safe on the street because of the maltreatment from the community.”<sup>141</sup> In addition to physical and verbal abuse, the girls also report being regularly cheated by customers.<sup>142</sup> The general feeling from the girls is that the community “hates us”<sup>143</sup> and “doesn’t respect and regard us as humans.”<sup>144</sup>

Another interesting aspect of the general dislike and maltreatment of *kayayei* is the emphasis placed on the girls being from the North. Over and over the community noted, generally with a great deal of disdain, that the *kayayei* are “not from [Kumasi]” or that “they are not one of us.”<sup>145</sup> The implication was that whatever was “wrong” with the *kayayei*, it could be explained by the fact that they were not Ashanti, the dominant tribe in the Kumasi area.<sup>146</sup> While this response might have been predictable in the context of immigrants and refugees from other countries who are sometimes viewed as a drain on local resources, it was somewhat surprising, however, that this degree of hostility was in response to other Ghanaian citizens, particularly children. Some argue, however, that this tension between the North and South has become part of the “national culture.”<sup>147</sup>

The girls view this as “tribalism,” a form of discrimination.<sup>148</sup> According to them, this plays out in a couple of significant ways. First, the girls from the North say it is harder for them to get jobs because people “don’t like” the girls from the North.<sup>149</sup> It is also harder for them to negotiate everything from places to sleep to the

140. Sheryl Buske, *Kayayei Survey*, Responses to Question 101 (2011) (on file with author).

141. Kwankye et al., *Coping Strategies*, *supra* note 2, at 13 (noting “disrespectful treatment and insults” from their customers).

142. A sixteen-year-old girl reported that the community “beats us and treats us badly. Sometimes they cheat us by not giving us the money bargained for.” Sheryl Buske, *Kayayei Survey*, Book 6 #91SB (2011) (on file with author).

143. Sheryl Buske, *Kayayei Survey*, Book 3 #021912-232M (2011) (on file with author).

144. Sheryl Buske, *Kayayei Survey*, Book 5 #149PSA (2011) (on file with author). One girl recounted an incident on the street: “I was walking and a man asked me to walk faster. I was not feeling well and could not. He pushed me to the ground and went around me.” Sheryl Buske, *Kayayei Survey*, Book 3 #94PT (2011) (on file with author).

145. Sheryl Buske, *Kayayei Survey*, Book 2 #21612-1 (2011) (on file with author).

146. Sheryl Buske, *Kayayei Survey* (2011) (on file with author).

147. Iman Hashim, *Exploring the Linkages Between Children’s Independent Migration and Education: Evidence from Ghana*, 10 (Dev. Research Ctr. on Migration, Globalisation & Poverty, Working Paper T-12, 2005), available at [http://www.migrationdrc.org/publications/working\\_papers/WP-T12.pdf](http://www.migrationdrc.org/publications/working_papers/WP-T12.pdf) (citing Ann Whitehead, *Poverty in the North-East Ghana*, OVERSEAS DEV. AGENCY 32 (1996)).

148. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 5, 2011 (on file with author).

149. *Id.*

price of food.<sup>150</sup> According to them, the general bias against them makes everything harder because “they have no regard for people from the North.”<sup>151</sup>

The bias is not limited just to the general public. Instead, Ashanti girls working as *kayayoo* regard the girls from the North as unwanted “competition” for limited jobs and do not want them there.<sup>152</sup> The girls from the North say they are regularly beaten and attacked by Ashanti *kayayei*.<sup>153</sup> As one Dagbona girl from the North reported, “[t]hey will never regard you as a sister or daughter when you wrong them if they notice you are a northerner or any other tribe apart from Ashanti.”<sup>154</sup> The Ashanti girls seem to agree, noting “[t]he community is quite ok as to how they treat us. Those from the Ashanti region, due to tribalism, are normally favored over those northerners.”<sup>155</sup>

A final layer that emerged from the community surveys was the public’s feeling that the girls “should just go home.”<sup>156</sup> Many community survey respondents were of the opinion that the *kayayei* were not only unwanted in Kumasi, but also that they had no one to blame but themselves for whatever they experienced and/or endured.<sup>157</sup> At the same time, though, when asked why the girls come to the cities to work as *kayayei*, the most common response (thirty-five percent) was that the girls were orphans and had no other option.<sup>158</sup> To the extent the public believes the girls are orphans, to where and to whom, exactly, should they return? One survey respondent explained by pointing out that “[e]ven though it isn’t their fault they are orphans, they should find something else to do instead of *kayayoo*. If they make the bad decision to be *kayayoo*, it is their fault what happens to them. Not all orphans have to be *kayayoo*.”<sup>159</sup>

150. *Id.*

151. Sheryl Buske, *Kayayei Survey*, Book 5 #020612-20F (2011) (on file with author) (showing a fifteen-year-old girl from the Northern Region who has been working and living on the streets for more than three months); see also Sheryl Buske, *Kayayei Survey*, Book 6 #021812-230M (2011) (on file with author) (showing a fifteen-year-old girl from the Northern Region who said “[p]eople are never nice to me. They treat us harshly. I think it is because I am from the North.”); Sheryl Buske, *Kayayei Survey*, Book 3 #021712-166M (2011) (on file with author) (showing that a fifteen-year-old girl from the Northern Region noted, “[p]eople are not always nice to me and it makes me sad.”); Sheryl Buske, *Kayayei Survey*, Book 1 #021712-139M (2011) (on file with author) (“People are very rude to me because I am a Northerner.”).

152. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 5, 2011 (on file with author).

153. *Id.*

154. *Id.*

155. Sheryl Buske, *Kayayei Survey* Book 5 #0202212-21F (2011) (on file with author).

156. Sheryl Buske, *Community Survey* (on file with author).

157. *Id.*

158. Sheryl Buske, *Community Survey*, Responses to Question 6 (on file with author).

159. Sheryl Buske, *Community Survey*, Book 2 #030112-10 (on file with author).

Some say the *kaya* business was once viewed as an “honourable trade.”<sup>160</sup> Public criticism, predicated on the belief that the girls are thieves and prostitutes,<sup>161</sup> is now the norm. It is true that some *kayayei* engage in theft and prostitution as survival strategies, but it is also true that they are often themselves the victims of crime. More than half of the girls surveyed reported they had been physically attacked, robbed, or sexually assaulted while on the street.<sup>162</sup>

### *B. As Victims: Orphaned and Exploited*

The second most common public perception of street kids is that they are victims, usually because they have been orphaned or exploited in some way.<sup>163</sup> This view of street kids is sometimes “overromanticized by the press and charity groups, and . . . [portrays them] as the passive victims of a ruthless society,”<sup>164</sup> which, in turn, often produces a “rescue” mentality.<sup>165</sup>

Likewise, in Ghana, there is also, to a much lesser extent, a view of the *kayayei* as victims. According to the public, they are innocent victims because they are either orphans<sup>166</sup> or they are exploited and forced to work as *kayayoo*.<sup>167</sup> Descriptions of the girls in this vein tend to emphasize their vulnerability, including: “young,”<sup>168</sup>

160. Agarwal et al., *supra* note 19, at 257.

161. Sheryl Buske, *Community Survey* (on file with author); *see also* Agarwal et al., *supra* note 19, at 257 (noting “urban legends” about girls who have stolen customers’ goods).

162. Nineteen percent of the girls have been attacked, twenty-six percent have been robbed and eight percent have been sexually assaulted while working on the streets. Incidents of sexual assault are likely under-acknowledged because talking about sexual violence is considered “taboo” in Ghana. Sheryl Buske, *Kayayei Survey*, Responses to Question 84, 85 & 86 (2011) (on file with author); *see also* Beauchemin, *supra* note 18, at 11.

163. *See* UNHCR, *supra* note 109, at 12; CONSORTIUM FOR ST. CHILDREN, *supra* note 104, at 13 (noting that younger children are more likely than adolescents to be perceived as victims).

164. CONSORTIUM FOR ST. CHILDREN, *supra* note 104, at 13 (quoting H. Beady, *The Construction and Protection of Individual and Collective Identities by Street Children and Youth in Indonesia*, 13 CHILDREN, YOUTH AND ENV'TS 1 (2003)).

165. *See* UNHCR, *supra* note 109, at 12.

166. “Orphan,” in the African context, is not restricted to children who have lost both parents; it is also used to refer to children who have lost only one parent. *E.g.*, UNICEF, CHILDREN IN GHANA, *supra* note 14, at 154 (stating that “[l]osing one or both parents . . . creates orphans . . .”).

167. *See* Kwankye et al., *supra* note 1, at 6 (describing the view that children’s migration leaves them vulnerable to exploitation as “generally held”); *see also* Opare, *supra* note 31, at 43 (stating that women and girls in the *kaya* business had to move south due to “very limited opportunities”).

168. Sheryl Buske, *Community Survey*, Book 2 #022712-3 (on file with author).

“poor,”<sup>169</sup> “exploited,”<sup>170</sup> “on their own,”<sup>171</sup> and “without any help from anyone.”<sup>172</sup>

To the extent that the public views them as victims, helping the girls is seen as an imperative and almost exclusively as the government’s responsibility.<sup>173</sup> In addition to the general “government should help them” responses,<sup>174</sup> some respondents felt the government should take specific actions, including:

- the government should provide free vocational training and/or free education<sup>175</sup>
- the government should create more jobs<sup>176</sup>
- the government should offer financial incentives to stop working as *kayayoo*<sup>177</sup>
- the government should create and/or enforce child labor laws<sup>178</sup>
- the government should provide proper housing for them<sup>179</sup>

Alternatively, the view that the girls are being exploited led a fair number of respondents to suggest that someone must be punished—either the parents/ families, or the people who hire them.<sup>180</sup> Others felt educating parents and families about the dangers of working as a *kayayoo*, instead of punishment, is a more productive response.<sup>181</sup>

The public perception of the girls as victims due to orphanhood is somewhat at odds with what the girls themselves report. Almost eighty percent of the girls interviewed reported their mother is living, and almost half of them had spoken to their mothers in the last thirty days.<sup>182</sup> Of their fathers, roughly sixty percent of the girls reported their father is living, although only about twenty-five percent of the girls reported speaking to their fathers within the last

169. Sheryl Buske, *Community Survey*, Book 2 #022412-7 (on file with author).

170. Sheryl Buske, *Community Survey*, Book 1 #012212-11 (on file with author).

171. Sheryl Buske, *Community Survey*, Book 1 #121811-29 (on file with author).

172. Sheryl Buske, *Community Survey*, Book 2 #011812-17 (on file with author).

173. There was also a thin thread of responses suggesting that “society,” churches, and NGOs bear some of the responsibility for helping the girls. Sheryl Buske, *Community Survey* (on file with author).

174. Sheryl Buske, *Community Survey*, Book 3 #011212-13 (on file with author).

175. Sheryl Buske, *Community Survey*, Book 3 #30312-21 (on file with author).

176. Sheryl Buske, *Community Survey*, Book 3 #40712-4 (on file with author).

177. Sheryl Buske, *Community Survey*, Book 4 #111911-18 (on file with author).

178. Sheryl Buske, *Community Survey*, Book 4 #111911-31 (on file with author).

179. Sheryl Buske, *Community Survey*, Book 2 #020912-13 (on file with author).

180. Sheryl Buske, *Community Survey*, Book 2 #031312-9 (on file with author).

181. Sheryl Buske, *Community Survey*, Book 6 #031912-11 (on file with author).

182. Sheryl Buske, *Kayayei Survey*, Responses to Question 4, 5 (2011) (on file with author).

thirty days.<sup>183</sup> In sum, almost ninety percent of the girls reported living mothers *and* fathers, leaving only slightly more than ten percent of the girls to report being double-orphans, or “true orphans”—having neither parent.<sup>184</sup> Still, the fact that about forty percent of the girls reported their father is deceased is significant and has complex policy implications, particularly in Ghana’s patrilineal societies in which children “belong” to fathers.<sup>185</sup>

For the girls who have lost both parents, who are “true” orphans, the situation is dire. Many of those girls say they must “fend” for themselves or “who else would?”<sup>186</sup> As many of them point out, what other option do they have?<sup>187</sup>

The opinions of the girls themselves, as to whether they are being exploited are far from straightforward. In a culture where children’s rights are rarely part of the national dialogue, a surprising number of the girls talk in terms of children’s rights.<sup>188</sup> While the girls rarely, if ever, used the language of exploitation, many of them talked in terms of how working in the streets, often at the behest of parents and extended family, for the benefit of the family, deprived them of their rights.<sup>189</sup> As one fourteen-year-old girl said, “[c]hildren should not be made to work to survive.”<sup>190</sup> This viewpoint most often came up in the context of a discussion about Ghana’s child labor laws and whether the laws were good laws.<sup>191</sup> The girls were almost equally divided about whether the labor laws are “good laws.” The girls who believed the labor laws are “good laws” focused on how a prohibition on working would affect them in positive ways,

183. Sheryl Buske, *Kayayei Survey*, Responses to Question 6, 7 (2011) (on file with author).

184. Sheryl Buske, *Kayayei Survey* (2011) (on file with author).

185. ASSIMENG, *supra* note 48, at 77–78 (noting patrilineal systems are common in the northern regions of Ghana—the regions from which the majority of the girls working in the streets as *kayayei* come from. In a patrilineal system, children “belong” to their fathers and father’s family. Consequently, it is the father and, in his absence, the father’s family, which bears the responsibility of caring for a child).

186. For example, a seventeen-year-old girl who had been on the streets for more than six months due to the death of both parents stated, “who else would take care of me if I don’t take care of myself.” Sheryl Buske, *Kayayei Survey*, Girls Book 6 #021812-203M (2011) (on file with author).

187. As a sixteen-year-old girl who had lost both parents sadly pointed out, “[b]eing an orphan, no one sees it as a responsibility to take care of you.” Sheryl Buske, *Kayayei Survey*, Book 6 #021812-203M (2011) (on file with author).

188. Sheryl Buske, *Kayayei Survey* (2011) (on file with author).

189. For example, a thirteen-year-old girl who had been sent by her mother to work in the markets said, “[w]orking in the market] is against our rights. We should be in school.” Sheryl Buske, *Kayayei Survey*, Book 8 #011912-109M (2011) (on file with author).

190. Sheryl Buske, *Kayayei Survey*, Book 6 #021912-249M (2011) (on file with author); *see also* Sheryl Buske, *Kayayei Survey*, Book 3 #021712-162M (2011) (on file with author). One young girl who had been on the streets for more than year and whose parents sent her to work in the streets said, “children should not be made to work for their living.”

191. Sheryl Buske, *Kayayei Survey* (2011) (on file with author).

including making it more likely they would go to school or at vocational training.<sup>192</sup> Alternatively, the girls who believed the labor laws prohibiting them from working are “bad laws” tended to view the prohibition as improper interference with their need or wish to work.<sup>193</sup>

The right most often cited by the girls is their right to education. For example, as one young girl who has lived on the street full-time for more than two years succinctly put it, “[c]hildren under 18 should be in school which is free and we should all enjoy it to the fullest. It is our right.”<sup>194</sup> Others simply noted that “children have a right to education”<sup>195</sup> or that “children should be in school but not working on the streets.”<sup>196</sup> One seventeen-year-old girl went further: “Our future stands to be destroyed if we start work under 18 instead of keeping in school.”<sup>197</sup>

On the other hand, having a responsibility, or obligation, to contribute to family finances was a common thread across the responses. This is not surprising in a society that values family relationships and obligations to each other. Indeed, as one Ghanaian sociologist noted, among the common aspects across Ghanaian culture are:

- a tendency towards conformity—“the blatant eschewing” of individual ideas;
- an “unquestioning acquiescence” to men of influence, particularly fathers and village elders;
- a lack of self-reliance as a result of the “pervading influence” of extended family.<sup>198</sup>

Time and again the girls referred to their own desire to contribute to family finances. For example, one seventeen-year-old *kayayoo* said, “[c]hildren should willfully help in upkeep of families”<sup>199</sup> and another adolescent girl said “children should work to help their parents.”<sup>200</sup>

192. For example: Sheryl Buske, *Kayayei Survey*, Book 8 #012512-112M (2011) (on file with author).

193. Sheryl Buske, *Kayayei Survey*, Book 8 #021512-98M (2011) (on file with author).

194. Sheryl Buske, *Kayayei Survey*, Book 5 #0201812-278F (2011) (on file with author).

195. Sheryl Buske, *Kayayei Survey*, Book 7 #020812-112M (2011) (on file with author); see also Sheryl Buske, *Kayayei Survey*, Book 7 #021712-157M (2011) (on file with author); Sheryl Buske, *Kayayei Survey*, Book 2 #020712-67F (2011) (on file with author) (noting “[c]hildren have the basic right to education.”); Sheryl Buske, *Kayayei Survey*, Book 2 #020712-71F (2011) (on file with author) (“Education is the basic right of children.”).

196. Sheryl Buske, *Kayayei Survey*, Book 7 #020812-109M (2011) (on file with author).

197. Sheryl Buske, *Kayayei Survey*, Book 5 #0201012-173F (2011) (on file with author); see also Sheryl Buske, *Kayayei Survey*, Book 4 #020712-94M (2011) (on file with author) (“All children should have chance to be in school.”).

198. ASSIMENG, *supra* note 48, at 114–15.

199. Sheryl Buske, *Kayayei Survey*, Book 5 #0201012-107F (2011) (on file with author).

200. Sheryl Buske, *Kayayei Survey*, Book 5 #0201012-169F (2011) (on file with author); see also Sheryl Buske, *Kayayei Survey*, Book 2 #020912-150F (2011) (on file with author).

Other girls seemed to view contribution to general family finances as an unwelcome requirement, an obligation even, amounting to exploitation. One twelve-year-old girl who has been living on her own and working on the street full-time for more than three months and who has never been to school emphasized the obligation to family when she said, “[w]e *have* to help our parents take care of the family.”<sup>201</sup> Given no choice in the matter, this young girl’s parents sent her to Kumasi from her village, on her own, at the age of eleven to work in the streets and send her earnings back home.<sup>202</sup> Another young girl put the responsibility for care squarely, and bluntly, on parents: “[c]hildren should be cared for by their parents and should not have to work to support them.”<sup>203</sup> These are not isolated examples—many girls told similar stories of being forced to work for someone else’s benefit.<sup>204</sup>

Others viewed the requirement that they must contribute to expenses directly related to them, most often their education, as a form of exploitation. It is not surprising that many Ghanaian parents push the responsibility for funding their own education onto their daughters. Ghanaians have historically seen little value in formal education for girls “since their functions in society were clearly mapped out, with presumed less intellectual demands.”<sup>205</sup> While ideas about educating daughters have changed over time, some traditions die hard.<sup>206</sup> For example, when asked why she has remained on the streets long after when she thought she would return home, one young girl replied that she had “not earned enough money for my school fees yet” and that her parents would not let her return home until she had earned enough money to pay her school

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(insisting that “children can work to assist their parents.”); Sheryl Buske, *Kayayei Survey*, Book 1 #0201712-267F (2011) (on file with author) (“My parents are poor and I work to help support them.”).

201. Sheryl Buske, *Kayayei Survey*, Book 5 #0201012-179F (2011) (on file with author).

202. Sheryl Buske, *Kayayei Survey*, Book 5 #0201012-179F (2011) (on file with author).

203. Sheryl Buske, *Kayayei Survey*, Book 3 #021612-119M (2011) (on file with author).

204. For example, a twelve-year-old girl who has been on the streets for more than a year “want[s] to stop working but I can’t because I have to have the money for my family.” Sheryl Buske, *Kayayei Survey*, Book 6 #021912-247M (2011) (on file with author); *see also* Sheryl Buske, *Kayayei Survey*, Book 3 #021512-77M (2011) (on file with author) (“Children should be taken care of by adults and not by themselves.”); Sheryl Buske, *Kayayei Survey*, Book 4 #021512-164F (2011) (on file with author) (“My parents don’t have money to take care of us. I work to support myself and younger siblings.”); Sheryl Buske, *Kayayei Survey*, Book 4 #020612-13M (2011) (on file with author) (“A child should not be made to work for a living.”); Sheryl Buske, *Kayayei Survey*, Book 4 #020712-84M (2011) (on file with author) (“I want to stop working on the street but my family won’t allow it.”); Sheryl Buske, *Kayayei Survey*, Book 1 #0201112-195F (2011) (on file with author) (“We have to help our parents take care of the family.”).

205. ASSIMENG, *supra* note 48, at 125.

206. *Id.* at 125–26.

fees.<sup>207</sup> She had initially planned to work in the market for six to nine months but had been on the street full-time for more than two years.<sup>208</sup> Again, this was not an uncommon scenario.<sup>209</sup>

### C. As *Entrepreneurs: Independent Agents*

Finally, an emerging perception of working street children is related to recognizing their right and ability to make decisions and act for themselves. This perception arguably stems from a culture that “readily tolerates the exploitation of children.”<sup>210</sup> In this vein, working street children are often viewed as entrepreneurs whose efforts have a legitimacy that should not be dismissed just because they are children.<sup>211</sup> Some have argued that “[c]hildren’s work is not unavoidably synonymous either with ‘exploitation’ or ‘abuse’ of children . . . .”<sup>212</sup> Instead, it should be considered from their perspective as they may feel very differently about their work than we do.<sup>213</sup> This has a particular significance in Ghana where working in support of the family is seen as “an integral part of the socialization of children.”<sup>214</sup> It is expected that children will support their parents in taking care of the family.<sup>215</sup> Indeed, it is “part and parcel of the fabric of Ghanaian society.”<sup>216</sup>

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207. Sheryl Buske, *Kayayei Survey*, Book 5 #020812-278F (2011) (on file with author).

208. Sheryl Buske, *Kayayei Survey*, Book 5 #020812-278F (2011) (on file with author).

209. For example, Sheryl Buske, *Kayayei Survey*, Book 7 #021712-150M (2011) (on file with author); *see also* Sheryl Buske, *Kayayei Survey*, Book 3 #021312-11M (2011) (on file with author) (noting that a seventeen-year-old girl who had been on the streets more than year said, “[i]f I stop working, I can’t gather enough money to continue my education.”); Sheryl Buske, *Kayayei Survey*, Book 3 #021312-17M (2011) (on file with author) (“I want to make enough money to continue studying.”); Sheryl Buske, *Kayayei Survey*, Book 3 #021512-75M (2011) (on file with author) (“If I am stopped from working on the streets, how do I earn money to pay my school fees to continue my education?”); Sheryl Buske, *Kayayei Survey*, Book 4 SB14 (2011) (on file with author) (“I have never been to school, but I want to learn to be a dressmaker, but my parents can’t afford to buy a sewing machine. I work to get money to buy a machine so I can learn to sew.”); Sheryl Buske, *Kayayei Survey*, Book 8 #020612-52M (2011) (on file with author) (“I wish I did not have to work on the street for my school fees.”).

210. MINISTRY OF EMP’T & SOC. WELFARE, NATIONAL PLAN OF ACTION (NPA) FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR IN GHANA 2009–15, at 31 (Nov. 2009).

211. *See* MANFRED LIEBEL, A WILL OF THEIR OWN: CROSS-CULTURAL PERSPECTIVES ON WORKING CHILDREN 9 (2004).

212. *Id.*

213. *Id.*

214. INT’L LABOUR OFFICE, *supra* note 79, at 215.

215. GHANA STATISTICAL SERV., *supra* note 7, at 4.

216. INT’L LABOUR OFFICE, *supra* note 79, at 215; *see also* PROSPERA TEDAM, CHILDREN’S RIGHTS INT’L, CHILD DOMESTIC LABOUR—THE INVISIBLE THIEF OF CHILDREN’S RIGHTS IN GHANA 2 (2013), *available at* <http://www.childjustice.org/index.php/component/edocman/?view=document&id=132&Itemid=471> (noting that “culturally” Ghanaian children are expected to assist with household chores as well as commercial activities of the family).

The *kayayei* in Ghana are in some ways the classic example of children's work. Many community survey respondents approved of girls working as *kayayoo*, even as a substitute for formal education.<sup>217</sup> They described the girls as "hardworkers," "girls doing a hard job," and "trustworthy."<sup>218</sup>

Traders and other people with business interest in the markets are especially supportive of the girls. In a market setting where everything must be carried in and out on foot,<sup>219</sup> a supply of workers willing and able to carry the merchandise is essential. An abundance of young girls willing to do so means that there will always be competition for jobs, which in turn, keeps costs low. Traders view the girls' willingness to "hustle" as a benefit to the girls by allowing them to be self-sufficient and to the traders by keeping their costs down.<sup>220</sup>

The girls who viewed themselves as free agents were a group clearly and unequivocally separate from the girls who worked, voluntarily or otherwise, to support their families. These girls were fiercely proud of themselves and their ability to provide for themselves. They can be very disciplined about earning and saving money—sometimes forgoing food and/or medicine to save more money.<sup>221</sup> Some say they take risks sleeping in the open instead of paying for accommodations because they want to save the money.<sup>222</sup> Earning their own money is a powerful experience for some of them. They are often willing to overlook the difficulty of living and working on the streets in exchange for the money they are earning.<sup>223</sup> Many of the girls were working toward specific "targets" and planned to return home after they met their target amount.<sup>224</sup> Others intended to keep working in the markets and had no plans to return home.<sup>225</sup> As one fourteen-year-old said, "I came here of my own accord to make money and I don't plan to stop."<sup>226</sup>

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217. Sheryl Buske, *Community Survey*, Book 2 #021012-6 (on file with author); Sheryl Buske, *Community Survey*, Book 2 #020612-8 (on file with author); Sheryl Buske, *Community Survey*, Book 2 #021312-10 (on file with author).

218. Sheryl Buske, *Community Survey*, Book 2 #21612-18 (on file with author); Sheryl Buske, *Community Survey*, Book 2 #021512-1 (on file with author); Sheryl Buske, *Community Survey*, Book 4 #020412-09 (on file with author).

219. Opere, *supra* note 31, at 43–44.

220. Interview with "Mercy," Kejetia Market Trader, Kejetia Market, Kumasi, Ghana (Mar. 6, 2012) (on file with author).

221. Focus Group, Street Children Project Drop-In Center, Feb. 13, 2012 (on file with author).

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. Sheryl Buske, *Kayayei Survey*, Book 6 #021612-125M (2011) (on file with author).

Additionally, the girls' comments focused over and over again on their "right" to make their own decisions and objected to their decisions being questioned by anyone else. They see themselves as "independent individuals who can judge and design their lives themselves and can contribute something to society."<sup>227</sup> The girls were particularly proud, and somewhat defensive, of their ability to decide for themselves minor day-to-day things such as when and what to eat, with whom to socialize, and what to wear.<sup>228</sup> This is not terribly surprising given that so many of them come from traditional communities where much about their day-to-day lives is prescribed and determined by others.<sup>229</sup> Throw in normal adolescent development and the desire for independence and autonomy and it is easy to understand why the girls value their "freedom" so much.<sup>230</sup> As one young girl who looked about ten years old and who had been living and working on the streets for more than one year, said: "I have my own freedom to do whatever I want now."<sup>231</sup>

### III. GHANA'S PUBLIC POLICY RESPONSE

Ghana has developed extensive public policies with respect to child labor, education and health care. For the most part, the policies fall within the three main public policy models based on the intent, or purpose, of the policy: protectionist, punitive, and a human

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227. LIEBEL, *supra* note 211, at 22.

228. Sheryl Buske, Focus Group, Street Children Project Drop-In Center Feb. 13, 2012 (on file with author).

229. See Opare, *supra* note 31, at 35.

230. For example, see Sheryl Buske, *Kayayei Survey*, Book 5 #0201912-336F (2011) (on file with author) (recording a fourteen-year-old girl's declaration that, "I have freedom to work and decide what to eat. And I get to see city life."); Sheryl Buske, *Kayayei Survey*, Book 5 #020812-272F (2011) (on file with author) (noting a seventeen-year-old girl who said, "I feel some sense of maturity and the ability to take care of myself."); Sheryl Buske, *Kayayei Survey*, Book 5 #0201812-301F (2011) (on file with author) (noting a fourteen-year-old girl, who had been on the streets more than six months, said "I can now buy clothes I want from my hard work."); Sheryl Buske, *Kayayei Survey*, Book 5 #0201912-332F (2011) (on file with author) (noting that an eleven-year-old girl said "I can work and spend money on food I like."); Sheryl Buske, *Kayayei Survey*, Book 5 #21812-288F (2011) (on file with author) (recording a fifteen-year-old girl, who had never been to school, stating that, "I earn a lot of money and also have freedom for myself."); Sheryl Buske, *Kayayei Survey*, Book 5 #0201712-245F (2011) (on file with author) (noting a fourteen-year-old girl who had been on the streets for more than two years who said, "I work for my money and I can choose what to eat, when and how to spend it"); Sheryl Buske, *Kayayei Survey*, Book 6 #021712-159M (2011) (on file with author) (noting a seventeen-year-old girl who had never been to school, who stated, "[n]ot all children want to go to school. I am an example.").

231. Sheryl Buske, *Kayayei Survey*, Book 5 #0201712-237F (2011) (on file with author). She didn't know her actual age, but looked to be about ten years old.

rights model.<sup>232</sup> While evident in the *kayayei* context, with some modification, there are huge gaps between policy intent and implementation. The gap can be explained, in part, by the perceptions of the *kayayei* as criminals, victims, and entrepreneurs by the very people tasked with implementing the policies.

### A. Public Policy Models

In 1994 the Council of Europe identified three models of public policy approaches towards street children.<sup>233</sup> Each of the models is based on distinct conceptualizations and assumptions.<sup>234</sup> The models are:

1. *Correctional, punitive or repressive model*: this model conceptualizes street children as deviants who pose a threat to the general public and results in a repressive or punitive response;
2. *Rehabilitative or protection-oriented model*: this model conceptualizes street children as victims and emphasizes the deficiencies of street life, the violation of street children's rights and is protectionist in response;
3. *Human-rights model*: this model conceptualizes street children as a group who has been discriminated against.<sup>235</sup>

While the Council of Europe's classifications were developed in the context of a broad understanding of "street children," they are adaptable to the narrower context of girl *kayayei*.<sup>236</sup>

There are few, if any, public policies that are specific, and limited, to *kayayei*, and even fewer of the public policies can be neatly and exclusively placed within one of the models. There also tends to be some overlap and/or blending between models. Specifically, in the context of *kayayei*, the protectionist and human rights models tend to merge.<sup>237</sup> Additionally, in the context of girl *kayayei*,

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232. CONSORTIUM FOR ST. CHILDREN, *supra* note 104, at 34.

233. The third classification proposed by the Council of Europe is a human rights model. This model conceptualizes street children as a group of people who have been discriminated against. *Id.*

234. *Id.*

235. *Id.* at 35.

236. The *kayayei* and "street children" face many of the same problems and both groups run the risk of exploitation. Many of the protections meant for "street children" could benefit the *kayayei*.

237. This might be explained by the fact that, to the extent that violations of girl *kayayei* rights are seen as human rights violations, they are usually framed as a violation of the United Nations Convention on the Rights of the Child which is inherently a human rights document.

I would borrow from the field of economics and add an additional classification, a laissez-faire model. Literally translated, laissez-faire means “let them do as they will” or “leave them alone.”<sup>238</sup> In the economics field, it is understood to mean that private citizens should be allowed to engage in commercial transactions with little to no government interference or assistance.<sup>239</sup> Much of Ghana’s public policy regarding girl *kayayei* embraces this principle, neither intentionally helping nor hindering the girls. Consequently, I would borrow the Council of Europe’s classifications, but also suggest that Ghana’s public policies with respect to girl *kayayei* more accurately fall into one of three models:

1. Correctional, punitive or repressive model;
2. Rehabilitative, protectionist/Human rights model;
3. Laissez-faire model.

*B. Kayayei and Public Policies: A Mix of Punitive, Protectionist, and Laissez-Faire Policy Models and the Obstacles to Implementation*

Whatever the intent of the policy might have been, the gap between the intent and its implementation has meant that the *kayayei* girls have largely not benefitted from the child labor, health, and education policies. Instead, because of the public perceptions of the girls, not only have they not benefitted, they are often penalized.

*1. Child Labor Laws and Policy*

The public largely views the *kayayei* as a “street children” issue. The Government of Ghana, on the other hand, has framed the *kayayei* as a child labor issue, and more specifically, one of the worst forms of child labor (WFCL).<sup>240</sup> In 2009 the Ministry of Employment and Social Welfare (MESW) undertook an ambitious multi-stakeholder study of child labor in Ghana which resulted in the National Plan of Action for the Elimination of the Worst Forms of Child Labour in Ghana (NPA).<sup>241</sup> The overriding goal of the NPA is to “reduce the

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238. Jeffrey Tucker, *What Is Laissez-Faire?*, DAILY RECKONING (Dec. 14, 2011), <http://dailyreckoning.com/what-is-laissez-faire/>.

239. *Id.*

240. MINISTRY OF EMP’T & SOC. WELFARE, *supra* note 210, at 15. The NPA has identified nine types of child labor as “worst forms” and prioritized those for elimination: portage of heavy loads (*kayayoo*), child trafficking, fisheries, mining and quarrying, ritual servitude, commercial sexual exploitation, domestic servitude, agriculture, street hawking, and begging. *Id.*

241. The NPA falls under the umbrella of the Medium Term Development Policy Framework (MTDPF) relevant to children’s welfare. *Id.* at 13.

worst forms of child labour to the barest minimum by 2015, while laying strong social, policy and institutional foundations for the elimination and prevention of all other forms of child labour in the longer term.”<sup>242</sup> The government

recognizes the serious nature of the child labour problem, its impact on the rights and welfare of our children, and its negative consequences for a number of important national goals in areas such as education . . . human resource development, poverty reduction, our drive to attain middle income status by 2015, as well as the alleviation of vulnerability and social exclusion.<sup>243</sup>

The NPA’s ultimate conclusion was that despite multiple laws and policy measures that have been put in place over the last ten years that should ensure the realization of “the constitutional provisions and moral obligations for the protection of children” from the worst forms of child labor, including *kayayei*,<sup>244</sup> they “have remained disjointed, and progress towards the achievement of the underlying goals has been uneven and inadequate in many areas.”<sup>245</sup>

The primary policy response to *kayayei* has been through protectionist child labor laws which are principally concerned with gatekeeping—setting out who can and cannot work—but less so with enforcing the gatekeeping measures. The labor laws do not address, however, the bigger issues such as why the girls are migrating to the cities in droves and/or finding meaningful alternatives for them. In addition, large portions of the general population are unaware of child labor laws and/or how the public should respond to violations.<sup>246</sup> Moreover, many of the officers charged with implementing the laws have little to no understanding of the laws.<sup>247</sup>

Ghana has ratified several international instruments which address child labor, including: the ILO Worst Forms of Child Labour Convention (No. 182) (ILO 182),<sup>248</sup> the ILO Minimum Age Convention (No. 138) (ILO 138),<sup>249</sup> the Convention on the Rights of the Child

242. *Id.* at 21.

243. *Id.* at 12.

244. *Id.*

245. *Id.*

246. MINISTRY OF EMP’T & SOC. WELFARE, *supra* note 210, at 25.

247. *Id.* at 26.

248. *Ratifications of C182—Worst Forms of Child Labour Convention, 1999 (No. 182)*, INT’L LABOUR ORG., [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327) (last visited Jan. 10, 2014).

249. *Ratifications of C138—Minimum Age Convention, 1973 (No. 138)*, INT’L LABOUR ORG., [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312283](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283) (last visited Jan. 10, 2014).

(CRC)<sup>250</sup> and the African Charter on the Rights and Welfare of the Child (Charter).<sup>251</sup> The Children's Act, 1998 (Act 560), although not yet fully operational,<sup>252</sup> is the primary domestic authority for child labor laws<sup>253</sup> and incorporates the rights detailed in the international instruments. With respect to *kayayei*, the Act provides that "[n]o person shall engage a child in exploitative labor."<sup>254</sup> Labour is "exploitative" if it "deprives the child of its health, education or development."<sup>255</sup> Furthermore, it sets eighteen as the minimum age for engagement in "hazardous work"<sup>256</sup> which is defined as work that "poses a danger to the health, safety or morals of a person."<sup>257</sup> Finally, "hazardous work" specifically includes "portage of heavy loads."<sup>258</sup>

Enforcement of these provisions is the responsibility of Social Services.<sup>259</sup> If, after investigation, Social Services is "reasonably satisfied" there has been a violation in the informal sector, Social Services "shall" report the matter to the police who "shall" investigate the allegation and "take the appropriate steps to prosecute the offender."<sup>260</sup> If, however, the offender is a family member of the exploited child, Social Services "shall request" that a probation officer or a social welfare officer prepare a "social enquiry report" instead of reporting the matter to the police.<sup>261</sup>

The Act's labor provisions are essentially protectionist, but a closer look, particularly at the enforcement provisions, reveals a limited punitive aspect. First, certain types of work (i.e., "exploitative" and "hazardous") are prohibited in an effort to protect children's

250. See 1577 U.N.T.S., [http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en) (showing Ghana ratified the treaty on February 5th, 1990).

251. See *Ratification Table*, AFR. COMM. OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD, <http://acerwc.org/ratifications/> (last visited Jan. 10, 2014).

252. MINISTRY OF EMP'T & SOC. WELFARE, *supra* note 210, at 22 (noting, for example, that implementation of Child Panels at the district level is still pending in many places).

253. There is also a limited reference to "young persons" in the Labour Act of 2003 (Act 651), but is framed as employer's responsibilities to youth workers in the formal sector. Labour Act, 2003 (Act 651), §§ 58–61.

254. The Children's Act, 1998 (Act 560), § 87(1) [hereinafter *The Children's Act*].

255. *Id.* § 87(2).

256. *Id.* § 91(1). Alternatively, § 90 sets the minimum age for "light" work at fifteen. "Light" work is defined as work "which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work." *Id.* § 90(2).

257. *Id.* § 91(2).

258. *Id.* § 91(3).

259. The Children's Act, *supra* note 254, § 96(1).

260. *Id.* § 96(3).

261. *Id.* § 96(4). This process is considerably different from the process used when there are allegations of violations in the formal sector. There, the initial investigating party is a district labour officer. If the labour officer is "reasonably satisfied" there has been a violation, he "shall" report the matter to the police for investigation. *Id.* § 95(3).

“health, education [and] development.”<sup>262</sup> And, responsibility for investigating allegations of violations in the informal sector rests with the Department Social Welfare Officer and the Social Services Subcommittee of the District Assembly instead of a police/prosecutorial body.<sup>263</sup> The enforcement provisions, however, trigger different responses depending on who is the offender. Non-relative employer offenders face prosecution, but relative offenders merely trigger the request of a “social enquiry report.”<sup>264</sup> The different approach for the relative/non-relative is interesting in that, while the offense (exploitation of the child) may be exactly the same, non-relatives trigger a punitive response but relatives trigger a protectionist response through social services intervention. Still, putting aside that aspect of enforcement, the overall tenor of the child labor laws is protectionist in nature: there is no provision for punitive action against the child and the bright-line age criteria for admission to *kaya* work is inconsistent with free market ideas and ignores the girls’ own decision-making ability.

The bigger issue is the enforcement of the labor laws at the street level. For many of the *kayayei* girls, the idea that the laws, which prevent them from working, are intended to protect them is laughable.<sup>265</sup> Instead, they see the prohibitions, and their “enforcement,” as punitive. From their point of view, there are two major problems with prohibitions on their working. First, the prohibitions allow, perhaps even encourage, exploitation and corruption.<sup>266</sup> All market traders and workers, including *kayayei*, must purchase daily “tickets” to be “legally” permitted to work in the markets.<sup>267</sup> The tickets are purchased from the Kumasi Metropolitan Assembly (KMA) and cost twenty cents.<sup>268</sup> Anyone working in the markets can be stopped and required to produce their daily ticket; anyone unable

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262. *Id.* § 87(2) & 91(2).

263. *Id.* § 96(1).

264. The Children’s Act, *supra* note 254, § 97(4).

265. For example, when asked if the labor laws are a good thing, the incredulous response was often along the lines of “[t]he law does not help the child, it helps the KMA.” Sheryl Buske, *Kayayei Survey*, Book 8 #020812-128F (2011) (on file with author).

266. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 12, 2011 (on file with author); *see also* MINISTRY OF EMP’T & SOC. WELFARE, *supra* note 210, at 16 (citing “institutional weakness in the application of child labour laws” as one of the causes of child labor in Ghana).

267. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 12, 2011 (on file with author). *See also* Kwankye et al., *Coping Strategies*, *supra* note 2, at 14–15 (noting that, in order to be permitted to work in the markets, the *kayayei* must pay a daily toll to the authorities).

268. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 12, 2011 (on file with author).

to produce a valid ticket is subject to being fined.<sup>269</sup> The girls report that they generally have no problem purchasing their tickets, even though they should not be permitted to do so because they are under eighteen.<sup>270</sup> They are able to easily purchase the tickets because they pay a “tax.”<sup>271</sup> The tax is a little extra money, locally known as “small-small,” for the KMA officer who sells the ticket.<sup>272</sup> The girls despise the practice, but say that they could not get their tickets otherwise.<sup>273</sup>

The girls pin their tickets to their clothes where they will be visible. In this way, they say, they are usually not bothered by KMA officers because “everyone knows” they have already paid their tax.<sup>274</sup> Sometimes, though, the girls report that they are easy targets—especially the younger ones—because the KMA officers will take their head pans if they haven’t bought a ticket or they can’t pay another “tax” to a second, or third, KMA officer.<sup>275</sup> The loss of their head pan is a serious problem for the girls. Replacing a pan, or paying for a lost rented one, can be more than an entire week’s earnings.<sup>276</sup> Consequently, their pans are one of their most prized possessions and they rarely let it out of their sight, even while sleeping they curl around it or use it for a pillow.

The labor law is intended to protect children. The requirement of the daily ticket is meant to regulate who can work in the markets and to raise city revenue. Instead, it creates a situation in which individual KMA officers have complete control over whether a child is able to purchase a ticket and work. To be sure, some KMA officers enforce the law and do not sell tickets to children.<sup>277</sup> Other KMA officers, guided by a sense of compassion and the desire to “help,” will sell the tickets to the girls.<sup>278</sup> Other KMA officers use their position to exploit the girls by demanding “small-small.”<sup>279</sup> From their perspective, *kayayei* are only prostitutes and thieves and are

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269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 12, 2011 (on file with author).

275. *Id.*

276. *Id.* According to the girls, new pans cost between fifteen and twenty cedis (approximately eight to eleven USD). For most of the girls, this represents approximately one week of earnings.

277. Interview with “Kwame,” KMA Officer, Kumasi, Ghana (Feb. 18, 2012) (on file with author).

278. *Id.*

279. *Id.*

lucky not to be arrested.<sup>280</sup> In this way, the threat of withholding a ticket, or charging extra for it, becomes the stick with which the girls are beaten.<sup>281</sup> Thus, the law that was intended to protect them often fails to do so because of individual KMA officers' perception of the girls.

Many of the girls also say the labor laws pose an even bigger problem than the daily "tax" and hassles from the KMA.<sup>282</sup> Those without any adult support ask, often poignantly, what else can they do to survive?<sup>283</sup> Indeed, as they point out, the law prevents them from working, but there is very little in the way of meaningful alternatives for them. These girls are very much aware that there is virtually no safety net for them and believe that they have no choice but to "fend for ourselves."<sup>284</sup> They view the laws that prohibit them from working, without providing realistic alternatives for them, as punitive—another strike against them in their already difficult life.

## 2. Education Policy

Ghana's education policy is a rights-based policy. In the days leading up to the "new" 1992 Constitution, policymakers believed that education was an "unequivocal" right and that tuition operated as a barrier which kept some children from exercising their right to an education.<sup>285</sup> At that time, roughly thirty percent of the school age children in Ghana were not attending school.<sup>286</sup> The 1992 Constitution reflects this rights-based approach to education and

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280. *Id.*

281. See Agarwal et al., *supra* note 19, at 257 (noting that protectionist legislation can "operate as an extra burden upon children, leaving them open to extortionate practices on the part of minor officials").

282. Sheryl Buske, Focus Group, Street Children Project Drop-In Center, Dec. 12, 2011 (on file with author).

283. Sheryl Buske, *Kayayei Survey*, Book 8#0201112-181F (2011) (on file with author) (stating "sometimes there's just nothing else for people like me").

284. For example, Sheryl Buske, *Kayayei Survey*, Book 8#012912-112M (2011) (on file with author) (stating "I don't have anyone to help me").

285. Kwame Akyeampong, *Revisiting Free Compulsory Universal Basic Education (FCUBE) in Ghana*, 45:2 COMP. EDUC. 175, 181 (2009); see also Angela W. Little, CONSORTIUM FOR RESEARCH ON EDUC. ACCESS, TRANSITIONS AND EQUITY, ACCESS TO BASIC EDUCATION IN GHANA: POLITICS, POLICIES AND PROGRESS 12–21 (2010), available at [http://www.create-rpc.org/pdf\\_documents/PTA42.pdf](http://www.create-rpc.org/pdf_documents/PTA42.pdf) (providing a detailed and fascinating history of education reform in Ghana).

286. Athena Maikish & Alec Gershberg, TARGETING EDUCATION FUNDING TO THE POOR: UNIVERSAL PRIMARY EDUCATION, EDUCATION DECENTRALIZATION AND LOCAL LEVEL OUTCOMES IN GHANA, EFA GLOBAL MONITORING REPORT 2009, at 6, available at <http://unesdoc.unesco.org/images/0018/001804/180410e.pdf>.

provides “basic education shall be free, compulsory and available to all.”<sup>287</sup>

In 1996, in an effort to meet the constitutional mandate,<sup>288</sup> the Ministry of Education launched Ghana’s flagship education policy, the Free Compulsory Universal Basic Education program, more commonly known as FCUBE.<sup>289</sup> The FCUBE attempted to do two essential things: improve the quality of teaching and improve the infrastructure of the schools.<sup>290</sup> These reforms were to be carried out during the provision of a “free” education.<sup>291</sup> Nonetheless, many school districts continued to charge “administrative fees” as a way to create funding for school repairs and other needs.<sup>292</sup> Essentially, the “administrative fees” provided the “extra” resources for schools beyond the minimal amount provided by the government.<sup>293</sup>

In 1999, frustrated with the continuation of fees in some schools, failure to meet enrollment targets, and poor school supervision at the local level, the Ministry shifted its initial focus from improved teaching and infrastructure to decentralizing the country’s education system and introducing capitation grants.<sup>294</sup> Capitation grants are government funds which are provided to schools on a per-child basis based on enrollment.<sup>295</sup> It is meant to increase enrollment by removing the financial barrier to school and to compensate schools for revenue lost through elimination of fees.<sup>296</sup> Nonetheless there are still significant barriers to education for *kayayei* girls.

*Actual Cost:* One of the reasons *kayayei* girls have not benefited from the FCUBE is because even though education is “free” and students no longer pay tuition, the “real cost” of education is much more than just the tuition.<sup>297</sup> The “real cost” includes the actual cost of school supplies, uniforms and book bags, lunch costs and transportation costs—none of which are part of the FCUBE tuition waiver.<sup>298</sup>

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287. GHANA [CONSTITUTION] May 8, 1992, art. 25(1)(a).

288. *Id.* art. 38(2) (requiring that the government “shall within two years after Parliament first meets after the coming into of this Constitution, draw up a programme for implementation within the following ten years, for the provision of free, compulsory and universal basic education”).

289. Maikish & Gershberg, *supra* note 286, at 5.

290. *See id.*

291. *Id.*

292. *Id.*

293. *See id.*

294. *Id.* at 6–7.

295. Maikish & Gershberg, *supra* note 286, at 7.

296. *Id.* at 9.

297. Yeboah & Appiah-Yeboah, *supra* note 3, at 15.

298. *Id.* at 15–16.

These costs, while perhaps manageable for one or two children, become prohibitive for many large families.

Being forced to earn money to contribute to their school expenses is common among the girls. For example, one twelve-year-old who had only been working on the streets for less than a week explained that after her school shoes were stolen, her mother withdrew her from school and told her she had to work until she earned enough money to replace them.<sup>299</sup> She estimated that it would take her at least six months to earn enough money to replace the shoes.<sup>300</sup> Others tell similar stories about working to earn money to purchase “stationary” (school supplies) or uniforms.<sup>301</sup>

*Opportunity Cost:* A second reason *kayayei* have been mostly left out of FCUBE’s success is because of “lost opportunity” costs associated with children attending school.<sup>302</sup> These costs include the loss of wages from a child who is not working, the loss of childcare provided by a child who attends school, the loss of unpaid labor and, in many cases, the cost of a delayed bride price.<sup>303</sup> These are very real costs that families must make up for if their daughter goes to school instead of to work.

*Cultural Reluctance/Resistance:* A third reason *kayayei* have seen little benefit from the FCUBE is that, simply put, educating girls is often seen as a waste of time and money. This is particularly true in the northern regions where “traditional beliefs about women’s status are the strongest . . .”<sup>304</sup> Instead, girls are often kept at home to help their mothers and learn housekeeping.<sup>305</sup> Additionally, it isn’t considered “beneficial to invest in female education because most of them do not perform well. What sense does it make to invest one’s limited resources in a girl only for her to drop out of school for poor performance or worse still, get pregnant?”<sup>306</sup> More generally, in many of the northern rural communities, people view education as either

299. Sheryl Buske, Field Notes, Nov. 9, 2011 (on file with author).

300. *Id.* A social worker who was present for this exchange said she doubted very much that the child would ever return to school. According to her, the temptation of a regular income typically overcame parents’ willingness to have their children return to school.

301. Sheryl Buske, *Kayayei Survey*, Book 1 #201912-318F (2011) (on file with author) (noting “I’m able to pay for some of my stationary now.”); Sheryl Buske, *Kayayei Survey*, Book 8 #020312-112F (2011) (on file with author) (stating “[n]ow I can help my parents pay for my school things”).

302. Yeboah & Appiah-Yeboah, *supra* note 3, at 15.

303. *Id.*

304. UNICEF, *supra* note 14, at 95.

305. *Id.* at 93; *see also* Kangsangbata, *supra* note 32, at 20 (noting that women are traditionally socialized to “ensure the healthy maintenance of their families”).

306. Kangsangbata, *supra* note 32, at 24.

“meaningless” because children will only grow up to work on the family farms, or as a threat to traditional lifestyles in that an educated child might leave the family farm for other opportunities.<sup>307</sup>

The FCUBE has the potential to make education assessable to *kayayei* girls. Ultimately, though, whether they can exercise their right to education depends on the answer to several key questions:

1. Is there the ability to pay the actual other costs?
2. Is there the ability to absorb the lost opportunity costs?
3. Is there a willingness to do both?

The answer to these questions, in turn, depends on whether there is sufficient support for *kayayei* girls' education. At present, there is very little political or public will to do so. On the one hand, many families cannot, or will not, prioritize long-term improvement through education over the short-term gains of income from *kaya* work.<sup>308</sup> On the other hand, teachers and administrators charged with ensuring the girls' enrollment in school and their continued attendance share many of the negative perceptions of the girls. As one headmistress of a secondary school noted, “[g]etting [*kayayei* girls] enrolled is an uphill battle. Even when we get them enrolled, they are behind grade level and usually drop out. My teachers should be spending their efforts on other children who want to learn.”<sup>309</sup> This response is telling—it reflects a lack of understanding of *kayayei*, including that many of the gaps in the girls' education causing them to be behind grade level is due to their parents' insistence that they go to work.<sup>310</sup> Sadly, it also reflects the public's perception, or at least this headmistress' position, that some children are worthy of an education and some are not—even though all Ghanaian children have a constitutional right to an education.

### 3. Health Care Policy

Similar to its education policy, Ghana's health policy recognizes that health care is also a human rights issue.<sup>311</sup> The national policy is

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307. INT'L LABOUR OFFICE, *supra* note 79, at 230.

308. MINISTRY OF EMP'T & SOC. WELFARE, *supra* note 210, at 36 (noting that many families continue to value the short-term benefit from children's work over the long-term benefits of education).

309. Interview with “Mary,” Primary School Teacher, Kumasi, Ghana (Mar. 28, 2012) (on file with author).

310. Kangsangbata, *supra* note 32, at 14–15.

311. See GHANA MINISTRY OF HEALTH, NATIONAL HEALTH POLICY 11 (2007), available at <http://www.moh-ghana.org/UploadFiles/Publications/NATIONAL%20HEALTH%20POLICY22APR2012.pdf>.

implemented through the National Health Insurance Act of 2003,<sup>312</sup> which, in turn, established the National Health Insurance Scheme (NHIS).<sup>313</sup> The mission of the NHIS is “to ensure equitable universal access for all residents of Ghana to an acceptable quality of essential health services without out-of-pocket payment being required at the point of service use.”<sup>314</sup>

The NHIS is a national system with decentralized operations; each district has its own insurance fund which is financed at the national level through levies against the VAT, Social Security and the National Insurance Trust Fund.<sup>315</sup> To enroll, members must register and pay premiums through their district office.<sup>316</sup> From the beginning, several groups of people have been statutorily exempt from the premium requirement, including:

A person who is:

- a) under 18 years of age and both of whose parents or guardians are contributors;
- b) under 18 years of age and whose parent or guardian has been proven by the scheme to be a single parent or guardian. . . is not required to pay any contribution to a District Mutual Health Insurance Scheme but is entitled in the case of a child to enjoy the minimum benefits under the scheme as a dependent . . . .<sup>317</sup>

The language of this provision is somewhat misleading. It specifies who may be enrolled without paying the premium. What isn't clear, though, is that because children whose parents enrolled them via a household plan are not charged a premium, *only* those children can be enrolled. In short, children whose parents were not enrolled in a family plan were not eligible for enrollment.

This restriction was arguably lifted in 2009 when President Mills made comments to the UN General Assembly that free healthcare would be extended to all children.<sup>318</sup> Whether all children have, in fact, been eligible for free enrollment since 2009 is a

312. Joseph Mensah et al., *Ghana's National Health Insurance Scheme in the Context of Health MDGs: An Empirical Evaluation Using Propensity Score Matching*, RUHR ECON. PAPERS (2009), available at <http://ideas.repec.org/p/rwi/repape/0157.html>.

313. National Health Insurance Regulations, 2004 (LI1809): Schedule III—National Health Insurance Scheme (NHIS).

314. Mensah et al., *supra* note 312, at 6.

315. OXFAM INT'L, *ACHIEVING A SHARED GOAL: FREE UNIVERSAL HEALTH CARE IN GHANA* 18 (2011).

316. *Id.* at 21.

317. National Health Insurance Regulations, 2004 (LI 1809): Regulation 56—Exemption from payment of contribution on basis of age.

318. OXFAM, *supra* note 315, at 18.

contentious issue.<sup>319</sup> It appears that some districts allowed it while others did not.<sup>320</sup>

More promising is the newly enacted National Health Insurance Authority 2012, Act 852.<sup>321</sup> It expressly provides that *all* children are now eligible for free enrollment regardless of their parents' enrollment status.<sup>322</sup> As yet, however, the Ministry has not announced when it will be implemented. If past experience is any indication, it will likely take months, perhaps years even.<sup>323</sup>

The NHIS has certainly made some impressive improvements in the provision and quality of healthcare in Ghana. Like the gains in education, though, the *kayayei* girls have benefited from them very little due to eligibility and logistical obstacles which stem, in part, from public perception.

*Eligibility:* Until 2009, it was clear that children could not be enrolled in NHIS unless they were enrolled as family members under their parent's plan.<sup>324</sup> After 2009, whether children could be enrolled separately from their parents was a matter of much confusion, even among Ghana's top officials, and resulted in inconsistent implementation across districts.<sup>325</sup> Additionally, given the high rates

319. See *NHIS Is Healthier Now Than Before—Sylvester Mensah*, PEACE FM ONLINE (Oct. 29, 2012), <http://www.ghanamedicalassociation.org/v3/index.php/2013-03-15-11-35-36/health-news/705-nhis-is-healthier-now-than-before-sylvester-mensah> (quoting NHIS CEO Sylvester Mensah as saying, “[s]ince 2009 children have been decoupled from their parents and children have independent access to healthcare without recourse to their parents”); *President Mahama Slams NPP Healthcare Promise*, GHANA ELECTION 2012 (Oct. 22, 2012), [http://www.africanelections.org/ghana/news\\_detail.php?nws=6786&t=President%20Mahama%20slams%20NPP%20healthcare%20promise](http://www.africanelections.org/ghana/news_detail.php?nws=6786&t=President%20Mahama%20slams%20NPP%20healthcare%20promise) (quoting President John Mahama as saying “the New Patriotic Party’s proposal to provide free healthcare to children under 18 years was in contrast to the National Health Insurance Authority law”); *Free Healthcare for Children—Nana Akufo—Addo Declares*, MODERN GHANA (Oct. 20, 2012), <http://www.modernghana.com/news/425180/1/free-healthcare-for-children-nana-akufo-addo-decl.html> (quoting New Patriotic Party (NPP) Presidential Candidate Nana Akufo-Addo as saying that NPP would offer all children free access to healthcare because “parents no longer have to be a subscriber to the NHIS for a child to benefit”).

320. *Porters, Street Kids Registered for NHIS*, MODERN GHANA NEWS (June 9, 2008), <http://www.modernghana.com/news/169028/1/porters-street-kids-registered-for-nhis.html> (reporting that about two thousand porters and street kids were registered with the NHIS, presumably without parental enrollment); *10,800 “Kayayeis” Get Free Health Care*, NGO NEWS AFR. (Sept. 19, 2009), <http://ngonewsafrika.org/archives/236> (reporting a mass NHIS registration of over ten-thousand *kayayei*).

321. Sodzi Tettey, *Ten Years of Health Insurance in Ghana*, SODZI SODZI-TETTEY’S BLOG (Sept. 16, 2013), <http://www.sodzisodzi.com/2013/09/ten-years-of-health-insurance-in-ghana>.

322. Report of the Committee of the Whole on the Proposed Formula for Disbursement of the National Health Insurance Fund for the Year 2013, The First Session of the Sixth Parliament of the Fourth Republic of Ghana, Mar. 27 2013, at 6.

323. Tettey, *supra* note 321.

324. See PEACE FM ONLINE, *supra* note 319.

325. OXFAM, *supra* note 315, at 18.

of illiteracy among the *kayayei*, as well as language barriers, print and radio campaigns meant to educate the public were largely inaccessible by the girls. Consequently, few of the girls realized they were eligible to enroll in NHIS and most went without insurance. Implementation of the new Act 852 is likely to face the same challenges.

*Logistics:* Assuming that Act 852 settles the issue of children's independent eligibility, there are still logistical issues that work against the *kayayei* girls enjoying the full benefit of the NHIS. First, the NHIS has been criticized as "riddled with inefficiency" and that the registration process is "poorly managed and slow," administered by "unprofessional poorly trained staff," and people are faced with long lines and repeat visits.<sup>326</sup> That people have been known to "wait months for their membership cards, without which they are not entitled to benefits," is an example of the program's inefficiency.<sup>327</sup> Further complicating the process is the lack of consistency across districts, despite national guidelines which should facilitate nationwide consistency.<sup>328</sup> While these issues are not limited to *kayayei* girls, they make it all the more unlikely that a child could navigate the process. This is particularly true when the child has little to no formal education.<sup>329</sup>

Second, it is unlikely *kayayei* girls were enrolled before they left their villages. Twenty-eight percent of Ghana's population is considered "indigent," however less than three percent of that group is enrolled in the NHIS.<sup>330</sup> The main reason given for failure to enroll is the inability to afford the premium.<sup>331</sup> Given the high concentration of poor households in the northern regions, it is not unlikely that many of the *kayayei* girls came from households which were not enrolled in NHIS.

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326. *Id.* at 29.

327. *Id.*

328. Yogesh Rajkotia & Kevin Frick, *Does Household Enrollment Reduce Adverse Selection in a Voluntary Health Insurance System? Evidence from the Ghanaian National Health Insurance System*, HEALTH POL'Y & PLANNING 1, 2 (2011), available at <http://heapol.oxfordjournals.org/content/early/2011/09/07/heapol.czr057.full.pdf> (noting the existence of "much heterogeneity" across districts).

329. Mensah et al., *supra* note 312, at 14 (noting that those with low levels of education are less likely to enroll).

330. OXFAM, *supra* note 315, at 26.

331. *Id.* at 26 (noting this is the case for as many as seventy-seven percent of the country's total population, eighty-five percent for rural residents and ninety-one percent for very poor households); see also *Free NHIS Registration for People in Kassena Nankana*, GHANA BUS. NEWS (Feb. 5, 2013), <http://www.ghanabusinessnews.com/2013/02/05/free-nhis-registration-for-people-in-kassena-nankana/> (reporting that many of the people who registered during the registration campaign had allowed their policy to expire because they could not affirm the premium to renew it).

Additionally, for those who attempt to enroll separately from their parents, they will likely have difficulty establishing eligibility because they cannot provide proof of age.<sup>332</sup> For *kayayei* girls, producing a birth certificate can be problematic, even in the best of circumstances. It's unlikely that they have a birth certificate because it is unlikely that their birth was registered in the first place.<sup>333</sup> For example, between 1999 and 2003, the period during which many of the *kayayei* were born, only about twenty percent of Ghana births were registered.<sup>334</sup> Moreover, even if they do have a birth certificate, they are very unlikely to have taken it with them when they went to the city. Without it, it will be difficult for them to enroll in NHIS.

Third, even if the *kayayei* girls were initially enrolled in the NHIS, they must renew their policy every year.<sup>335</sup> The process for renewals, like the process for initial enrollment, is challenging and inconsistent across districts. Some districts will not permit a renewal if the enrollee cannot produce a current membership card while other districts will allow it.<sup>336</sup> Some renewals have been delayed due to an inability of NHIS staff to locate the enrollee's records. For *kayayei* girls, renewing their NHIS enrollment is just not worth the working hours lost while waiting in long lines to see an NHIS administrator and then to be told they don't have the proper documentation.

Finally, there is a great deal of general confusion and misunderstanding regarding membership renewals. The confusion stems from discussions in the media about the possibility of a one-time premium payment option that might become effective at some point in the future.<sup>337</sup> This is often confused with a one-time enrollment, which will still require annual renewals. Unfortunately, many of the media reports have confused the issue by using the language

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332. See UNICEF, STRENGTHENING BIRTH REGISTRATION IN AFRICA: OPPORTUNITIES AND PARTNERSHIPS TECHNICAL PAPER 5 (2010), available at [http://www.unicef.org/esaro/Technical\\_paper\\_low\\_res\\_.pdf](http://www.unicef.org/esaro/Technical_paper_low_res_.pdf) (noting that “[e]ach year nearly fifty million children are not registered worldwide”).

333. One indicator that *kayayei* girls do not have birth certificates is that so many of them do not their own age. Indeed, the author's *Kayayei Study* revealed that thirteen percent did not know the age or birth date. Sheryl Buske, *Kayayei Survey*, Responses to Question 2 (2011) (on file with author).

334. UNICEF, *supra* note 332, at 7; see also UNHCR, *supra* note 109, at 12 (noting that children living on the street are “likely” to lose access to basic services because they lack the required identity documents).

335. OXFAM, *supra* note 315, at 21.

336. *Id.* at 25.

337. Kumasi Morgan Owusu, *Confusion Over NHIS One Time Premium*, MODERN GHANA NEWS (June 11, 2011), <http://www.modernghana.com/news/331792/1/confusion-over-nhis-one-time-premium.html>.

interchangeably and by failing to make clear when, exactly, the change will go into effect.<sup>338</sup>

The NHIS system has resulted in improvements in the quality and accessibility of health care in Ghana. In the past, eligibility barriers prevented many *kayayei* girls from benefiting from NHIS. The new law is intended to remove that barrier. Still, barriers to full participation by *kayayei* girls continue to exist due to their lack of understanding about their eligibility and administrative challenges to enrolling.

### CONCLUSION

North-to-South migration of young girls in search of *kaya* jobs is increasingly common. Some have suggested that it is “an adaptive response to poverty.”<sup>339</sup> Indeed, some studies have concluded that almost every house in some of the northern regions have lost at least one girl to the *kaya* business.<sup>340</sup>

As the presence of the girls on the street continues to grow, it is increasingly difficult for the public to continue to ignore them. Instead, the public sees “street children” and responds to them as criminals and victims, and to a lesser degree, working entrepreneurs. Public perception of the girls has rendered much of the labor, education and health policies of no use to them. In a country which struggles with corruption and little and/or uncoordinated administrative oversight, individual members of “the public” tasked with policy implementation all too often allow their personal views to affect how they do their job. To put it plainly, “the public” is made up of individual teachers, secretaries, KMA officers, NHIS personnel, school administrators, and others. These are the very people who must implement the policies. As long as the implementation of public policy is filtered through individual biases, the *kayayei* girls will not benefit from policies that are intended to reach *all* Ghanaian children. Bringing about meaningful changes in public perception is a monumental task, but it can be done; it has been done.

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338. For example, in 2009 the media reported that “the latter part of 2010” was “fixed” as the implementation date for the one-time premium, but the change has yet to go into effect. *Date Set for NHIS One-Time Premium*, MODERN GHANA (Nov. 13, 2009), <http://www.modernghana.com/news/249058/1/date-set-for-nhis-one-time-premium.html>. *But see NHIS One-Time Premium to Commence*, MODERN GHANA (May 12, 2012), <http://www.modernghana.com/news/394914/1/nhis-one-time-premium-to-commence.html> (citing Dr. Kwabena Duffuor, Minister of Finance, as saying that the one-time premium was “certain” to go into effect by the end of 2012).

339. Awumbila, *supra* note 4, at 3.

340. Kwankye et al., *Coping Strategies*, *supra* note 2, at 24.